

**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

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

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) – 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 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

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

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. 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. 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. 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. 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. 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. 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. 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. 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.

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

This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 40 – Agricultural Activities. 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. 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. This Nationwide Permit has been revoked within the 48-mile Special River Management Zone of the upper Yellowstone River.

Nationwide Permit 44 - Mining Activities. 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. 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. 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. 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.