



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVE  
NEW ORLEANS, LA 70118-3651

March 8, 2021

SPECIAL PUBLIC NOTICE  
NATIONWIDE PERMIT REGIONAL CONDITIONS FOR LOUISIANA

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published notice in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing Nationwide Permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These NWP will go into effect on March 15, 2021 and will expire on March 14, 2026:

- 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
- 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

On February 10, 2021, the Mississippi Valley Division Engineer approved regional conditions for the state of Louisiana. These conditions apply to all activities authorized by these 16 NWP. Regional conditions provide additional protections for the aquatic environment by ensuring that the NWP authorize only those activities with minimal adverse effects on the aquatic environment. The New Orleans District has posted the regional conditions for NWP issued in Louisiana on our Regulatory webpage at:

<http://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Nationwide-Permits-Program/>

On December 15, 2020, the Louisiana Department of Environmental Quality (LDEQ) issued water quality certification (WQC) for these NWP with the exception of NWP 29 and NWP 39. Applicants seeking authorization under NWP 29 (for anything other than a single residence) or NWP 39 will be required to obtain individual WQC. On December 14, 2020, the Louisiana Department of Natural Resources (DNR) issued their

Coastal Zone Management Act (CZMA) consistency determinations. NWP 12, 29, 39, 40, 42, 43, 44, 51, 52, 55, 56, 57, and 58 have been conditionally approved by DNR, applicants seeking authorization will be required to obtain a coastal use permit. It is noted that in general, use of the Programmatic General Permit (PGP) supersedes the use of a NWP within the coastal zone of Louisiana.

At this time, the remaining existing NWPs are still under review; however, these NWPs are still approved under the March 2017 requirements including the 2017 general conditions and the 2017 Louisiana Regional Conditions. This information can also be obtained via the link identified above.

Questions regarding this matter should be directed to Mr. Brenda Archer at (504) 862-2046 (Brenda.A.Archer@usace.army.mil) of the Regulatory Branch.

Martin S. Mayer  
Chief, Regulatory Branch

**1. STATE OF LOUISIANA**  
**2. 2021 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS**

***PART I - REGIONAL CONDITIONS FOR ALL NWPS:***

**Regional Condition 1.** No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of cypress swamp and/or cypress-tupelo swamp.

**Regional Condition 2.** No regulated activity may cause the permanent loss or the conversion of greater than ½ acre of coastal prairie, pine savanna, and/or pitcher plant bogs.

**Regional Condition 3.** No regulated activity is authorized under any NWP permit where such activity would have an adverse impact upon a federal or state designated rookery and/or bird sanctuary.

**Regional Condition 4.** Dredged and/or fill material placed within wetlands and other waters must be free of contaminants.

**Regional Condition 5.** For work within the Louisiana Coastal Zone and/or the Outer Continental Shelf off Louisiana;

a. The New Orleans District's Programmatic General Permit (PGP) generally supersedes the Nationwide Permits for regulated activities located within the Louisiana Coastal Zone within the New Orleans Corps District boundaries. Projects typically will not qualify for a Nationwide Permit if they qualify for the Programmatic General Permit.

b. A joint permit application for work must first be submitted to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM). OCM will then forward the application to the Corps of Engineers-New Orleans District.

c. NWP verification requests that have not received a Coastal Use Permit or other consistency determination from the OCM would be processed by the Corps. However, if granted, authorization may be conditioned to require the applicant to obtain appropriate authorization from OCM before the NWP is valid.

**Regional Condition 6.** A pre-construction notification, as defined under nationwide general condition 32, will be provided for all regulated activities, excluding Nationwide 20, that

a. Adversely affect greater than 1/10 acre of wetlands within the Louisiana Coastal Zone, and/or;

b. Adversely impact a Louisiana designated Natural and Scenic River or a state or federal wetland/wildlife management area and/or refuge.

**Regional Condition 7, Supplement to General Condition 2 – Aquatic Life Movement.** To support compliance with General Condition 2 of the NWPs, culverts must be sufficiently sized to maintain expected high water flows and be installed at a sufficient depth to maintain low flows to sustain the movement of aquatic species.

**Regional Condition 8, ESA Additional Information and State Regulation.** NWP GC 18(g) provides links to information about threatened and endangered species and their critical habitat from FWS and NMFS. Within the State of Louisiana, additional information regarding the state protection status of rare, threatened and endangered species and compliance with state threatened and endangered species laws and regulations can be obtained from LDWF at their world wide web pages at <https://www.wlf.louisiana.gov/page/request-wildlife-diversity-project-review-or-digital-data>. **Proponents of regulated activities are reminded that NWPs only authorize activities from the perspective of the U.S. Army Corps of Engineers and state permits, approvals and authorizations may also be required.**

## **PART II - REGIONAL CONDITIONS FOR SPECIFIC NWPS**

### **NWP 12.** *Oil or Natural Gas Pipeline Activities:*

Pre-Construction Notification, as defined under nationwide general condition 32, is required for regulated **pipeline activities within tidal waters** regardless of impact acreage. The U.S. Environmental Protection Agency and National Marine Fisheries Service will be forwarded a copy of the Pre-Construction Notification.

A 50-foot gap shall be required for every 500 linear feet of sidecast material resulting from trench excavation activities associated with pipeline construction. Under certain circumstances the gap intervals may be modified. Additionally, no fill shall be placed in a manner which would impede natural watercourses.

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

### **NWP 21.** *Surface Coal Mining Activities:*

No regional conditions are proposed.

### **NWP 29.** *Residential Developments:*

This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice for all developments except those associated with construction or expansion of a

single residence. For all developments consisting of more than a single residence, individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality.

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 39.**      *Commercial and Institutional Developments:*

This NWP, via disavowal of water quality certification by the Louisiana Department of Environmental Quality, is considered **denied** without prejudice. Individual requests for approval under this NWP will be considered on a case-by-case basis only after receipt by the appropriate Corps district of an individual water quality certification, waiver, or other approval by the Louisiana Department of Environmental Quality.

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 40.**      *Agricultural Activities:*

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 42.**      *Recreational Facilities:*

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 43. Stormwater Management Facilities:**

Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Navigation Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 44. Mining Activities:**

Regulated activities which would result in the resuspension of dredged material shall be prohibited in Bayou d'Inde, the Inner Harbor Canal, Calcasieu River at the mouth of Bayou d'Inde, Harvey Canal, California Canal, and Bayous Trepagnier, Rigaud, Olsen and Verdine, Capitol Lake, Coon Island Loop, Devil's Swamp, and Tensas River (areas within and upstream of Tensas National Wildlife Refuge), Ouachita River (areas within and upstream of the Upper Ouachita National Wildlife Refuge), Wham Brake drainage (Staulkinghead Creek, Little Bayou Boeuf, Bayou Lafourche and Lake Irwin).

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will **be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.**

**NWP 48. Existing Commercial Shellfish Aquaculture Activities:**

No regional conditions are proposed.

**NWP 50. Underground Coal Mining Activities:**

No regional conditions are proposed.

#### **NWP 51. Land-Based Renewable Energy Generation Facilities:**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

#### **NWP 52. Water-Based Renewable Energy Generation Pilot Projects:**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

#### **NWP-55. Seaweed Mariculture Activities**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

#### **NWP-56. Finfish Mariculture Activities**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

#### **NWP-57. Electric Utility Line and Telecommunication Activities**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

## **NWP-58. Utility Line Activities for Water and Other Substances**

This NWP, via disavowal of Coastal Zone certification by the Louisiana Department of Natural Resources, is considered **denied** without prejudice within the Louisiana Coastal Zone. Individual requests for approval under this NWP will ***be conditioned to require the applicant to obtain a Louisiana Department of Natural Resources determination/certification before the NWP is valid.***

### ***PART III - WATER QUALITY REGIONAL NWPS CONDITIONS FOR "INDIAN COUNTRY" LANDS***

The Environmental Protection Agency (EPA) is the agency required to address water quality certification of the 2021 nationwide permits (NWPs) in Indian country<sup>1</sup> where a tribe has not received treatment in the same manner as a state for the Clean Water Act (CWA) Section 401 program. Tribes which have received treatment in the same manner as a state (TAS) for the water quality standards and §401 certification programs and which have EPA-approved water quality standards will be contacted by the Corps of Engineers for the water quality certification process. EPA is the agency required to address water quality certification for tribes that have not received TAS for the water quality standards and 401 certification programs. At this time, no Indian tribes in Louisiana have CWA Section 401 authority.

1. The permittee shall conduct all work in such a manner to comply with all U.S. Army Corps of Engineers §404 permit conditions.
2. The permittee shall keep a copy of this certification with conditions at the project site during all phases of construction. All contractors or subcontractors involved in the project must be provided a copy of this certification prior to commencement of activities.
3. All heavy equipment used in the project areas shall be steam cleaned before the start of the project and inspected daily for leaks. Leaking equipment must not be used in or near surface water or in a wetland area. Equipment shall be parked outside the waterbody when not in use.
4. All fuels, oil, hydraulic fluid, or other substances of this nature must not be stored, temporarily or otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the

---

<sup>1</sup> "Indian Country", as defined in 18 U.S.C. 1151, means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States government, not withstanding the issuance of any patent, and including rights-of-way running through the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.



primary containment system leaks. Refueling or servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.

5. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.
6. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment. Temporary access roads must be restored to pre-project conditions.
7. All asphalt, concrete, and other construction materials must be properly handled and contained to prevent releases to the stream channels. All concrete that is to be poured must be fully contained in mortar-tight forms to prevent accidental releases to surface water or ground water. No discharge of any concrete to surface water or ground water may occur. Dumping of waste materials near watercourses is strictly prohibited.
8. Work in a stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.
9. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.
10. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil, and restoration of appropriate native vegetation to establish permanent cover.