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Army Corps of Engineers Receives New Biological Opinion on the 2012 Nationwide Permits

WASHINGTON – The U.S. Army Corps of Engineers (USACE) announced today that it received a final biological opinion from National Oceanic and Atmospheric Administration (NOAA) Fisheries on the nationwide permits that were reissued on Feb. 13, 2012, and went into effect on March 19, 2012. The biological opinion was issued on Nov. 24, 2014, and it concludes the re-initiated programmatic consultation on the Endangered Species Act that began in July 2012 between USACE and NOAA Fisheries. This biological opinion replaces NOAA Fisheries' earlier biological opinion issued in February 2012. The two agencies re-initiated programmatic consultation to consider information that was not previously contemplated by NOAA Fisheries in its February 2012 biological opinion.

This biological opinion does not affect current Department of the Army permits, including previously verified nationwide permit activities and permittees who have not yet completed construction of an authorized activity. Also, previously authorized activities complied with the Endangered Species Act through activity-specific evaluations and consultations and are not affected by this opinion.

In its review NOAA Fisheries found USACE's Nationwide Permit Program does not jeopardize the continued existence of threatened and endangered species under its authority, and will not result in the destruction or adverse modification of critical habitat it has designated. The biological opinion announced today provides for 12 protective measures, which USACE will implement. These measures will enhance the protection of listed species and critical habitat under NOAA Fisheries' jurisdiction. USACE will phase the implementation of the protective measures. Those measures not requiring rulemaking, changes in or development of national guidance or technology modifications will be implemented more rapidly than those which require rulemaking, national guidance development or technology modification. In the meantime, consistent with the USACE's regulations and the Endangered Species condition of the 2012 nationwide permits (general condition #18), USACE districts will continue to conduct Endangered Species Act Section 7 consultation with NOAA Fisheries for any proposed nationwide permit activity that may affect listed species or critical habitat. It is anticipated that full implementation of NOAA Fisheries' latest opinion will be achieved by the fall of 2015.

Among the protective measures USACE will implement include development of information packages with NOAA Fisheries for prospective users to enhance compliance with the endangered species general condition (#18) for the nationwide permit; conduct consultations with NOAA Fisheries Regional Offices to identify new or modified regional conditions for nationwide permits where appropriate; conduct rulemaking to modify four nationwide permits (i.e., NWP 12 (utility line

activities), 13 (bank stabilization), 14 (linear transportation projects), and 36 (boat ramps)) to require pre-construction notification for all proposed activities that would add impervious surface cover in watersheds where listed species/designated critical habitat occur; provide semi-annual reports on all permitting activities; USACE district staff meet with NOAA Fisheries region staff to discuss semi-annual report data and determine any actions necessary to address specific activities or stressors affecting listed species or critical habitat.

The biological opinion affects 19 of the 38 USACE districts. USACE staff in those 19 districts will do most of the work required to implement the protective measures. After the rulemaking is completed and in effect, some users of nationwide permits 12, 13, 14, and 36 in the 19 USACE districts will be required to submit additional pre-construction notifications. Processing times for nationwide permit pre-construction notifications and other permit applications are likely to increase in those 19 USACE districts.

Information on the 2012 nationwide permits, including the biological opinion dated Nov. 24, 2014, is posted to the USACE Web site at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>

Additional information about the USACE Regulatory Program can be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>.