



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

Public Notice

In reply refer to Public Notice No.

Issuance Date: **APR 19 2011**

LRH-2011-128

Stream:

Closing Date:

MAY 18 2011

N/A

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 8th Street

Huntington, WV 25701-2070

Phone: (304) 399-5210

NATIONWIDE PERMIT REISSUANCE REGIONAL CONDITIONS FOR THE STATE OF WEST VIRGINIA REQUEST FOR COMMENTS

On March 10, 2011, a Public Notice was issued by the Huntington District of the U.S. Army Corps of Engineers advertising the February 16, 2011, Federal Register publication regarding the U.S. Army Corps of Engineers proposal to reissue 48 of its existing nationwide permits (NWP) and issue two new NWP.

Under Section 404 of the Clean Water Act (Section 404), the U.S. Army Corps of Engineers regulates the discharge of dredged and fill material into waters of the United States (U.S.), including wetlands. Our responsibility under Section 10 of the Rivers and Harbors Act of 1899 (Section 10) is to regulate any work in, or affecting, navigable waters of the U.S.

NWP are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWP require notification to the district engineer (DE) before commencing the work, to ensure that the activities authorized by those NWP have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWP: As stated in the March 10, 2011, Public Notice, the Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Anyone wishing to provide comments may obtain a full text copy of the NWP through www.regulations.gov (docket number COE-2010-0035), the Corps Home page at <http://www.usace.army.mil/CECW/Pages/nnpi.aspx>, or the Federal Register at <http://www.gpoaccess.gov/fr/index.html>. Comments on national issues relating to these NWP should be submitted to docket number COE-2010-0035 at www.regulations.gov, or by email to NWP2012@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Comments on the proposed NWP are due to Headquarters by April 18, 2011.

Regional Issues Concerning the Proposed NWP's, Including Regional Conditioning:

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP's are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP's in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWP's may be more than minimal.

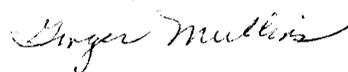
The intent of this Public Notice is to provide an opportunity for the public to express their views on the proposed regional conditions for the State of West Virginia. An enclosure for this public notice is a list of the proposed regional conditions currently under consideration by the Huntington and Pittsburgh Districts of the US Army Corps of Engineers for the State of West Virginia. These districts are seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the impacts authorized by the proposed NWP's are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of West Virginia.

Comments on regional issues relating to the proposed NWP's and regional conditions are to be sent to:

Ms. Sarah M. Workman, Regulatory Project Manager
South Regulatory Section, CELRH-OR-FS
USACE Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070

Comments relating to regional conditions are due to the Huntington District by May 21, 2011. If you have any questions concerning this public notice, please contact Ms. Sarah M. Workman of the South/Transportation Section at (304) 399-5710.

Please note the names and addresses of those who submit comments in response to this public notice become part of our administrative record and, as such, are available to the public under provisions of the Freedom of Information Act.



Ginger Mullins, Chief
Regulatory Branch

(WV)

Proposed Regional Conditions for the State of West Virginia

Regional General Conditions

Regional General Condition 1

Full Agency Pre-construction Notification: In an effort to expedite full agency permit review it is requested that all pre-construction notifications (PCNs) submitted for activities subject to Nationwide Permits (NWPs) 21, 44 and 50 requesting a waiver, NWP 49 with proposed impacts exceeding 1000 linear feet, and for those activities resulting in the loss of greater than ½ acre of waters of the United States (U.S.), include one original hard copy and five (5) additional copies of the PCN package. Applicants are encouraged to submit the five agency copies in electronic formats such as CDs, in order to minimize the use of paper and postage resources.

Regional General Condition 2

Pre-Construction Notification Submittals: In addition to the PCN requirements listed in NWP General Condition 30, all PCNs should include the following information:

- Graphic illustrations on 8 1/2" x 11" paper. The illustrations must clearly depict the project boundaries, including all elements and phases of the proposed project. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map {a location map such as the U.S. Geological Survey (USGS) 7.5 Minute Series topographical map is highly encouraged}, a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number and the project Latitude and Longitude.
- A written description of the proposed project including acreage(s) of waters of the U.S. (according to aquatic resource type) proposed to be directly or indirectly affected as a result of the proposed project, the linear footage of proposed direct and indirect stream impacts associated with the project, and cubic yards of fill proposed to be discharged.
- A description of the ways in which the project has been designed to avoid and minimize adverse impacts to waters of the U.S.
- Information concerning whether the proposed activity would affect any historic properties listed, determined to be eligible, or which they have reason to believe may be eligible, for listing on the National Register of Historic Places.
- Basic information about the general project area (encompassing a search radius of 2 miles centered on the project area) including USGS 7.5' series topographic maps, National Register of Historic Places (NRHP) files including Historic Districts, and county atlases, histories and/or any historic USGS 15' series topographic map(s), brief description of the

terrain and topography of the project area, acreage of the project area, proximity of the project area to major waterways, past land uses in the project area, and any past cultural resources studies or coordination for the project area, if available, along with photographs, keyed to mapping, showing the project area and any buildings or structures on adjacent parcels.

- The submission of ground photographs to illustrate current conditions of the overall project site and impact site is highly encouraged.

Regional General Condition 3

Compensatory Mitigation: Compensatory mitigation will typically be required as indicated in accordance the terms and conditions of the NWP's in addition to all General and Regional Conditions for projects with impacts that result in the conversion of a water of the U.S. to uplands or the conversion of one aquatic resource type to another.

Regional General Condition 4

Passage of Aquatic Life: Culverted crossings should be sized in a manner that allow the passage of aquatic life and freely pass bankfull flows. The only exception to this requirement would involve culvert placement in bedrock and/or extremely high gradient streams, in which counter-sinking of culverts is determined not to be practicable. In the event proposed crossings do not meet these criteria compensatory mitigation may be required.

Regional General Condition 5

Endangered Species: Federally listed endangered species, subject to Section 7 of the Endangered Species Act occur in nearly every county within West Virginia. As part of the PCN process, the district engineer (DE) will assume responsibility for determining project-related effects to endangered species. For projects that do not require a PCN, it is the applicant's responsibility to ensure that all elements of a proposed single and complete project comply with Section 7 of the Endangered Species Act.

Regional General Condition 6

Endangered Species Habitat: Due to the potential presence of endangered species or their habitats notification is required to the U.S. Fish and Wildlife Service Elkins Field Office, 694 Beverly Pike, Elkins, West Virginia 26241, for any work in the following waterways:

U.S. Army Corps of Engineers Huntington District

Upper Kanawha River (Kanawha Falls to Watson Island, River Mile 75.5), Fayette and Kanawha counties: Tubercled-blossum pearlymussel (*Epioblasma torulosa torulosa*), Pink mucket pearlymussel (*Lampsilis abrupta*) and Fanshell (*Cyprogenia stegaria*). Candidate species: Sheepnose mussel (*Plethobasus cyphus*) Spectacle case mussel (*Cumberlandia monodonta*).

Elk River (Sutton Dam to slackwater below Coonskin Park), Braxton, Clay, and Kanawha counties: Clubshell (Pleurobema clava), Northern riffleshell (Epioblasma torulosa rangiana) and Pink mucket pearly mussel (Lampsilis abrupta). Candidate species: Rayed bean (Villosa fabalis) and diamond darter (Crystallaria cincotta).

Ohio River (Upper Greenup, R.C. Byrd, Racine, and Belleville Navigation Pools), Cabell, Jackson, Mason, Pleasants, Wayne, and Wood counties: Pink mucket pearly mussel (Lampsilis abrupta) and Fanshell (Cyprogenia stegaria). Candidate species: Sheepnose mussel (Plethobasus cyphus).

Meathouse Fork of Middle Island Creek, Doddridge County: Clubshell (Pleurobema clava).

Middle Island Creek, Doddridge, Tyler, and Pleasants counties: Clubshell (Pleurobema clava).

South Fork of the Hughes River, Ritchie County: Clubshell (Pleurobema clava).

Potts Creek and South Fork of Potts Creek, Monroe County: James spiny mussel (Pleurobema collina).

Greenbrier River, Greenbrier County: Virginia spiraea (Spiraea virginiana).

Lower Gauley River (Summersville Dam - Swiss), Nicholas and Fayette counties: Virginia spiraea (Spiraea virginiana).

Lower Meadow River (Nallen - Gauley River), Nicholas and Fayette counties: Virginia spiraea (Spiraea virginiana).

Bluestone River (Bluestone Gorge - slackwater Bluestone Reservoir), Mercer and Summers counties: Virginia spiraea (Spiraea virginiana).

Dinges Branch and Millers Camp Branch of Marsh Fork and associated palustrine emergent and scrub-strub wetlands, Raleigh County: Virginia spiraea (Spiraea virginiana).

U.S. Army Corps of Engineers Pittsburgh District

Hacker Creek of the West Fork River, Lewis County: Clubshell (Pleurobema clava).

Sleepy Creek and the Great Cacapon River, Morgan County: Harperella (Ptilimnium nodosum).

Back Creek, Berkeley County: Harperella (Ptilimnium nodosum).

Wetlands in Berkeley and Hardy counties: Northeastern bulrush (Scirpus ancistrochaetus).

Jefferson and Berkeley counties – streams, springs, and wetlands connected to the groundwater system including caves, areas near sinkholes, and other groundwater/surface interfaces, from the Potomac River west to Opequon Creek, especially in the Rippon and Leetown Areas, and the Evitts Run Watershed: Madison cave isopod (*Antrolana lira*).

* The candidate species listed above will be added to the Regional Conditions when placed on the Threatened and Endangered Species List.

Regional General Condition 7

All PCNs involving work in the below listed waters require notification to the National Park Service and/or the Forest Service.

- New River;
- Bluestone River from the upstream boundary of Pipestem Park to Bluestone Reservoir
- Meadow River from an area near the US 19 Bridge to its junction with the Gauley River;
- All streams within the Monongahela National Forest designated as National Wild and Scenic Study Rivers;
- All streams and other bodies of water in State and National Forests and Recreation Areas (included are streams and bodies of water located within the Spruce Knob, Seneca Rocks and Gauley River National Recreation Areas); and
- Streams and their tributaries as contained within the boundaries of the designated National Wilderness Areas or the headwaters of such rivers and their tributaries; Cranberry River, Red Creek, Laurel Fork and Otter Creek.

Regional General Condition 8

West Virginia Natural Stream Preservation Act: In accordance with the West Virginia Natural Stream Preservation Act, the following streams or rivers are protected from activities that would impound, divert or flood the body of water:

West Virginia Natural Stream Preservation Act

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

Regional General Condition 9

Tier 3 Protected Waters: All PCNs involving work in Tier 3 Protected Waters (West Virginia Code or State Regulations, Requirements Governing Water Quality Standards, Title 47, Series 2) shall include prior written notification to the West Virginia Department of Environmental Protection, Division of Water and Waste Management. Tier 3 Protected Waters include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §1131 et seq.) within the State, all Federally designated rivers under the “Wild and Scenic Rivers Act”, 16 U.S.C. §1271 et seq.; all streams and other bodies of water in state parks which are high quality waters or naturally reproducing trout streams; waters in national parks and forests which are high quality waters or naturally reproducing trout streams; waters designated under the “National Parks and Recreation Act of 1978”, as amended; and pursuant to subsection 7.1 of 60CSR5, those waters whose unique character, ecological or recreational value, or pristine nature constitutes a valuable national or state resource.

Regional General Condition 10

Archeological Sites and Human Remains: In the event any archeological sites or human remains are uncovered during construction, the permittee shall cease all work immediately and contact the appropriate Corps District office, the West Virginia Division of Culture and History at 304-558-0240 and the appropriate county Sheriff’s Office.

NATIONWIDE PERMIT SPECIFIC REGIONAL CONDITIONS:

1. ***Aids to Navigation.***
 - No proposed regional conditions.
2. ***Structures in Artificial Canals.***
 - No proposed regional conditions.
3. ***Maintenance.***
 - Discharges of dredges or fill material associated with removal of accumulated sediment and debris immediately adjacent to the existing structures and placement of new or additional riprap to protect the structure is limited to distances of 50 feet upstream and/or 50 feet downstream of the structure.
 - If dredging activities are proposed to occur along an island or within a backchannel or embayment, notification to the appropriate Corps District and the U.S. Fish and Wildlife Service West Virginia Field Office at 694 Beverly Pike, Elkins, West Virginia, is required.
4. ***Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.***
 - No proposed regional conditions.

5. ***Scientific Measurement Devices.***
 - Discharges of dredged or fill material located in wetlands, islands, island backchannels, embayments, and sites at stream mouths are ineligible for this NWP.
6. ***Survey Activities.***
 - No proposed regional conditions.
7. ***Outfall Structures and Associated Intake Structures.***
 - No proposed regional conditions.
8. ***Oil and Gas Structures on the Outer Continental Shelf.***
 - No proposed regional conditions.
9. ***Structures in Fleeting and Anchorage Areas.***
 - No proposed regional conditions.
10. ***Mooring Buoys.***
 - No proposed regional conditions.
11. ***Temporary Recreational Structures.***
 - Discharges of dredged or fill material located in wetlands, islands, island backchannel embayments, and sites at stream mouths are ineligible for this NWP.
12. ***Utility Line Activities.***
 - Notification is required for all work in Section 10 waterways.
 - Notification is required for utility lines not regulated by a State or Federal agency (Federal Energy Regulatory Commission, Public Service District, etc.) and will result in the placement of fill material necessary for access or dewatering of construction sites occurring in wetlands or perennial streams.
 - Notification is not required for utility lines to individual family residences.
 - Notification is required for all work in waters of the U.S. associated with the construction of utility line substations.
 - Notification is required for all stream work (perennial, intermittent, and ephemeral) associated with the construction of foundations for overhead utility line towers, poles, and anchors.
 - The maximum allowable timeframe for temporary work in waters of the U.S. is limited to one year, unless the permittee receives written approval from the Corps of Engineers granting a time extension.
 - Notification for aerial transmission lines over Section 10 waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.
 - Note: All aerial crossings will have the following minimum clearances above the clearance required for bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed crossing. These clearances are based on the low point of the line under conditions which

produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outline in the Nation Electrical Safety Code. **For any non-electrical cable, the crossing must have a minimum clearance of 20 feet above the clearance required for bridges.**

<u>NOMINAL SYSTEM VOLTAGE, KV</u>	<u>ADDITIONAL CLEARANCE, FEET</u>
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

13. *Bank Stabilization.*

- Notification is required for all discharges involving the construction of concrete retaining walls.
- Wherever practicable, bank stabilization work shall be accomplished using natural channel design and/or stabilization methodologies (e.g. bioengineered techniques).
- All activities shall be constructed in a manner to withstand expected bankfull events and shall consist of clean and coarse non-erodable materials with 15% or less fines.

14. *Linear Transportation Projects.*

- Notification is required for all activities in Section 10 streams.
- Notification is required for discharges causing the loss of greater than 100 feet of perennial, intermittent, and ephemeral stream.
- Notification is required for all vented (culverted) low water crossings.
- All activities shall be constructed in a manner to withstand expected bankfull events and shall consist of clean and coarse non-erodable materials with 15% or less fines.
- Compensatory mitigation will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for the loss of greater than 300 linear feet of perennial, intermittent, and ephemeral stream unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.

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

- No proposed regional conditions.

16. ***Return Water From Upland Contained Disposal Areas.***
 - No proposed regional conditions.
17. ***Hydropower Projects.***
 - No proposed regional conditions.
18. ***Minor Discharges.***
 - Notification is required for use of this NWP.
 - This NWP does not authorize stream relocations, impoundments and/or well pads for commercial and/or industrial use, construction of valley fills, or elimination of streams.
19. ***Minor Dredging.***
 - Notification is required for activities in Section 10 streams.
20. ***Response Operations for Oil and Hazardous Substances.***
 - No proposed regional conditions.
21. ***Surface Coal Mining Activities.***
 - Projects exceeding 1000 linear feet are ineligible for use of this NWP.
22. ***Removal of Vessels.***
 - No proposed regional conditions.
23. ***Approved Categorical Exclusions.***
 - Notification is required for use of this NWP.
 - Projects with discharges of dredged or fill material into waters of the U.S., including wetlands shall not exceed ½ acre.
 - In addition to notification requirements identified in NWP General Condition 30, the notification should also include a copy of the categorical exclusion.
 - Compensatory mitigation will be required for discharges causing the loss of greater than 1/10 acre of wetlands. In addition, compensatory mitigation will be required for the loss of greater than 300 linear feet of perennial, intermittent, and ephemeral stream unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.
24. ***Indian Tribe or State Administered Section 404 Programs.***
 - No proposed regional conditions.
25. ***Structural Discharges.***
 - No proposed regional conditions.
26. ***Reserved.***

27. ***Aquatic Habitat Restoration, Establishment, and Enhancement Activities.***
- Notification is required for all work in waters of the U.S., including special aquatic sites.
 - Projects associated with residential subdivisions that result in impacts to greater than 300 linear feet of perennial, intermittent, and ephemeral stream are ineligible for this NWP.
28. ***Modification to Existing Marinas.***
- No proposed regional conditions.
29. ***Residential Developments.***
- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S.
 - Projects involving the culverting of perennial and intermittent streams for the purpose of yard construction or expansion are not eligible for this NWP.
 - Issuance of waivers of the 300 linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the U.S. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
 - Compensatory mitigation will be required for the loss of greater than 300 linear feet of intermittent and ephemeral stream for which a waiver has been obtained. Mitigation will be required unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.
 - Projects involving stream relocation activities that incorporate appropriate channel plan, profile, dimension, as well as other elements of natural stream design would typically not require additional mitigation.
30. ***Moist Soil Management for Wildlife.***
- No proposed regional conditions.
31. ***Maintenance of Existing Flood Control Facilities.***
- No proposed regional conditions.
32. ***Completed Enforcement Actions.***
- No proposed regional conditions.
33. ***Temporary Construction, Access, and Dewatering.***
- The maximum allowable timeframe for temporary work in waters of the U.S. is limited to one year unless the permittee receives written approval from the Corps granting an extension.

- All activities shall be constructed in a manner to withstand expected bankfull events and shall consist of clean and coarse non-erodible materials with 15% or less fines.
 - For temporary crossings in wetlands, the use of construction pads, timber matting, and geotextile fabric to prevent over compaction of wetland substrate is required.
34. ***Cranberry Production Activities.***
- No proposed regional conditions.
35. ***Maintenance Dredging of Existing Basins.***
- No proposed regional conditions.
36. ***Boat Ramps.***
- The use of unsuitable material is prohibited.
 - Discharges of dredged or fill material located in wetlands, islands, island backchannels, embayments, and sites at stream mouths are ineligible for this NWP.
37. ***Emergency Watershed Protection and Rehabilitation.***
- This NWP may be used for abandoned mine lands emergencies.
38. ***Cleanup of Hazardous and Toxic Waste.***
- No proposed regional conditions.
39. ***Commercial and Institutional Developments.***
- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S.
 - Issuance of waivers of the 300 linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the U.S. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
 - Compensatory mitigation will be required for the loss of greater than 300 linear feet of intermittent and ephemeral stream for which a waiver has been obtained. Mitigation will be required unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.
40. ***Agricultural Activities.***
- Projects involving impacts to perennial streams are not eligible for the NWP.
41. ***Reshaping of Existing Drainage Ditches.***
- Notification is required for all impacts.

42. *Recreational Facilities.*

- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S.
- Issuance of waivers of the 300 linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the U.S. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
- Compensatory mitigation will be required for the loss of greater than 300 linear feet of intermittent and ephemeral stream for which a waiver has been obtained. Mitigation will be required unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.

43. *Stormwater Management Facilities.*

- Notification is required for all impacts to wetlands, in addition to all perennial and intermittent stream impacts.
- No waivers will be granted for impacts to more than 300 linear feet of intermittent streams under this NWP.

44. *Mining Activities.*

- Work in perennial streams, including Section 10 waterways, is ineligible for use of this NWP.
- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S.
- Issuance of waivers of the 300 linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the U.S. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
- Projects exceeding 1000 linear feet are ineligible for use of this NWP.
- Compensatory mitigation will be required for the loss of greater than 300 linear feet of intermittent and ephemeral stream for which a waiver has been obtained. Mitigation will be required unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.

45. *Repair of Uplands Damaged by Discrete Events.*

- No proposed regional conditions.

46. *Discharges in Ditches.*

- No proposed regional conditions.

47. *(Reserved)*
48. *Existing Commercial Shellfish Aquaculture Activities.*
- No proposed regional conditions.
49. *Coal Remining Activities.*
- No proposed regional conditions.
50. *Underground Coal Mining Activities.*
- Projects exceeding 1000 linear feet are ineligible for use of this NWP.
- A. *Land-Based Renewable Energy Generation Facilities.*
- Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S.
 - Issuance of waivers of the 300 linear foot limit for ephemeral and intermittent streams will be limited to those projects located in degraded waters of the U.S. If a waiver is being requested, notification shall include documentation on the nature of stream degradation.
 - Compensatory mitigation will be required for the loss of greater than 300 linear feet of intermittent and ephemeral stream for which a waiver has been obtained. Mitigation will be required unless the applicant demonstrates that adverse effects of the project are minimal without mitigation. In such cases, the applicant may submit justification explaining why compensatory mitigation should not be required for the DE's consideration.
- B. *Water-Based Renewable Energy Generation Pilot Projects.*
- Proposed for revocation.