

UNITED STATES OF AMERICA
Before the
DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS

Request for Comments on the Proposal)	Reissuance of Existing Nationwide
To Reissue and Modify Nationwide)	Permits; Issuance of New Nationwide
Permits)	Permits

**COMMENTS OF THE NATIONAL HYDROPOWER ASSOCIATION ON THE
PROPOSED REISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS**

I. INTRODUCTION

On February 16, 2011, the Department of the Army, Corps of Engineers (Army Corps or the Corps) issued its Proposal to Reissue and Modify Nationwide Permits (Proposal). The Proposal includes two new nationwide permits (NWP) to authorize activities involving discharges of dredged or fill material into the waters of the United States under Section 404(e) of the Clean Water Act and Section 10 of the Rivers and Harbors Act. New NWP “B”, for water-based renewable energy generation pilot projects, would authorize structures and work in navigable waters of the United States for the construction, expansion, and modification of hydrokinetic pilot projects and their attendant features. Specifically, NWP “B” would apply to hydrokinetic pilot projects involving: (1) a discharge that would not cause the loss of more than ½-acre of waters of the United States, including the loss of no more than 300 linear feet of stream bed (unless, for intermittent and ephemeral stream beds, the Corps’ district engineer waives this limit); and (2) no more than 10 generation units.

The National Hydropower Association (NHA or Association)¹ appreciates the opportunity to comment on the Corps’ Proposal. NHA’s comments focus on the Proposal for NWP “B.”

¹ NHA is a non-profit national association dedicated exclusively to advancing the interests of the U.S. hydropower

II. SUPPORT FOR NATIONWIDE PERMIT B

NHA supports the Corps' addition of an NWP for hydrokinetic projects. Marine and hydrokinetic technologies represent a promising opportunity to add significant renewable generation to the country's energy portfolio. Estimates have put the amount of tidal, wave, ocean current and hydrokinetics around 16,000 MW², but currently pending before the Federal Energy Regulatory Commission (FERC) there is over 27,000 MW³. Authorizing certain hydrokinetic activities under the Corps' NWP program will streamline the approval process for these clean, renewable, emissions-free projects.

III. SPECIFIC COMMENTS

a. Use of Term "Pilot"

The Proposal for NWP "B" specifically references water-based renewable energy generation "pilot" projects, although the Proposal does not define this term and its meaning is unclear. FERC, the agency with statutory authority to license hydrokinetic projects, has an optional "pilot" licensing process available to allow developers to test new technologies or find appropriate sites for such projects.⁴ The process is available only for hydrokinetic projects that are 5 MW or less, short-term (5 years or less), removable or able to shut down quickly, and not located in sensitive areas. NHA recommends that the Corps revise NWP "B" to make it available

industry, including conventional, pumped storage and new marine and hydrokinetic technologies. NHA's membership consists of more than 180 organizations including public utilities, investor owned utilities, independent power producers project developers, equipment manufacturers, environmental and engineering consultants and attorneys. In 2006, NHA established an Ocean, Tidal and New Technologies Council to promote growth and development of these technologies.

² Job Creation Opportunities in Hydropower. Navigant Consulting. September 2009. http://hydro.org/wp-content/uploads/2010/12/NHA_JobsStudy_FinalReport.pdf

³ Federal Energy Regulatory Commission. Pending and Issued Preliminary Permits. <http://ferc.gov/industries/hydropower/gen-info/licensing.asp>

⁴ FERC, Licensing Hydrokinetic Pilot Projects (Apr. 14, 2008), *at* http://www.ferc.gov/industries/hydropower/indus-act/hydrokinetics/pdf/white_paper.pdf

to water-based renewable energy projects that otherwise qualify for coverage, and not restrict it to short-term “pilot” projects like those that may qualify for FERC’s pilot licensing process.

b. Generation Unit Limit

The Proposal for NWP “B” would restrict coverage to hydrokinetic projects deploying 10 generation units or less. The Proposal does not give any reason for this limitation, and no comparable restriction is placed on projects eligible for the Proposal’s NWP “A”, for land-based renewable energy projects. Some water-based renewable energy projects may utilize technologies, including a combination of hydrokinetic, wind and solar technologies that would deploy more than 10 generation units, while otherwise remaining within NWP “B” coverage limits. Flexibility to select generator technologies appropriate for a given site, including the number of generation units, may make the difference between economically practicable projects that are able to be developed and supply renewable energy, and those that are not economically viable and cannot be developed. Accordingly, NHA recommends eliminating the 10 generation unit limitation for NWP “B”.

c. Acreage and Stream Bed Limitations

NHA recommends that NWP “B”’s applicability not restrict the burying of cable or other attendant features for up to and more than the ½-acre and 300 linear feet of stream bed limits for those projects that otherwise meet the requirements of NWP “B”. NHA notes that this restriction should not apply to ocean tidal, wave, and current projects because the term “stream bed,” as defined in the Corps’ NWP program, does not apply to the marine environment. Should the Corps expand the 300 linear feet restriction to seabed areas, NHA recommends that NWP “B” should authorize the district engineer to waive the restriction, as may be done for projects

utilizing stream beds, if the engineer concludes that the discharge will have minimal adverse effects.

IV. CONCLUSION

NHA commends the Army Corps for its work to address the needs of new waterpower technology developers by creating an NWP to expedite the authorization of hydrokinetic projects. NHA would also like to express its support for the reissuance of permit 17 which covers hydropower projects under 5 MW capacity. Small hydropower, like marine and hydrokinetics, represent a great opportunity to expand hydropower generation in the United States. NHA remains committed to participating in any further Corps efforts to ensure the success of both marine and hydrokinetic technologies and small hydropower opportunities as an integral part of the Nation's energy policy.

Respectfully submitted,

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ASSOCIATION

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