

## **Nationwide Permit 27**

### **Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

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**Expiration Date: March 18, 2017**

**Aquatic Habitat Restoration, Establishment, and Enhancement Activities.** Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to re-establish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

**Reversion.** For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities).

The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

**Reporting.** For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 31), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Sections 10 and 404)

**Note:** This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

### **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP.

**1. Navigation.**

(a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and stormwater management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, The Endangered

Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if

the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include NOAA-managed marine sanctuaries and marine monuments and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site)

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added

by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: “When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification.** (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see



33 CFR 330.4(f) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWP 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification. The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification. The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination.

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality

agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

#### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits  
Regional Conditions  
Omaha District  
State of Montana**

The following Nationwide Permit regional conditions will be used in the State of Montana. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**Wetlands Classified as Peatlands – Revoked for Use (including the Special River Management Zone of the Upper Yellowstone River).**

All Nationwide Permits, with the exception of 3, 5, 6, 20, 27, 32, and 38, are revoked for use in peatlands in Montana.

“Peatlands” are waterlogged areas with a surface accumulation of peat (organic matter) 30 centimeters (12 inches) or more thick. Any type of peat-covered terrain, including fens, bogs, and muskegs, are all peatlands

**Wetlands Classified as Peatlands – Pre-construction Notification Requirement (including the Special River Management Zone of the Upper Yellowstone River).**

For Nationwide Permits 3, 5, 6, 20, 27, 32, and 38 permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity impacting peatlands in Montana.

**Waters Adjacent to Natural Springs – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in Montana.

For purposes of this condition, a spring is defined as any location where there is groundwater flow emanating from a distinct point. Springs do not include seeps or other groundwater discharge areas where there is no distinct point source.

**Riffle and Pool Complexes – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into riffle and pool complexes.

Riffle and pool complexes are special aquatic sites and sometimes characterize steep gradient sections of streams. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper

areas adjacent to riffles and are characterized by slower stream velocities, a smooth water surface, and finer substrate material.

**Scrub-Shrub and Forested Wetlands – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into scrub-shrub and/or forested wetlands.

Forested wetlands are characterized by woody vegetation that is 20 feet tall or taller and normally possess an overstory of trees and an understory of young trees or shrubs and an herbaceous layer. Scrub-shrub wetlands include areas dominated by wood vegetation that is less than 20 feet tall including true shrubs, young trees, and trees or shrubs that are small or stunted because of environmental conditions.

**Yellowstone River (including the Special River Management Zone of the Upper Yellowstone River) – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the Yellowstone River and its impoundments.

**Milk River, Missouri River, Bitterroot River, Clark Fork River (tributary to the Columbia River), the Flathead River above Flathead Lake, and Flathead Lake – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities in these waterways and their impoundments.

**Indian Reservations in Montana – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities within the boundaries of any Indian Reservation in Montana.

**Channel Straightening and Relocation Activities – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to straightening, relocating and/or shortening an existing perennial stream channel. For all nationwide permits, except NWP 27, the total channel length reduction for all ephemeral, intermittent or perennial channels must be less than 100 feet. This requirement may be waived by the Corps for impacts to man-made ditches, canals or conveyances on a case-specific basis.

**Bank and Shoreline Stabilization Activities (except activities located in the Special River Management Zone of the upper Yellowstone River) – Pre-construction Notification Requirement.**

For all Nationwide Permits, permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any non-bioengineered bank stabilization activity involving all new bank or shoreline stabilization, including activities extending the length of previously stabilized areas. The following additional requirements apply to all bank and shoreline stabilization for all Nationwide Permits:

For bank revetments such as riprap, root wads, rock or log toes, or any bioengineered revetment, a. through c. apply:

- a. The revetment must conform to the existing bankline.
- b. The revetment must not extend above the elevation of the existing top of the bank (i.e., no new levees).
- c. The revetment must not wholly or partially block flows from entering a side channel or an overflow channel.

For bank stabilization structures that project into the stream, such as weirs, barbs or vanes, d. through i. apply:

- d. The bank-end of the structure can be no higher than the ordinary high water mark.
- e. The top of the structure must decrease in elevation as it extends away from the bank.
- f. The structure must angle upstream from the bank.
- g. The structure must be keyed into the bed and the bank.
- h. The structure must not wholly or partially block flows from entering a side channel or an overflow channel.
- i. The structure cannot extend out more than 25% of the bankfull channel width from the existing bank.

For the purposes of this condition, bioengineering is defined as bank stabilization methods utilizing predominantly live and/or dead vegetation. Bioengineering can sometimes include minor amounts of soil, rock, and/or large dead wood.

**Special River Management Zone of the Upper Yellowstone River – Bank Stabilization Activities - All Nationwide Permits.**

For bank stabilization activities associated with any Nationwide Permit, including maintenance of bank stabilization, the following apply:

For bank revetments such as riprap, root wads or any bioengineered revetment, a. through e. apply:

- a. Revetments must conform to the existing eroded or eroding bankline, unless such work is determined by the Corps to be biologically or geomorphically beneficial for the upper

## Yellowstone River.

b. Revetment slopes must be flatter than the angle of repose for the selected revetment material. For example, rock riprap normally needs to be placed on a slope flatter than 1.5H:1V (1.5 Horizontal to 1 Vertical).

c. Revetments are only permissible under Nationwide Permits if they are parallel to and near the lateral boundaries of the Special River Management Zone.

d. Revetments must not extend above the elevation of the adjacent natural bank height (i.e., no new levees).

e. Revetments must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.

For bank stabilization structures that project into the stream, such as weirs, barbs, hard points, or vanes, f. through k. apply:

f. Bank stabilization structures must not wholly or partially block flows from entering a side channel, secondary channel, or an overflow channel, unless such work is determined by the Corps to be necessary for maintaining or restoring the geomorphic integrity of the upper Yellowstone River.

g. Bank stabilization structures are only permissible under Nationwide Permits if they result in an effective bankline that is approximately parallel to and near the lateral boundaries of the Channel Migration Zone.

h. Bank stabilization structures must be keyed into the bank far enough to prevent flanking.

i. Bank stabilization structures cannot occupy more than 10% of the bankfull channel area. Bankfull channel area pertains to the specific primary or secondary channel in question, and is not the aggregate channel area of all primary and secondary channels in multi-channel reaches.

j. Bank stabilization structures must not present hazardous obstructions to boating, floating, or other river uses.

k. Bank stabilization structures that are low in elevation, project only a short distance out from the bank, and angle upstream are more likely to qualify for Nationwide Permits because they typically result in less adverse impact on aquatic resources than structures that are tall, long, and point downstream.

**Special River Management Zone of the Upper Yellowstone River - Sediment Management – All Nationwide Permits.**

Sediment removal is allowable only to maintain function of existing facilities and structures, or as necessary to maintain or restore the geomorphic integrity of the upper Yellowstone River. Diversion or removal of sediment or alluvium from the river channel and adjacent wetlands for other purposes is not allowed in the Special River Management Zone (SRMZ) under a Nationwide Permit. Examples of sediment diversion or removal not allowed under a Nationwide Permit include hydraulic dredging and mining and mechanical excavation to obtain aggregate, fill material, or minerals, including gold. Processing of material for the purpose of obtaining select minerals or a specific gradation of material, where only a portion of the sediment or alluvium is removed and the remainder returned to the SRMZ, is not allowed under a Nationwide Permit in the SRMZ.

**Special River Management Zone of the Upper Yellowstone River – Dams – All Nationwide Permits.**

New dams, diversions, and/or impoundments are not authorized under a Nationwide Permit in the Special River Management Zone. These projects typically have more than minimal adverse impacts and must be reviewed under standard (individual) permit procedures.

**Special River Management Zone of the Upper Yellowstone River - Constructed Ponds and Stream Channels – All Nationwide Permits.**

Construction of ponds and new artificial stream channels is prohibited under a Nationwide Permit in the Special River Management Zone, unless they are necessary and appropriate elements of a stream or wetland restoration project.

**Special River Management Zone of the Upper Yellowstone River - Placement and Removal of Temporary Fills – All Nationwide Permits.**

Temporary fills in waters of the United States must be placed on a horizontal marker layer such as fabric or certified weed-free straw to delineate the pre-project ground elevation and facilitate complete fill removal and site restoration.

**Borrow Site Identification – All Nationwide Permits.**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

**Temporary Vegetation Impacts – All Nationwide Permits (including the Special River Management Zone of the Upper Yellowstone River).**

Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Where temporary riparian or wetland vegetation impacts are unavoidable, mow or cut off the vegetation above the ground, leaving the topsoil and root mass intact. Restore disturbed areas to original or pre-construction contours and use seeding and planting as necessary to re-establish desirable vegetative cover, utilizing native species in areas where native species were impacted.

**Erosion and Sediment Control Blanket – All Nationwide Permits (including the Special River Management Zone of the Upper Yellowstone River).**

All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be comprised of degradable material to ensure decomposition. Do not use material that includes stabilized netting or stabilized open mesh, as those products take a long time to degrade and they can trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics that break down within 24 months are acceptable. Non-degradable blankets or fabric may be allowed on a case-specific basis if it will be buried beneath riprap or structures and it is not likely to be exposed. Non-degradable blanket or fabric that becomes exposed within waters of the U.S. must be removed.

**Counter-Sinking Riprap Associated with Culvert Installation – All Nationwide Permits.**

When riprap inlet and outlet protection is used below the ordinary high water mark, it must be placed to match the adjacent culvert bottom elevations. Where culvert bottom elevations are lower than the stream bed elevation, the riprap must be lower than the stream bed and match the culvert elevation.

**Minimum Culvert Size – All Nationwide Permits.**

Culverts installed in ephemeral, intermittent, and perennial streams must completely span the bankfull width of the stream channel. This requirement can be waived by the Corps for culverts installed in man-made ditches or canals. For the purpose of this condition bankfull width is defined as the width of the channel at the elevation where overbank or out-of-bank flow begins.

**REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS****Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and  
Nationwide Permit 12 – Utility Line Activities - Intakes in the Yellowstone River or the  
Missouri River in Blaine, Chouteau, Custer, Dawson, Fergus, Garfield, McCone, Petroleum,  
Phillips, Prairie, Richland, Roosevelt, Valley and Wibaux Counties.**

Inlet screens will be installed on all pump intakes, with a screen mesh opening size no larger than 0.25 inches. Water intake velocities must not to exceed 0.5 feet per second through the mesh.



Intakes must be located in the deepest water available and be elevated off the bottom of the river bed.

**Nationwide Permit 11 – Temporary Recreational Structures - Special River Management Zone of the Upper Yellowstone River.**

Temporary recreational structures within the Special River Management Zone of the upper Yellowstone River can be installed no earlier than 7 calendar days in advance of an event and must be removed no later than 7 calendar days after the event concludes.

**Nationwide Permit 12 – Utility Line Activities - Special River Management Zone of the Upper Yellowstone River.**

Trench excavation and backfill for utility lines is prohibited within the Ordinary High Water Mark of main and secondary flow channels and in adjacent wetlands within the Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 12 - Utility Line Activities.**

Permittees must notify the Corps in accordance with General Condition No. 31 (Pre-Construction Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into open water such as lakes, ponds and perennial streams, or into wetlands, intermittent streams, or ephemeral streams when surface water is present.

The following activities normally do not usually involve a discharge of dredged or fill material and do not normally require a Section 404 permit:

- 1) Utility line activities involving only directional drilling or boring under the waterway where the bed and banks of the waterway and wetlands are not disturbed;
- 2) Utility line suspension over the waterway where wetlands and the bed and banks of the waterway are not disturbed;
- 3) Plowing or knifing methods of utility line installation where the soil or substrate is briefly separated and the utility line placed in the crease before the soil falls back into place; and
- 4) Permits are required for all of the above activities (1 through 3) in waters regulated under Section 10 of the Rivers and Harbors Act.

**Nationwide Permit 13 – Bank Stabilization – Special River Management Zone of the Upper Yellowstone River.**

- a. Temporary bank stabilization is prohibited during spring runoff.
- b. Construction of temporary or permanent levees is prohibited within the Special River Management Zone.
- c. Only bank stabilization that is parallel to and adjacent to the valley wall and/or Special River Management Zone boundary is allowed. All other bank stabilization must be reviewed under Standard Permit procedures. Bank stabilization along roads, ditches, fills, or structures already located along the valley wall is allowed under this Nationwide Permit.

**Nationwide Permit 14 – Linear Transportation Projects - Special River Management Zone of the Upper Yellowstone River.**

The construction of new transportation facilities in waters of the U.S. within the Special River Management Zone (SRMZ) of the upper Yellowstone River is prohibited under this Nationwide Permit and must be reviewed under Standard Permit procedures. The replacement, reconstruction, and upgrading of existing transportation facilities are allowed under this Nationwide Permit within the SRMZ.

**Nationwide Permit 17 – Hydropower Projects - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 21 – Surface Coal Mining Activities - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 23 – Approved Categorical Exclusions.**

All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any activities authorized under this permit.

**Nationwide Permit 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Special River Management Zone of the Upper Yellowstone River.**

The construction of water control structures, dikes, berms, current deflectors, bank stabilization, and ponds is prohibited within the Channel Migration Zone of the upper Yellowstone River unless it is demonstrated that the proposed features contribute to the restoration or rehabilitation of previously lost or impaired functions of the upper Yellowstone River and adjacent aquatic areas.

**Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment, and Enhancement Activities.**

All permittees must notify the Corps in accordance with the General Condition No. 31 (Pre-Construction Notification) prior to initiating any aquatic habitat restoration, establishment or enhancement activities.

Notifications for pond projects must demonstrate there will be no net loss of emergent wetlands (if present) once the pond site matures in order for the project to qualify for NWP 27. Monitoring will be required to assure no net loss of emergent wetlands.

NWP 27 will not be used to authorize berms, dams, or similar structures for on-stream ponds on perennial, intermittent, or ephemeral streams unless they are necessary and appropriate elements of a stream or wetland restoration project.

Post-construction monitoring is required for wetland restoration, establishment, and enhancement projects exceeding ½ acre in size, and for stream restoration, establishment, and enhancement projects exceeding 500 feet in length.

**Nationwide Permit 29 - Residential Developments - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 30 – Moist Soil Management for Wildlife - Special River Management Zone of the Upper Yellowstone River.**

Fire breaks within the Channel Migration Zone of the upper Yellowstone River must be reclaimed and restored within six months after the fire event ends.

**Nationwide Permit 33 – Temporary Construction, Access, and Dewatering - Special River Management Zone of the Upper Yellowstone River.**

a. Temporary bank stabilization is prohibited during spring runoff within the Special River Management Zone of the upper Yellowstone River.

b. Construction of temporary levees is prohibited within the Special River Management Zone.

**Nationwide Permit 39 - Commercial and Institutional Developments Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 40 – Agricultural Activities - Special River Management Zone of the Upper Yellowstone River.**

Only those activities associated with the reduction of existing adverse impacts on the upper Yellowstone River are authorized by this Nationwide Permit. Examples of allowable projects include work associated with livestock management, moving livestock watering areas off the river or out of the Channel Migration Zone, removal of irrigation systems from the Channel Migration Zone, and the removal or conversion of irrigation systems from flood irrigation to sprinkler irrigation.

**Nationwide Permit 42 - Recreational Facilities Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 43 - Stormwater Management Facilities - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 44 - Mining Activities - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 45 - Repair of Uplands Damaged by Discrete Events - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 49 – Coal Remining Activities - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**Nationwide Permit 50 – Underground Coal Mining Activities - Special River Management Zone of the Upper Yellowstone River.**

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

**GENERAL CONDITIONS (REGIONAL ADDITIONS)****General Condition 6 – Suitable Material**

The use of precast or cast in place concrete materials or structures for permanent stream bank or shoreline stabilization, or as a component of a stream channelization or relocation project, is prohibited in Montana. Articulated concrete matting or similar material may be used on a case-specific basis such as for boat ramps, bridge pier scour protection, low water fords, culvert aprons, etc.

The use of clean brick, broken concrete and cinder block (in lieu of rock riprap) for fill can be considered on a case-specific basis. A list of materials prohibited or restricted as fill material in waters of the United States within Montana can be found at <http://www.nwo.usace.army.mil/html/od-rmt/mtspecific.html>.

## **DEFINITIONS**

“Discrete Event,” as used in Nationwide Permit 3 – Maintenance and Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events does not include runoff or stream flow events equal to or less than the bankfull discharge.