



PUBLIC NOTICE

US Army Corps
of Engineers

New York District
26 Federal Plaza
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

Buffalo District
1776 Niagara Street
Buffalo, N.Y. 14207
ATTN: Regulatory Branch

**AMENDMENT OF
New York State Nationwide
Permit Regional Conditions**

Issue Date: June 25, 2019

AMENDMENT OF THE NEW YORK STATE REGIONAL CONDITIONS FOR THE 2017 NATIONWIDE GENERAL PERMITS PERTAINING TO THE REMOVAL OF A PERMIT-SPECIFIC REGIONAL CONDITION REQUIRING SEASONAL RESTRICTIONS

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) published the notice in the Federal Register announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, one new general condition, and five new definitions. The 2017 NWPs went into effect on March 19, 2017, and will expire on March 18, 2022.

Division Engineers are authorized to add, delete, or modify any term or condition of the NWP program to include 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 NWPs are no more than minimal, both individually and cumulatively.

In a public notice dated September 6, 2018, the New York District proposed to delete the following Permit-specific Regional Condition requiring a seasonal restrictive window on work activities within Endangered Species Act (ESA) Section 7 Threatened, Endangered or Candidate habitats on 19 NWPs.

“Within National Marine Fisheries Service (NMFS) Threatened, Endangered or Candidate (TE&C) habitat as discussed in Section G-E.8 below, any work that would generate turbidity or sedimentation shall be avoided from March 16 to October 31. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested”.

The rationale for removal of the above referenced condition is that this seasonal work window was not taken from activity-based comments on stressors of concern for ESA Section 7 species. While turbidity and sedimentation are considered stressors of concern to ESA Section 7 listed species, the above referenced condition is not relevant to the range of activities associated with the 19 NWPs which include this condition.

Therefore, the New York District revised the New York State Regional Conditions for the 2017 Nationwide General Permits, which required the aforementioned seasonal restrictive window on work activities within ESA Section 7 Threatened, Endangered, or Candidate habitats on the following nineteen (19) NWP:

- (1) NWP-3 Maintenance
- (2) NWP-4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- (3) NWP-12 Utility Line Activities
- (4) NWP-13 Bank Stabilization
- (5) NWP-14 Linear Transportation Projects
- (6) NWP-15 U.S. Coast Guard Approved Bridges
- (7) NWP-16 Return Water from Upland Contained Disposal Areas
- (8) NWP-18 Minor Discharges
- (9) NWP-19 Minor Dredging
- (10) NWP-23 Approved Categorical Exclusions
- (11) NWP-28 Modifications of Existing Marinas
- (12) NWP-31 Maintenance of Existing Flood Control Facilities
- (13) NWP-33 Temporary Construction, Access, and Dewatering
- (14) NWP-35 Maintenance of Existing Basins
- (15) NWP-36 Boat Ramps
- (16) NWP-48 Commercial Shellfish Aquaculture Activities
- (17) NWP-52 Water-Based Renewable Energy Generation Pilot Projects
- (18) NWP-53 Removal of Low-Head Dams
- (19) NWP-54 Living Shorelines

The revised New York State Regional Conditions for the 2017 Nationwide General Permits can be obtained in writing to the Buffalo District at the address above, the New York District at the address above, or by reviewing the Districts' Internet Home Pages on the Nationwide General Permit Program. The Buffalo District's Regulatory Internet Home Page is located at:

<https://www.lrb.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>. The New York District's Regulatory Internet Home Page is located at:
<https://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>.



Stephan A. Ryba
Chief, Regulatory Branch