

LIVING SHORELINES: POLICY, PERMITTING, AND REGULATION FROM A NATIONAL PERSPECTIVE

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COMMON AREAS OF OVERSIGHT

- Federal Level:
 - USACE permits under Clean Water Act Section 404 and/or Rivers and Harbors Act Section 10
- State Level:
 - State coastal programs
 - State-owned submerged lands programs
- Local Level:
 - Local land use authority

FEDERAL

USACE NATIONWIDE PERMITS

FEDERAL

- Nationwide Permits
 - Authorize activities across the country that cause minimal environmental impacts.
- Regional General Permits
 - Tailored to meet the needs of a particular region – may be state specific;
 - May exist in some jurisdictions (MS & AL have RGP for living shorelines)
- Individual Permits
 - Applies to all projects that do not qualify for a nationwide or regional permit.

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NWP 27

- Authorizes activities associated with restoration, enhancement, establishment of tidal and non-tidal wetlands;
- Specifically references oyster habitat construction;
- Most commonly used in this context.

NWP 13

- Authorizes activities necessary to prevent erosion and stabilize shorelines;
- Limited to projects 500 ft long or less;
- Used in some districts for restoration activities.

NWP 54: LIVING SHORELINES

- New option under USACE permitting
 - IF your jurisdiction allows
- Defines living shorelines as:
 - Incorporating “vegetation or other living, natural ‘soft’ elements alone or in combination with some type of harder shoreline structure (e.g. oyster reefs or rock sills) for added protection and stability.”
- Requires pre-construction notification (PCN)
 - Including delineation of special aquatic sites
 - PCN not required for maintenance and repair

NWP 54: LIVING SHORELINES

- To qualify:
 - Structure must be made up of mostly native materials and
 - Include a substantial biological component (either tidal or lacustrine fringe wetlands, or oyster or mussel reef structures)
 - Must maintain or enhance shoreline ecological processes, including natural continuity of the land water interface

NWP 54: LIVING SHORELINES

- Construction & Design:
 - Cannot exceed 500 feet along the bank or 30 feet out into the waterbody (including any sand fills, sills, breakwaters, or reefs)
 - But size restrictions can be waived by the district engineer if a written determination is made that the structure will result in no more than minimal adverse environmental effects
 - Materials must be adequately anchored to stay in place during most wave action
 - If using sills/breakwaters, must be minimum size necessary to protect the wetlands

NWP 54: LIVING SHORELINES

- Maintenance and Repair
 - NWP 54 authorizes maintenance and repair after severe storms or erosion events, including minor deviations to the original design necessary to address changing environmental conditions
 - Does not require PCN
- Explicitly does not authorize beach nourishment or land reclamation activities

REGIONAL VARIATIONS

NWP 54 & REGIONAL VARIATIONS

- States can condition use of USACE NWPs in their waters through CZMA consistency review.
 - IE is this NWP consistent with my state coastal plan under the CZMA?
 - States may object to use or place additional conditions
- Result = lots of variations across the country, even with federal permitting
- Example:
 - Louisiana objects to use of NWP 54 and 13 but not 27; but will allow NWP 54 on a case-by-case basis
 - Alabama and Mississippi – have developed Regional General Permits for Living Shorelines - (prior to creation of NWP 54); these have been reauthorized and remain in effect because they more clearly reflect the state specific conditions of those regions

NWP 54 & REGIONAL VARIATIONS

- Connecticut
 - Relies on state specific General Permit 9 for shoreline and bank stabilization projects (includes living shorelines and traditional structures)
- Ohio coast of Lake Erie
 - Allows NWP 54 but added regional conditions such as design parameters, excavation requirements, and prohibitions on use of broken concrete

NWP 54 & REGIONAL VARIATIONS

- Maryland
 - Suspended NWP 13 and 54, replaced with Maryland State Programmatic General Permit 5 – regulations all bank stabilization activities
- Virginia
 - Essentially modified NWP 54 (through conditions) to make it mirror Regional General Permit 19.
 - Now the two permits are substantively similar
 - Norfolk District requires monitoring and reporting as part of permit conditions and encourage use of VIMS LSL Design Guidelines

LIVING SHORELINES

The Science and Management
of Nature-Based Coastal Protection



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Boyd, Pace, Greenfeld, and Ryan-Henry, *Exploring living shorelines permitting at the state, federal and local level through case studies*, 85 *Shore & Beach* 4, 25-33 (Fall 2017).

QUESTIONS?

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