



Public Notice

**U S Army Corps
of Engineers**
Huntington District
Pittsburgh District

In reply refer to Public Notice No.

Issuance Date: June 14, 2016

LRH-2016-00006

Stream:

Closing Date: July 29, 2016

N/A

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-RD-E Public Notice No. (*reference above*)

502 8th Street

Huntington, WV 25701-2070

Phone: (304) 399-5210

INITIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWP.

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

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2015-0017 at www.regulations.gov, or by email to NWP2017@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 June 1, 2016 Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

Regional Issues Concerning the Proposed NWP, 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 important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP 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 NWP may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the Huntington and Pittsburgh Districts for West Virginia. The Huntington and Pittsburgh Districts are 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 NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in West Virginia. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to **Adam Fannin by mail at above address or by email at Adam.E.Fannin@usace.army.mil**. Comments relating to regional conditions are due by **July 29, 2016**. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices. If you desire to submit your comments on the proposed regional conditions by email, you must comply with the following:

- a) In the subject line of your email, type in ONLY the Public Notice ID No.;
- b) Provide your physical mailing address and telephone number;
- c) Send your email to: Adam.E.Fannin@usace.army.mil
- d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification. The 401 decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP. The final NWP will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWP, 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 NWP with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP, are available for viewing at www.regulations.gov, docket number COE-2015-0017. Final decision documents will be prepared for the NWP that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at www.regulations.gov in docket number COE-2015-0017, or at the Federal Register at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-01/pdf/2016-12083.pdf>.

Index of Proposed Nationwide Permits, Conditions, and Definitions

Nationwide Permits

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3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
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8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
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14. Linear Transportation Projects
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- 9. Management of Water Flows
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Vegetated shallows
Waterbody

Enclosure 1
2017 Proposed Regional Specific and General Conditions for West Virginia

NWP Specific Regional Conditions

1. ***Aids to Navigation.***
 - No proposed regional conditions.
2. ***Structures in Artificial Canals.***
 - No proposed regional conditions.
3. ***Maintenance.***
 - a. PCN in accordance with NWP General Condition 32 is required for the following activities:
 - i. All regulated activities in the Ohio River and the Kanawha River; and
 - ii. For temporary structures, work, and discharges (including cofferdams) necessary for access fills or dewatering of construction sites occurring in Section 10 waters when the primary activity is otherwise authorized by the Corps of Engineers. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
4. ***Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.***
 - No proposed regional conditions.
5. ***Scientific Measurement Devices.***
 - No proposed regional conditions.
6. ***Survey Activities.***
 - No proposed regional conditions.
7. ***Outfall Structures and Associated Intake Structures.***
 - No proposed regional conditions.
8. ***Oil and Gas Structures on the Outer Continental Shelf.***
 - No proposed regional conditions.
9. ***Structures in Fleeting and Anchorage Areas.***
 - No proposed regional conditions.
10. ***Mooring Buoys.***
 - No proposed regional conditions.

11. *Temporary Recreational Structures.*

- No proposed regional conditions.

12. *Utility Line Activities.*

- a. PCN in accordance with NWP General Condition 32 is required for all discharges of dredged or fill material into scrub/shrub and forested wetlands exceeding 1/10 acre.
- b. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- c. Anti-seep collars or clay plugs must be utilized for trenching activities conducted in a wetland.

13. *Bank Stabilization.*

- a. PCN in accordance with NWP General Condition 32 is required for the following activities:
 - i. All regulated activities in the Ohio River and the Kanawha River;
 - ii. All activities in Section 10 waters that involve a discharge of greater than 10 cubic yards of dredged or fill material below the ordinary high water mark; and
 - iii. The use of any vertical bulkhead. A vertical bulkhead is defined as any structure of fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.

14. *Linear Transportation Projects.*

- a. PCN in accordance with NWP General Condition 32 is required for the following activities:
 - i. All regulated activities in Section 10 waters;
 - ii. Discharge of dredged or fill material into greater than 200 linear feet of stream; and
 - iii. All vented (culverted) low water crossings and all vented crossings. A vented crossing is defined as a stream crossing where multiple culverts are proposed to be installed in waters of the U.S.

15. *U.S. Coast Guard Approved Bridges.*

- No proposed regional conditions.

16. *Return Water From Upland Contained Disposal Areas.*

- No proposed regional conditions.

17. ***Hydropower Projects.***
 - No proposed regional conditions.
18. ***Minor Discharges.***
 - a. This NWP does not authorize stream relocations or channelization, impoundments, well pads and/or utility substations for commercial and/or industrial use, construction of valley fills, or fills resulting in the permanent losses of streams.
19. ***Minor Dredging.***
 - a. PCN in accordance with NWP General Condition 32 is required for all regulated activities in Section 10 waters.
20. ***Response Operations for Oil and Hazardous Substances.***
 - No proposed regional conditions.
21. ***Surface Coal Mining Activities.***
 - No proposed regional conditions.
22. ***Removal of Vessels.***
 - No proposed regional conditions.
23. ***Approved Categorical Exclusions.***
 - a. PCN in accordance with NWP General Condition 32 is required for use of this NWP.
 - b. The PCN must include a copy of the Categorical Exclusion determination.
24. ***Indian Tribe or State Administered Section 404 Programs.***
 - No proposed regional conditions.
25. ***Structural Discharges.***
 - No proposed regional conditions.
26. ***Reserved.***
27. ***Aquatic Habitat Restoration, Establishment, and Enhancement Activities.***
 - a. PCN in accordance with NWP General Condition 32 is required for all regulated activities in waters of the U.S., including special aquatic sites.

28. ***Modification to Existing Marinas.***
 - No proposed regional conditions.
29. ***Residential Developments.***
 - No proposed regional conditions.
30. ***Moist Soil Management for Wildlife.***
 - No proposed regional conditions.
31. ***Maintenance of Existing Flood Control Facilities.***
 - No proposed regional conditions.
32. ***Completed Enforcement Actions.***
 - No proposed regional conditions.
33. ***Temporary Construction, Access, and Dewatering.***
 - No proposed regional conditions.
34. ***Cranberry Production Activities.***
 - No proposed regional conditions.
35. ***Maintenance Dredging of Existing Basins.***
 - a. PCN in accordance with NWP General Condition 32 is required for use of this NWP.
36. ***Boat Ramps.***
 - a. PCN in accordance with NWP General Condition 32 is required for use of this NWP for regulated activities located at a stream confluence.
 - b. PCN in accordance with NWP General Condition 32 is required for any boat ramp proposed to be located within the area between the upstream and the downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any federal-mooring cell at any lock, as shown on the navigation charts.
37. ***Emergency Watershed Protection and Rehabilitation.***
 - No proposed regional conditions.
38. ***Cleanup of Hazardous and Toxic Waste.***
 - No proposed regional conditions.

39. ***Commercial and Institutional Developments.***
 - No proposed regional conditions.
40. ***Agricultural Activities.***
 - No proposed regional conditions.
41. ***Reshaping of Existing Drainage Ditches.***
 - No proposed regional conditions.
42. ***Recreational Facilities.***
 - No proposed regional conditions.
43. ***Stormwater Management Facilities.***
 - a. PCN in accordance with NWP General Condition 32 is required for use of the NWP.
44. ***Mining Activities.***
 - Proposed for reinstatement. No proposed regional conditions.
45. ***Repair of Uplands Damaged by Discrete Events.***
 - No proposed regional conditions.
46. ***Discharges in Ditches.***
 - No proposed regional conditions.
47. ***[Reserved]***
48. ***Commercial Shellfish Aquaculture Activities.***
 - No proposed regional conditions.
49. ***Coal Remining Activities.***
 - No proposed regional conditions.
50. ***Underground Coal Mining Activities.***
 - No proposed regional conditions.
51. ***Land-Based Renewable Energy Generation Facilities.***
 - No proposed regional conditions.
52. ***Water-Based Renewable Energy Generation Pilot Projects.***
 - Proposed to revoke for use in West Virginia

A. *Removal of Low-Head Dams.*

- a. The PCN shall include the amount of sediments within the pool upstream of the dam which are to be released downstream and a discussion of the steps taken to minimize the potential adverse effects on the downstream aquatic environment.
- b. Sediments to be released from the pool upstream of the dam shall be consistent with NWP General Condition 6.

B. *Living Shorelines.*

- Proposed to revoke for use in West Virginia

Regional General Conditions

1. *Full Agency Pre-Construction Notification (PCN):* To the extent possible, applicants are encouraged to submit a complete compact disc (CD) copy for any PCN package greater than 15 pages and/or includes maps, drawings, spreadsheets or other similar materials which are larger than 8.5 inches by 11 inches. All files saved on CDs should be in .pdf format. A hard copy of any oversized maps, drawings, spreadsheets etc. in the PCN package should be submitted and accompany the complete CD. An index or table of contents should be provided and correspond with each file saved on the CD and/or within the PCN hard copy.

2. *United States Fish & Wildlife Service (USFWS):* Due to the potential presence of federally listed endangered and threatened (T&E) species, habitat for T&E habitat, including critical habitat, within the state of West Virginia, applicants are encouraged to contact the USFWS, West Virginia Field Office, Ecological Services by phone at (304) 636-6586 or by writing to 694 Beverly Pike, Elkins, West Virginia, 26241 prior to the submittal of a PCN. The USFWS can provide information to assist in complying with NWP General Condition 18 pertaining to endangered species and NWP General Condition 19 pertaining to migratory birds and bald and golden eagles. All relevant information obtained from the USFWS should be submitted with the PCN. The current list of waterways supporting federally listed T&E species in West Virginia is provided as Appendix A. Perspective applicants are encouraged to contact the USFWS West Virginia Field Office to obtain the most updated information regarding potential locations known to inhabit T&E species.

3. All regulated activities located in the waterways listed below require PCN in accordance with NWP General Condition 32:

- New River;
- Bluestone River from the upstream boundary of Pipestem Park to Bluestone Reservoir;
- Meadow River from an area near the US 19 Bridge to its junction with the Gauley River;
- All streams within the Monongahela National Forest designated as National Wild and Scenic Study Rivers;

- All streams and other bodies of water in State and National Forests and Recreation Areas (included are streams and bodies of water located within the Spruce Knob, Seneca Rocks and Gauley River National Recreation Areas); and
- Streams and their tributaries as contained within the boundaries of the designated National Wilderness Areas or the headwaters of such rivers and their tributaries; Cranberry River, Red Creek, Laurel Fork and Otter Creek.

The Corps will consult with National Park Service and/or the United States Forest Service upon receipt of the PCN.

4. *West Virginia Natural Stream Preservation Act:* In accordance with the West Virginia Natural Stream Preservation Act, PCN in accordance with NWP General Condition 32 is required to the Corps for regulated activities that would impound, divert or flood the body of water unless the specifically authorized by the West Virginia Department of Environmental Protection:

- Greenbrier River from its confluence with Knapps Creek to its confluence with the New River;
- Anthony Creek from its headwaters to its confluence with the Greenbrier River;
- Cranberry River from its headwaters to its confluence with the Gauley River;
- Birch River from Cora Brown Bridge in Nicholas County to its confluence with the Elk River; and
- New River from its confluence with the Greenbrier River to its confluence with the Gauley River.

Appendix A

Aquatic Habitats Supporting Federally listed Endangered and Threatened Species, and Proposed Endangered Species in West Virginia

There are seventeen federally listed endangered and threatened or proposed endangered species that are associated with specific aquatic habitats in West Virginia. These include ten endangered freshwater mussels - clubshell (*Pleurobema clava*), fanshell (*Cyprogenia stegaria*), James spinymussel (*Pleurobema collina*), northern riffleshell (*Epioblasma torulosa rangiana*), pink mucket pearl mussel (*Lampsilis abrupta*), rayed bean (*Villosa fabilis*), sheepnose (*Plethobasus cyphus*), snuffbox (*Epioblasma triquetra*), spectaclecase (*Cumberlandia monodonta*), and tubercled-blossum pearl mussel (*Epioblasma torulosa torulosa*); two endangered plants - Harperella (*Ptilimnium nodosum*) and northeastern bulrush (*Scirpus ancistrochaetus*); one threatened plant - Virginia spiraea (*Spiraea virginiana*); two threatened crustaceans – Madison Cave isopod (*Antrolana lira*) and Big Sandy crayfish (*Cambarus callainus*); one endangered crustacean – Guyandotte River crayfish (*Cambarus veteranus*); and one endangered fish - diamond darter (*Crystallaria cincotta*). Nine other listed species not associated with specific aquatic habitats also occur in West Virginia. Those species are not addressed here.

U.S. Army Corps of Engineers Huntington District

1. Big Sandy Creek: Kanawha County: Snuffbox.
2. Bluestone River: Mercer and Summers Counties (Bluestone Gorge to slackwater of Bluestone Reservoir): Virginia spiraea.
3. Cedar Creek: Braxton and Gilmer Counties: Snuffbox.
4. Clear Fork: Wyoming County: Guyandotte River crayfish
5. Cove Creek: Monroe County: James spinymussel.
6. Elk River: Braxton, Clay, and Kanawha Counties (Sutton Dam to slackwater below Coonskin Park), including the lower one-half mile reaches of its tributaries Birch River, Blue Creek, and Laurel Creek: Clubshell, pink mucket pearl mussel, northern riffleshell, rayed bean, and snuffbox. The Elk River also contains the diamond darter (endangered). Critical habitat for this species is from King Shoals to slackwater below Coonskin Park.
7. Gauley River: Fayette and Nicholas Counties (Summersville Dam to Swiss): Virginia spiraea.
8. Greenbrier River: Greenbrier and Pocahontas Counties: Virginia spiraea.
9. Henry Fork: Calhoun and Roane Counties: Snuffbox.

10. Hughes River: Ritchie and Wirt Counties, including the lower one-half mile reach of its tributary Goose Creek: Snuffbox.
11. Kanawha River: Fayette, Kanawha, Mason, and Putnam Counties: Fanshell, pink mucket pearl mussel, sheepnose, spectaclecase, and tubercled-blossom pearl mussel.
12. Leading Creek: Gilmer and Lewis Counties, including the lower one-half mile reach of its tributary Fink Creek: Snuffbox.
13. Little Kanawha River: Braxton, Calhoun, Gilmer, Wirt, and Wood Counties, including the lower one-half mile reaches of its tributaries Leading Creek (Calhoun County), Pine Creek, Sand Fork, Slate Creek, Straight Creek, Tanner Creek, Tucker Creek, and Walker Creek: Clubshell and snuffbox.
14. Marsh Fork River including Dingess Branch and Millers Camp Branch and associated palustrine emergent and scrub-shrub wetlands: Raleigh County: Virginia spiraea.
15. McElroy Creek: Doddridge and Tyler Counties: Snuffbox.
16. Meadow River: Fayette, Greenbrier, and Nicholas Counties: Virginia spiraea.
17. Meathouse Fork of Middle Island Creek: Doddridge County, including the lower one-half mile reach of its tributary Toms Fork: Clubshell and snuffbox.
18. Middle Island Creek: Doddridge, Pleasants, and Tyler Counties, including the lower one-half mile reaches of its tributaries Arnold Creek, Bluestone Creek, Buckeye Creek, Indian Creek, McKim Creek, Point Pleasant Creek, and Sancho Creek: Clubshell and snuffbox.
19. New River (Lower): Fayette County (Route 19 to Gauley Bridge): Virginia spiraea.
20. North Fork Hughes River: Ritchie and Wirt Counties, including the lower one-half mile reaches of its tributaries Addis Run, Bonds Creek, Devilhole Creek, and Gillespie Run: Snuffbox.
21. Ohio River: Cabell, Jackson, Mason Pleasants, Tyler, Wetzel, and Wood Counties: Fanshell, pink mucket pearl mussel, sheepnose, and snuffbox.
22. Pinnacle Creek: Wyoming County: Guyandotte River crayfish
23. Potts Creek and South Fork of Potts Creek: Monroe County: James spinymussel.
24. Reedy Creek: Roane and Wirt Counties: Snuffbox.

25. South Fork Hughes River: Doddridge, Ritchie, and Wirt Counties, including the lower one-half mile reaches of its tributaries Bone Creek, Indian Creek, Leatherbark Creek, Otterslide Creek, Slab Creek, and Spruce Creek: Clubshell and snuffbox.
26. Spring Creek: Roane and Wirt Counties: Snuffbox.
27. Steer Creek: Calhoun and Gilmer Counties: Snuffbox.
28. Sugar Creek: Pleasants County: Snuffbox.
29. Tug Fork River and tributaries including Dry Fork: McDowell and Mingo Counties: Big Sandy crayfish
30. West Fork Little Kanawha River: Calhoun, Roane, and Wirt Counties: Snuffbox.

U.S. Army Corps of Engineers Pittsburgh District

1. Back Creek: Berkeley County: Harperella.
2. Cacapon River: Morgan County: Harperella.
3. Dunkard Creek: Monongalia County: Snuffbox.
4. Fish Creek: Marshall County: Snuffbox.
5. Fishing Creek: Wetzel County: Snuffbox. Note – the mouth of Fishing Creek at the Ohio River is regulated by the Huntington District.
6. Hackers Creek (of the West Fork River): Harrison and Lewis Counties: Clubshell and snuffbox.
7. Potomac River: Morgan County (from the mouth of the Cacapon River to the mouth of Sleepy Creek): Harperella.
8. Sleepy Creek: Morgan County: Harperella.
9. West Fork River: Harrison, Lewis, and Marion Counties: Snuffbox.
10. Streams, springs, and wetlands connected to the groundwater system including caves, areas near sinkholes, and other groundwater/surface interfaces, from the Potomac River west to Opequon Creek, especially in the Rippon and Leetown Areas, and the Evitts Run Watershed: Jefferson and Berkeley Counties: Madison Cave isopod.
11. Wetlands: Berkeley and Hardy Counties: Northeastern bulrush.

***Note 1:** Applicants should ensure they are referencing the latest version of Appendix A by contacting the USFWS.

***Note 2:** Please also note that freshwater mussels which are not federally listed are protected and managed by the State of West Virginia, Division of Natural Resources (WVDNR). Non-listed freshwater mussels may occur in the streams listed above as well as additional streams throughout the State. For information on the distribution of freshwater mussel species and their protections contact the West Virginia Division of Natural Resources by phone at (304) 637-0245.