

#### 43. Stormwater Management Facilities.

Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. Examples of such nature-based solutions include, but are not limited to, stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances, as well as other nature-based solutions and other features that are conducted to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. The maintenance of stormwater management facilities and nature-based solutions that do not contain waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into nontidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or nature-based solutions, or the expansion of existing stormwater management facilities or nature-based solutions, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require preconstruction notification if they are limited to restoring the original design capacities of the stormwater management facility or nature-based solution. (Authority: Section 404)

## 2026 Nationwide Permits General Conditions

### 1. Navigation

a) No activity may cause more than a minimal adverse effect on navigation.

b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**NAE Note:** *Compliance with this condition can be achieved by ensuring no unreasonable interference with navigation by the existence or use of any activity authorized by any Nationwide Permit (NWP), and no attempt made by a permittee to prevent the full and free use by the public of all navigable waters at or adjacent to any activity authorized by any NWP.*

### 2. Aquatic Life Movements

No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

**NAE Note:** *Compliance with this condition may be achieved by ensuring that during in-stream work, the low flow channel/thalweg remains unobstructed during periods of low flow, except when it is necessary to perform the authorized work. Additionally, for work in tidal waters, in-stream controls should be installed in such a manner that do not obstruct fish passage.*

### 3. Spawning Areas

Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

#### **4. Migratory Bird Breeding Areas**

Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

#### **5. Shellfish Beds**

No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**Maine Note:** *Contact the Maine Department of Marine Resource (ME DMR) for further conservation measures if a proposed activity would result in excess turbidity (i.e., dredging) and is located within 100 feet of ME DMR shellfish areas. Reference material can be found at: <https://dmr-maine.opendata.arcgis.com/datasets/mainedmr-molluscan-shellfish-2010/explore?location=43.733484%2C-69.767928%2C10.43> and <https://mgs-maine.opendata.arcgis.com/datasets/maine-coastal-marine-geologic-environments/explore>.*

#### **6. Suitable Material**

No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

#### **7. Water Supply Intakes**

No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

#### **8. Adverse Effects from Impoundments**

If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

#### **9. Management of Water Flows**

To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

## **10. Fills Within 100-year Floodplains**

The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**Massachusetts Note:** *For activities located within the Commonwealth of Massachusetts, activities may be required to comply with the Bordering Lands Subject to Flooding provisions of the Commonwealth's Wetland Protection Act. Applicants should contact Massachusetts Department of Environmental Protection to determine whether this provision applies to their proposed activity/ies.*

## **11. Equipment**

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction efforts using techniques (e.g., soil re-aeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

**NAE Notes:** (1) *Compliance with this condition may be achieved through the implementation of best management practices outline in NAE's "Construction Mat Best Management Practices" document available at <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Permit-Resources/>.*

(2) *Compliance with this condition may be achieved by ensuring that construction equipment such as barges in tidal waters always provide adequate clearance above the substrate to avoid impacts to SAS during all tides.*

(3) *Compliance with this condition may be achieved by ensuring that construction equipment that would cross or access streams utilizes temporary bridges, spans, construction mats, culverts, or cofferdams to minimize disturbance to the waterway.*

## **12. Soil Erosion and Sediment Controls**

Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

**NAE Note:** *Compliance with this condition may be achieved by ensuring that all discharge points back into waters of the U.S., including wetlands use appropriate energy dissipaters and erosion and sedimentation control BMPs. Controls that are biodegradable can be left in place, but should be removed if they are not biodegradable.*

*Temporary controls should be removed upon completion of work, but not before all exposed soil and other fills and any work waterward of the OHWM are permanently stabilized. Once permanently stabilized, temporary controls should be removed as soon as possible. Sediment and debris collected by these controls should be removed and placed at an upland location and in a manner that will prevent its later erosion into a waterway or wetland.*

**Massachusetts Note:** *In Massachusetts, compliance with this condition may be achieved by ensuring, as applicable, that all activities are compliant with the State of Massachusetts' Stormwater Management Standards at 314 CMR 9.06(6)(a)-(f) and the State of Massachusetts' Stormwater Handbook.*

### **13. Removal of Temporary Structures and Fills**

Temporary structures must be removed to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**NAE Note:** *Compliance with this general condition may be achieved by underlying temporary fills with geotextile fabric which may help to facilitate the restoration to pre-construction elevations.*

### **14. Proper Maintenance**

Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**NAE Note:** *Compliance with this general condition may be achieved by the complete removal, cutting, and/or driving to three feet below the substrate of derelict, degraded, or abandoned piles and sheet piles located in navigable waters of the U.S., except for those inside existing work footprints for piers to prevent interference with navigation. Existing creosote piles that are affected by project activities may be completely removed if practicable. In areas of fine-grained substrates, piles may be removed by the direct, vibratory or clamshell pull method to minimize sedimentation, and turbidity impacts and prevent interference with navigation from cut piles. Removed piles should be disposed of in an upland location landward of MHW or OHW and not in wetlands, tidal wetlands, their substrate, or mudflats.*

### **15. Single and Complete Project**

The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

### **16. Wild and Scenic Rivers**

a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the

appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or Study River (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

**NAE Note:** See also: *Regional Condition C, Additional PCN Requirement (Wild and Scenic Rivers)*.

## **17. Tribal Rights**

No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

## **18. Endangered Species**

a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation.

b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective Federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal permittee should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this

general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

**NAE Note:** *For information on how to comply with General Condition 18, please visit our website at <https://www.nae.usace.army.mil/missions/regulatory/endangered-species-act/>.*

**Maine Note:** *Federal agencies should refer to “Multiple Federal Agency & Lead Federal Agency Best Practices” when a Corps permit is required, which can be found on the Corps’ webpage at: [www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit](http://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit). (This is a pending document and will be published on our website when completed.)*

## **19. Migratory Birds and Bald and Golden Eagles**

The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties**

a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district

engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective Federal agency is responsible for fulfilling its obligation to comply with section 106.

c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

d) Where the non-federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and so notified the Corps, the non-federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects on historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**NAE Note:** *The following link to the Corps' website provides SHPO and THPO contact information and additional procedures to expedite Corps regulatory review regarding the NHPA. Please contact the appropriate SHPO and/or THPO based on the geographic location of the regulated activity:*

<https://www.nae.usace.army.mil/Missions/Regulatory/Historic-and-Tribal-Resources/>.

## **21. Discovery of Previously Unknown Remains and Artifacts**

Permittees that discover any previously unknown historic, cultural or archaeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

## **22. Designated Critical Resource Waters**

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57, and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

### **23. Mitigation**

The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site).

b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the

NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another Federal agency holds an easement, the district engineer will coordinate with that Federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or

scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

**NAE Note:** *Applicants are encouraged to utilize the Regulatory In-lieu Fee and Bank Information Tracking System (RIBITS) in order to determine which in-lieu fee programs and/or mitigation banks have a sufficient amount of appropriate and available credits which they may propose to use to offset their proposed activity's unavoidable impacts to waters of the U.S., including wetlands. RIBITS is available at <https://ribits.ops.usace.army.mil/ords/f?p=107:2:.....>. See also: Regional Condition I, Compensatory Mitigation.*

#### **24. Safety of Impoundment Structures**

To ensure that all impoundment structures are safely designed, the district engineer may require non-federal applicants to demonstrate that the structures comply with established state or Federal dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

#### **25. Water Quality**

a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed activity which may result in any discharge from a point source into waters of the United States in order for the activity to be authorized by an NWP.

b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (*i.e.*, by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**NAE Note:** For information concerning how to apply to EPA for a Water Quality Certification for activities located within Tribal lands or within lands of exclusive Federal jurisdiction, please see: <https://www.epa.gov/cwa-401/resources-when-epa-acts-certifying-authority-under-section-401> and/or contact: [R1CWA401@epa.gov](mailto:R1CWA401@epa.gov).

**Connecticut Note:** For information concerning how to apply to CTDEEP for a Water Quality Certification, please see: <https://portal.ct.gov/deep/permits-and-licenses/factsheets-inland-water/401-water-quality-certification-fact-sheet>.

**Maine Note:** For information concerning how to apply to LUPC or MEDEP for a Water Quality Certification, please see: <https://www.maine.gov/dep/water/wd/wqc/>.

**Massachusetts Note:** For information concerning how to apply to MassDEP for a Water Quality Certification, please see: <https://www.mass.gov/lists/wetlands-permitting-forms>.

**New Hampshire Note:** For information concerning how to apply to NHDES for a Water Quality Certification, please see: <https://www.des.nh.gov/water/rivers-and-lakes/water-quality-certification>.

**Rhode Island Note:** For information concerning how to apply to RIDEM for a Water Quality Certification, please see: <https://dem.ri.gov/sites/g/files/xkqbur861/files/2025-06/wqcheck.pdf>.

**Vermont Note:** For information concerning how to apply to VTDEC for a Water Quality Certification, please see: <https://dec.vermont.gov/act250/watershed/business-support/water-quality-certification-section-401>.

## **26. Coastal Zone Management**

In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**NAE Note:** If an individual state coastal zone management consistency concurrence is required, applicants should submit a consistency certification to the state (see 15 CFR 930.31(d)) at the same time as the PCN is submitted to the Corps, or shortly thereafter.

**Connecticut Note:** For information concerning how to apply to CTDEEP for a coastal zone management consistency certification, please see: <https://portal.ct.gov/deep/coastal-resources/coastal-permitting/coastal-consistency>.

**Maine Note:** For information concerning how to apply to the Maine Office of Community Affairs for a coastal zone management consistency certification, please see: <https://www.maine.gov/dmr/programs/maine-coastal-program/federal-consistency-review>.

**Massachusetts Note:** For information concerning how to apply to Mass CZM for a coastal zone management consistency certification, please see: <https://www.mass.gov/federal-consistency-review-program>.

**New Hampshire Note:** For information concerning how to apply to NHDES for a coastal zone management consistency certification, please see: <https://www.des.nh.gov/water/coastal-waters/federal-consistency>.

**Rhode Island Note:** For information concerning how to apply to CRMC for projects within the coastal zone, please see: <https://www.crmc.ri.gov/applicationforms.html> and [https://www.crmc.ri.gov/regulations/fed\\_consistency.pdf](https://www.crmc.ri.gov/regulations/fed_consistency.pdf).

## **27. Regional and Case-by-Case Conditions**

The activity must comply with any regional conditions that may have been added by the division engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

## **28. Use of Multiple Nationwide Permits**

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

- a) The total acreage of loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.
- b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3-acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed under NWP 39 (which has a 1/2-acre limit), and the single and complete project

includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and 46 activities cannot exceed 1 acre.

### **29. Transfer of Nationwide Permit Verifications**

If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

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(Transferee)

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(Date)

### **30. Compliance Certification**

Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The successful completion of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

### **31. Activities Affecting Structures or Works Built by the United States**

If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**NAE Note:** Refer to the New England District’s Section 408 Program webpage that can be found at: <https://www.nae.usace.army.mil/Missions/Section-408/>. See also: Regional Condition B, Additional PCN Requirement (Federal Projects).

### **32. Pre-Construction Notification**

a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

2) 45 calendar days have passed from the district engineer’s receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential

to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b) Contents of the Pre-Construction Notification: The PCN must be in writing and include the following information:

1) Name, address and telephone numbers of the prospective permittee;

2) Location of the proposed activity;

3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

4) (i) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

**NAE Note:** *To comply with the above GC 32(5), the following methodologies should be utilized:*

- (a) *Wetlands should be delineated in accordance with the Corps Wetlands Delineation Manual and the most recent Northcentral/Northeast Regional Supplement. Wetland delineation and jurisdiction information can be found at: [www.nae.usace.army.mil/missions/regulatory/jurisdiction-and-wetlands](http://www.nae.usace.army.mil/missions/regulatory/jurisdiction-and-wetlands) and <https://www.usace.army.mil/Media/Announcements/Article/4262089/1-august-2025-us-army-corps-of-engineers-enhances-aquatic-resource-delineation/>.*
- (b) *Refer to the “Best Practices for Jurisdictional Determinations and Wetland Delineations,” which can be found on the Corps webpage at: <https://www.nae.usace.army.mil/missions/regulatory/state-general-permits/maine-general-permit/>. (This is a pending document and will be published on our website when completed.)*
- (c) *The ordinary high water mark should be delineated (on both sides) when streams, rivers, non-tidal open waters are present on the project site. Ordinary high water mark guidance can be found in RGL 05-05 (<https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll9/id/1253>). For complex, atypical, or problematic sites see: <https://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/486085/ordinary-high-water-mark-ohwm-research-development-and-training/>.*
- (d) *Vegetated shallows should be delineated when present on the project site. Vegetated shallow survey guidance and maps can be found on the Corps webpage at: <https://www.nae.usace.army.mil/Missions/Regulatory/Jurisdiction-and-Wetlands/>.*
- (e) *All Essential Fish Habitat should be delineated when present on the project site. EFH survey guidance can be found in the current EFH programmatic, which can be found on the Corps webpage at <https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>.*

6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

c) Form of Pre-Construction Notification: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWP's and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for:

(i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;

(ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and

(iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

**Maine Note:** *The Corps will additionally coordinate with the State of Maine on all activities that require a waiver.*

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP's, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

## 2026 Nationwide Permits - New England Regional General Conditions

The U.S. Army Corps of Engineers (Corps) New England District Regulatory Division issues the following Regional Conditions (RCs) to ensure that activities authorized by the 2026 Nationwide Permits (NWP) in the New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont will not cause more than minimal adverse environmental impacts, both individually and cumulatively. Before the New England District will verify an activity under one or more NWPs, the activity must be demonstrated to comply with the applicable NWP terms and all applicable NWP General Conditions (GCs) and RCs. Prior to commencement of a “non-notifying” activity (i.e., activities authorized by NWPs which do not require submission of a pre-construction notification [PCN]), the proponent (i.e., the person and/or the entity performing the work) is responsible for ensuring the activity meets all applicable:

- Terms of the NWP
- GCs
- RCs
- State Water Quality Certification, if applicable
- State Coastal Zone Consistency, if applicable

*PCN Summary Table. The following activities may require a PCN regardless of the terms of the applicable NWP. Please read the applicable RCs to determine if a PCN is required.*

<b>Applicable to All New England States</b>	
Exceedance of loss thresholds within streams, tidal/non-tidal wetlands, tidal submerged aquatic vegetation, mudflats, and intertidal areas	See RC A
Located within, or within the vicinity of a Federal Project	See RC B
Located within, or within the vicinity of a Wild and Scenic River	See RC C
Involving discharges of temporary fill material	See RC D
Involving slip lining	See RC E
Involving stream crossings	See RC F
Located within Essential Fish Habitat	See RC J
<b>Applicable to Specific New England States</b>	
Activities within Time-of-Year Restrictions	See RCs N, O, S, U, V, W
Located within the Saint John and Saint Croix River basins (Maine)	See RC P
Authorized by NWP 48, Commercial Shellfish Mariculture Activities and within the State of Maine > 5 acres	See RC Q
Located within Important or Rare Resources within the State of Maine	See RC R
Discharges of fill >10 cubic yards in Lake Champlain and Lake Memphremagog and/or their adjacent wetlands (Vermont)	See RC X

### **Regional Conditions**

The following RCs apply to all applicable NWP's in **all New England States** (unless otherwise specified):

- A. **Additional PCN Requirement (Specific Resources)**: A PCN is required for any proposed activities that would result in the loss of waters of the U.S. that exceed the listed thresholds to the following aquatic resources if a PCN is not already required by the NWP.

<b>Aquatic Resource</b>	<b>Threshold</b>
Non-tidal Wetlands	4,356 square feet (1/10-acre)
Tidal and Non-Tidal Stream	200 linear feet or 3/100-acre (whichever is less)
Tidal Wetland	500 square feet
Tidal Submerged Aquatic Vegetation (SAV)	25 square feet
Mudflat	1,000 square feet
Intertidal	1,000 square feet

- B. **Additional PCN Requirement (Federal Projects)**: A PCN is required for any proposed activities that would involve the temporary or permanent occupation of, or alteration of, a federal project (including, but not limited to, a levee, dike, floodwall, channel, anchorage, breakwater, seawall, bulkhead, jetty, wharf, pier, or other work built or maintained but not necessarily owned by the United States). This includes all structures and work in, over, or under a Corps' federal navigation project (FNP) or in the FNP's buffer zone. The buffer zone is an area that extends from the horizontal limits of the FNP to a distance three times the FNP's authorized depth.

The activity may also require review and approval by the Corps pursuant to 33 USC 408 (Section 408 Permission). The applicant may reach out to the points of contact listed here: <https://www.nae.usace.army.mil/Missions/Section-408/> and <https://www.nan.usace.army.mil/Missions/Regulatory/Section-408/> (for activities located within the Lake Champlain watershed) and consult the National Channel Framework mapper: <https://experience.arcgis.com/experience/b413139f18c046009ebcf62abea941dd/page/Map/>. For activities which require a Section 408 permission, verification under an NWP will not be issued prior to the decision the Section 408 permission requires. Any structure or work constructed in an FNP, or its buffer zone shall be subject to removal at the owner's expense prior to any future Corps dredging or hydrographic surveys.

Applicants should contact the Corps Real Estate Division (<https://www.nae.usace.army.mil/Missions/Real-Estate-Division/>) at (978) 318-8585 for work that would occur on or would potentially affect a Corps property (or properties) and/or Corps-controlled easements. Work may not commence on Corps properties and/or Corps-controlled easements until they have received any required

Corps real estate documents demonstrating site-specific permission to perform work.

A PCN is not required if an applicant has previously obtained a Section 408 permission for their proposed activities, or a determination from the Corps that a Section 408 permission is not required for their proposed activities, and the proposed activities qualify for a non-notifying NWP.

- C. Additional PCN Requirement (Wild and Scenic Rivers): A PCN is required under NWP GC 16, Wild and Scenic Rivers, and for: 1) any proposed activities that would be located in and within 1/4-mile up- or downstream of a Wild and Scenic River (WSR) segment, or in tributaries within 1/4-mile of a WSR segment; 2) any proposed activities that would be located in wetlands within 1/4-mile of a WSR segment; and 3) any proposed activities that have the potential to alter free-flowing characteristics in a WSR segment. Applicants should utilize <http://www.rivers.gov/> for the most up-to-date WSR designations.

**Note:** Applicants may coordinate with the Federal agency that has direct management responsibility of the WSR segment or tributary their proposed activity would be within 1/4-mile of prior to submitting a PCN to the Corps. This regional condition does not require a PCN to be submitted if that Federal agency determines that the proposed activity would not adversely affect the subject WSR.

- D. Additional PCN Requirement (Temporary Fills): A PCN is required for any proposed activities that would involve the discharge of temporary fill (33 CFR 323.2(e) and (f)) greater than 1/10-acre to be left in place in non-tidal wetlands for more than one growing season. The growing season is generally defined as April 1 to September 30 (See the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region* for more information about determining growing season. <https://www.nae.usace.army.mil/Missions/Regulatory/Jurisdiction-and-Wetlands/Wetland-Delineation-Manual/>).

**Note 1:** The Corps will determine on a case-by-case basis, after evaluating site-specific and activity-specific circumstances whether temporary construction mats proposed for use are considered as temporary fill.

**Note 2:** For linear projects, crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization (33 CFR 330.2(i)). Therefore, each crossing of a water of the U.S., including wetlands could have up to 1/10-acre of temporary fill without requiring the submittal of a PCN. \*Applicants should be aware that the definition of what constitutes a single and complete project per state regulations may differ from the Corps' definition. Applicants should consult with the state in order to determine state requirements. \*

- E. Additional PCN Requirement (Slip Lining): A PCN is required for any proposed activity that involves slip lining a stream crossing that is not currently meeting the stream crossing BMPs found in Regional Condition F (e.g., slip lining and invert-lining).
- F. Additional PCN Requirement (Stream Crossing Standards): A PCN is required for any proposed stream crossing activities that cannot comply with the below “Stream Crossing Best Management Practices (BMPs)” unless the district engineer provides the applicant written verification removing the below requirements.
1. The width of the crossing shall be greater than or equal to 1.2 times the bank full width.
  2. The crossing shall be embedded greater than or equal to 2 feet and/or at least 25 percent of the conveyance’s height.
  3. The crossing shall be constructed with a natural bottom substrate, as applicable.
  4. The crossing shall match the gradient (i.e., slope) of the natural stream channel profile.
  5. The crossing shall meet an openness ratio of greater than 0.82 feet.

Regardless of whether a proposed crossing can implement the above BMPs, the applicant should first coordinate with the appropriate state office to obtain required or recommended alternate stream crossing BMPs, prior to submitting a PCN to the Corps. If a stream crossing is designed to meet the standards required or recommended by the appropriate state agency for which the proposed activity is located within, those standards can serve in-lieu of these BMPs and submittal of a PCN is not required.

**Note:** Below are links to the stream crossing standards/guidelines for those New England states that have published such standards/guidelines. Applicants are highly encouraged to contact their state for additional information regarding those requirements and/or recommendations, as state requirements may be more stringent than the above listed BMPs.

Connecticut: CTDEEP Inland Fisheries Division Habitat Conservation and Enhancement Program’s Stream Crossing Guidelines (<https://portal.ct.gov/-/media/DEEP/fishing/restoration/StreamCrossingGuidelinespdf.pdf>)

Maine: Maine Interagency Stream Crossing Guidelines: (<https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit/>) and CoastWise ([https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/CoastWiseManualJuly2023\\_updated.pdf](https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/CoastWiseManualJuly2023_updated.pdf))

Massachusetts: Massachusetts River and Stream Crossing Standards as implemented through 314 CMR 9.06(2)(b).

(<https://www.mass.gov/doc/massachusetts-river-and-stream-crossing-standards/download>)

New Hampshire: New Hampshire RSA 482-A (<https://www.gc.nh.gov/rsa/html/L/482-A/482-A-mrg.htm>)

Rhode Island: Regardless of whether a proposed crossing can meet the above BMP's, all wetland and watercourse crossings in Rhode Island are evaluated on a site-by-site basis that account for on-site environmental characteristics by the state. For freshwater crossings, please contact them using the following link: <https://dem.ri.gov/environmental-protection-bureau/customer-and-technical-assistance/pre-application-meetings>. If a proposed crossing is within the coastal zone and under the jurisdiction of CRMC, please contact them using the following link: <https://www.crmc.ri.gov/contact.html>.

Vermont: *Vermont Stream Alteration Rule and General Permit* available at <https://dec.vermont.gov/watershed/rivers/river-management#rules>.

G. Aquaculture: Applicants proposing new aquaculture operations or modifications of existing aquaculture operations are required to coordinate with the appropriate U.S. Coast Guard (USCG) Sector for siting review, Navigation Risk Assessment (NRA), and navigation risk mitigation needs.

1. Coordination with the USCG can be completed by contacting via email:

Sector Northern New England: (Maine, New Hampshire, Vermont, and Northeastern New York, Lake Champlain) [D01-SMB-SecNNE-Waterways@uscg.mil](mailto:D01-SMB-SecNNE-Waterways@uscg.mil)

Sector Boston: (New Hampshire border southward to Plymouth, Massachusetts) [D01-SMB-SECBOSWaterways@uscg.mil](mailto:D01-SMB-SECBOSWaterways@uscg.mil)

Sector Southeastern New England: (Rhode Island and Southeastern Massachusetts, Cape Cod, and Islands) [SENEWWM@uscg.mil](mailto:SENEWWM@uscg.mil)

Sector Long Island Sound: (New York to Connecticut border at Port Chester, Connecticut to Rhode Island border at Watch Hill) [SECLISSPVMarineEvent@uscg.mil](mailto:SECLISSPVMarineEvent@uscg.mil)

Sector New York: (Sandy Hook, New Jersey north through Port of New York/New Jersey, Hudson River to Whitehall, NY (south of Lake Champlain) [D01-SMB-SecNY-Waterways@uscg.mil](mailto:D01-SMB-SecNY-Waterways@uscg.mil)

The applicant shall provide the following information to facilitate completion of the NRA: applicant name/company affiliation, license/lease type (commercial, research, shellfish, kelp, new or modified), nautical chart, detailed drawing with

dimensions, time of year, potential lighting/markings, types/materials of structures in water, planned anchoring, cultivation techniques (number of weekly/monthly visits, vessel tending/type), and any other significant information.

If the applicant receives a medium or high-risk assessment, they shall coordinate with the Corps and apply safety risk mitigations. The USCG will refer the project to the Corps unless the Corps makes the determination that it may proceed.

Any safety lights and signals prescribed by the USCG, through regulations or otherwise, must be installed and maintained at the permittee's expense. For required permitting, the applicant shall contact USCG First District Private Aid Program Manager through [D01-SMB-D01PrivateAtoN@uscg.mil](mailto:D01-SMB-D01PrivateAtoN@uscg.mil). Only actual AtoNs are permitted; floats, balls, markers, mooring balls and 'highflier flags' are not considered Aids to Navigation (AtoN). See: <http://www.usharbormaster.com>.

Applicants shall notify NOAA's National Ocean Service (NOS) Nautical Data Branch Office of Coast Survey to initiate chart and Coast Pilot corrections. See: <https://nauticalcharts.noaa.gov/>. Applicants must also notify NOAA on removal. See Note 2.

2. For marine safety information during construction or other significant periods, applicants may use the First District's Marine Safety Information form and email to: [D01-SMB-LNM@uscg.mil](mailto:D01-SMB-LNM@uscg.mil).

**Note 1:** If a PCN is required, applicants shall include documentation of all required coordination with their PCN.

**Note 2:** For nautical chart and coast pilot updates, activities owners should use the status report form at <https://nauticalcharts.noaa.gov/charts/docs/charts-updates/USACE+Permit+Status+Report.pdf>. For aquaculture activities owners should use: <https://nauticalcharts.noaa.gov/charts/docs/charts-updates/Artificial+Reef+Aquaculture+Status+Report.pdf> to notify the Office of Coast Survey of the project completion. The form should be emailed to [ocs.ndb@noaa.gov](mailto:ocs.ndb@noaa.gov) and should include a copy of as-built drawings.

- H. **Hydrology:** Permanent wetland crossings shall be constructed in such a manner as to prevent excessive ponding or drying on either side of the authorized crossing after completion of the work. Measures shall be taken to maintain the existing hydrology. Such measures may include road cross drains such as culverts that are appropriately sized and placed at intervals to maintain the existing hydrology of the contiguous wetland.
- I. **Compensatory Mitigation:** In addition to the requirements of NWP GC 23, Mitigation, compensatory mitigation requirements for unavoidable impacts to waters of the U.S. will be evaluated in accordance with the latest version of the *New England District Compensatory Mitigation Standard Operating Procedures* (<https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/>).

- J. Essential Fish Habitat: Essential Fish Habitat (EFH) is defined as those waters and substrates necessary to fish for spawning, breeding, feeding or growth to maturity (16 U.S.C. 1802).

The following NWP's have been determined to result in no more than minimal adverse effects, provided the permittee complies with all terms and conditions of the NWP as applicable to the activity, including all activity thresholds and activity-specific Conservation Recommendations (CRs) identified in the current EFH and Fish and Wildlife Coordination Act (FWCA) Programmatic Consultation (<https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>). The National Marine Fisheries Service (NMFS) has granted General Concurrence (50 CFR 600.920(g)) for the below listed NWP's, and these activities do not require activity-specific EFH consultation.

<b>Nationwide Permit</b>	<b>Authorized Activities with General Concurrence</b>
NWP's: 1, 4, 5, 6, 9, 10, 11, 15, 16, 19, 20, 27, 28, 32, 35, & 41	All authorized activities
NWP 3	Parts (a) and (c) (i.e., non-notifying)
NWP 12	Section 404 only activities that do not result in the loss of greater than 1/10-acre and is not a new pipeline greater than 250 miles (i.e., non-notifying)
NWP 13	Activities less than 500 linear feet in length with a discharge of less than one (1) cubic yard per running foot below the ordinary high water mark or high tide line, and no discharges into special aquatic sites (i.e., non-notifying)
NWP 14	Activities less than 1/10-acre with no discharges into special aquatic sites (i.e., non-notifying)
NWP 18	Activities that discharge less than ten (10) cubic yards of fill material below the plane of the ordinary high water mark or high tide line with no discharges into special aquatic sites (i.e., non-notifying)
NWP 22	Activities associated with vessels that are not listed or eligible for listing on the National Register of Historic Places and not located within special aquatic sites (i.e., non-notifying)
NWP 23	Activities not identified as notifying within Regulatory Guidance Letter 05-07 (i.e., non-notifying)
NWP 33	Section 404 only activities (i.e., non-notifying)
NWP 36	Activities that discharge less than 50 cubic yards of fill material and are less than 20 feet wide (i.e., non-notifying)

NWP 43	Activities that do not involve the expansion or construction of a new stormwater management facility (i.e., non-notifying)
NWP 48	Activities that are not the installation of a new operation and do not directly affect greater than 1/2-acre of submerged aquatic vegetation (i.e., non-notifying)
NWPs: 51 & 60	Activities that do not result in the loss of greater than 1/10-acre (i.e., non-notifying)
NWP 54	Maintenance activities (i.e., non-notifying)
NWPs: 57 & 58	Section 404 only activities that do not result in the loss of greater than 1/10-acre (i.e., non-notifying)

For non-federal applicants whose proposed activities would be located within EFH and that do not require a PCN per the language of the NWP or per any other general or regional condition (i.e., non-notifying), the applicant shall review the current EFH and FWCA Programmatic Consultation (<https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>) to ensure their proposed activity complies with all applicable CRs.

1. A PCN is required for any proposed project that would exceed the activity thresholds that are included within the current EFH and FWCA Programmatic Consultation. Any proposed project that exceeds an activity threshold requires preliminary coordination/project-specific consultation.
2. For all activities that do not exceed the activity-based thresholds included within the current EFH and FWCA Programmatic Consultation, the project proponent shall implement the activity-specific applicable CRs. If the applicable CRs cannot be implemented, a PCN must be submitted to the Corps, and work may not commence until the Corps verifies the project under the applicable NWP(s).

Federal applicants should follow their own procedures for compliance with the Magnuson-Stevens Fishery Conservation and Management Act and Fish and Wildlife Coordination Act.

**Note 1:** For activities proposed for authorization by an NWP that requires the submittal of a PCN, applicants are encouraged to review the current EFH and FWCA Programmatic Consultation and design their proposed activities with the activity-based thresholds and incorporate applicable CRs.

**Note 2:** Applicants can utilize the NMFS EFH mapper to determine if their proposed activities are located within EFH: <https://www.habitat.noaa.gov/apps/efhmapper/>. Applicants can also utilize the current EFH and FWCA Programmatic Consultation (<https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>) for guidance on non-tidal waterbodies with diadromous fish.

- K. **Invasive Species:** The introduction, spread, or the increased risk of invasion of invasive plant or animal species on the project site, into new or disturbed areas, or into areas adjacent to the project site caused by the site work shall be avoided. Native, non-invasive vegetation must be used unless otherwise authorized by the Corps, and shall not contain any species listed in Appendix K (“Invasive and Other Unacceptable Plant Species”) of the current *New England District Compensatory Mitigation Standard Operating Procedures* located at: <https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/>. Equipment shall be thoroughly cleaned before and after project construction to prevent the spread of invasive species. This includes, but is not limited to, tire treads and construction mats. Information about how to avoid the spread of invasive species can be found at: <https://www.nae.usace.army.mil/Missions/Regulatory/Invasive-Species>.
- L. **NWP Documentation On-Site:** The permittee shall ensure that a copy of their verification letter (for notifying NWPs only) and applicable NWP with all applicable GCs and RCs are at the worksite whenever work is being performed, and that all personnel performing work are fully aware of its terms and conditions.
- M. **Abandonment:** If the permittee decides to abandon the activity authorized by an NWP, unless such abandonment is merely the transfer of property to another party, the permittee may be required to restore the area to the satisfaction of the Corps.

### **State-Specific Regional Conditions**

The following RCs apply to all applicable NWPs in the **State of Connecticut**:

- N. **Additional PCN Requirement and Time-of-Year Windows/Restrictions:** A PCN is required for any proposed activity located in rivers/streams that deviates from the following time-of-year (TOY) work windows (i.e., work is allowed to occur), unless the State of Connecticut Department of Energy and Environmental Protection (CTDEEP) provides alternate TOY restrictions.

	<b>TOY Work Restriction</b>	<b>TOY Work Window</b>
Unconfined Work	April 1 to June 30	July 1 to September 30
Installation and Removal of Controls in Non-Tidal Streams	----	July 1 to March 31*

\*Controls must not encroach greater than 25 percent of the stream width measured from OHW during the prohibited work window.

For proposed activities that would be sited within Atlantic sturgeon critical habitat and/or anadromous waters but cannot follow the TOY windows/restrictions listed above, the applicant should first coordinate with CTDEEP to obtain alternate TOY windows and/or restrictions for their proposed activities as well as any other activities conditions required or recommended by the state, prior to submitting a PCN to the Corps. For activities that require PCN submittal, in order to avoid delays

in review, the applicant should include documentation of this coordination and CTDEEP's required or recommended conditions with the submittal of their PCN to the Corps.

Any proposed activity located in waters of the U.S. (excluding wetlands) shall be completed entirely "in-the-dry" or be isolated from active flows/the water column using temporary measures (i.e., cofferdams, sandbags, flume pipes, etc.) to the maximum extent practicable. The term "in-the-dry" means work that is done under dry conditions, e.g., work behind cofferdams or when the stream or tide is waterward of the work.

The following RCs apply to all applicable NWP's in the **State of Maine**:

- O. Regional Condition O is reserved for the State of Maine.
- P. Regional Condition P is reserved for the State of Maine.
- Q. Regional Condition Q is reserved for the State of Maine.
- R. Regional Condition R is reserved for the State of Maine.

The following RCs apply to all applicable NWP's in the **Commonwealth of Massachusetts**:

- S. Regional Condition S is reserved for the Commonwealth of Massachusetts.
- T. Regional Condition T is reserved for the Commonwealth of Massachusetts.

The following RCs apply to all applicable NWP's in the **State of New Hampshire**:

- U. Regional Condition U is reserved for the State of New Hampshire.

The following Regional Conditions apply to all applicable NWP's in the **State of Rhode Island**:

- V. Regional Condition V is reserved for the State of Rhode Island.

The following Regional Conditions apply to all applicable NWP's in the **State of Vermont**:

- W. Regional Condition W is reserved for the State of Vermont.
- X. Regional Condition X is reserved for the State of Vermont.



## REGION 1

BOSTON, MA 02109

December 18, 2025

Ms. Tammy Turley  
Chief, Regulatory Division  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Road  
Concord, MA 01742

Subject: Tribal Nations and Lands of Exclusive Federal Jurisdiction Water Quality Certification for the proposed 2026 Nationwide Permits

Dear Ms. Turley,

On June 18, 2025, EPA Region 1 received a request for water quality certification of the U.S. Army Corps of Engineers' (Corps) proposed 2026 Nationwide Permits (NWP) that may result in a discharge in waters of the United States within the Boundaries of an Indian Country or lands of exclusive federal jurisdiction (LEFJ) that are surrounded by the states of Maine, Massachusetts, Rhode Island, and Connecticut. In that notification, the Corps requested that EPA issue a Clean Water Act (CWA) Section 401 water quality certification for the NWP.

CWA section 401(a)(1) requires applicants for Federal permits and licenses that may result in discharges into waters of the United States to obtain certification that the discharge will comply with applicable provisions of the CWA, including sections 301, 302, 303, 306 and 307. The enclosed CWA section 401 water quality certification decision applies to Tribal Lands and LEFJ in relevant respects where EPA is the certifying authority.<sup>1</sup> EPA reviewed the draft NWP and applicable conditions and has determined that any discharge from activities authorized by the proposed NWP as certified will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the applicable enclosed conditions pursuant to Section 401(d). For the water quality certification decision on NWP 45 on behalf of Federally recognized Tribes in Maine and LEFJ in Maine, EPA denies water quality certification. For work that proposes activities authorized under NWP 45 that may occur on Tribal lands in Maine or on LEFJ in Maine, an individual water quality certification will be required.

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<sup>1</sup> 33 U.S.C. 1341(a)(1). Please contact EPA Region 1 for current information regarding the jurisdictions where this 401 certification decision applies at [R1cwa401@epa.gov](mailto:R1cwa401@epa.gov).



## REGION 1

BOSTON, MA 02109

Please provide this certification to any project proponent (or their designated contractor) contacting the Corps with applicable projects that may be authorized under the NWP. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 1 at [R1cwa401@epa.gov](mailto:R1cwa401@epa.gov) for a project-specific certification. This email may be used to submit pre-filing meeting requests, requests for certification, or for any certification-related questions.

EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. If you have any questions, please contact Haley Miller at [miller.haley@epa.gov](mailto:miller.haley@epa.gov) or 617-918-1169.

Sincerely,

**ANDREA  
TRAVIGLIA**

Digitally signed by ANDREA  
TRAVIGLIA  
Date: 2025.12.18 13:43:09  
-05'00'

Andrea Traviglia  
*Acting Section Chief*  
Water Quality and Wetlands Protection  
Section

Cc:

Roberta "Birdie" Budnik, Project Manager, Regulatory Division, U.S. Army Corps of Engineers New England District  
Matthew Hanington, Tribal Program Coordinator, U.S. Environmental Protection Agency  
Honorable Clarissa Sabattis, Chief, Houlton Band of Maliseet Indians  
Honorable Sheila McCormack, Chief, Mi'kmaq Nation  
Honorable Kirk Francis, Chief, Penobscot Indian Nation  
Honorable William Nicholas, Chief, Passamaquoddy Tribe of Indians – Indian Township Reservation  
Honorable Pos Bassett, Chief, Passamaquoddy Tribe of Indians – Pleasant Point Reservation  
Honorable Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah)  
Honorable Brian Weeden, Chairman, Mashpee Wampanoag Tribe  
Honorable Anthony Dean Stanton, Chief Sachem, Narragansett Indian Tribe  
Honorable James Gessner, Chairman, Mohegan Tribe  
Honorable Rodney Butler, Chairman, Mashantucket Pequot Tribal Nation

Attachment: Tribal Environmental Office Points of Contact

Compiled by EPA Region 1

Updated 12/17/2025

Houlton Band of Maliseet Indians	Susan Young, <a href="mailto:ogs1@maliseets.com">ogs1@maliseets.com</a> Sharri Venno, <a href="mailto:envplanner@maliseets.com">envplanner@maliseets.com</a> Rhonda Cochran, <a href="mailto:rcochran@maliseets.com">rcochran@maliseets.com</a> Carolyn Merriam, <a href="mailto:cmerriam@maliseets.com">cmerriam@maliseets.com</a> Sam St. John, <a href="mailto:samstjohn7@yahoo.com">samstjohn7@yahoo.com</a>
Mi'kmaq Nation	Shannon Hill, <a href="mailto:shilll@micmac-nsn.gov">shilll@micmac-nsn.gov</a> Cherish Cole, <a href="mailto:ccole@micmac-nsn.gov">ccole@micmac-nsn.gov</a> David Macek, <a href="mailto:dmacek@micmac-nsn.gov">dmacek@micmac-nsn.gov</a> Dena Winslow, <a href="mailto:dwinslow@micmac-nsn.gov">dwinslow@micmac-nsn.gov</a> Fred Corey, <a href="mailto:fcorey@micmac-nsn.gov">fcorey@micmac-nsn.gov</a>
Penobscot Indian Nation	Charlie (Chuck) Loring, Jr., <a href="mailto:Charlie.Loring.Jr@penobscotnation.org">Charlie.Loring.Jr@penobscotnation.org</a> Charles Bouchard, <a href="mailto:Charles.Bouchard@penobscotnation.org">Charles.Bouchard@penobscotnation.org</a> Dan Kusneirz, <a href="mailto:dan.kusnierz@penobscotnation.org">dan.kusnierz@penobscotnation.org</a> Jason Mitchell, <a href="mailto:jason.mitchell@penobscotnation.org">jason.mitchell@penobscotnation.org</a> Dan McCaw, <a href="mailto:dan.mccaw@penobscotnation.org">dan.mccaw@penobscotnation.org</a> Maria Girouard, <a href="mailto:maria.girouard@penobscotnation.org">maria.girouard@penobscotnation.org</a> Rhonda Daigle, <a href="mailto:rhonda.daigle@penobscotnation.org">rhonda.daigle@penobscotnation.org</a> Sean O'Brien, <a href="mailto:sean.obrien@penobscotnation.org">sean.obrien@penobscotnation.org</a>
Passamaquoddy Tribe of Indians Indian Township Reservation	Martin Dana, <a href="mailto:martindana@passamaquoddy.com">martindana@passamaquoddy.com</a> Trevor White, <a href="mailto:rovahfarm@yahoo.com">rovahfarm@yahoo.com</a> Joe Musante, <a href="mailto:joemusante@yahoo.com">joemusante@yahoo.com</a>
Passamaquoddy Tribe of Indians Pleasant Point Reservation	Marvin Cling, <a href="mailto:marvin@wabanaki.com">marvin@wabanaki.com</a> William (Billy) Longfellow, <a href="mailto:wlongfellow@wabanaki.com">wlongfellow@wabanaki.com</a> Bruce Doughty, <a href="mailto:bdoughty@wabanaki.com">bdoughty@wabanaki.com</a> Chris Soctomah, <a href="mailto:chrissoctomah@wabanaki.com">chrissoctomah@wabanaki.com</a> Ralph Dana, <a href="mailto:ralphdana@wabanaki.com">ralphdana@wabanaki.com</a>
Wampanoag Tribe of Gay Head (Aquinnah)	Brett Stearns, <a href="mailto:isa@wampanoagtribe-nsn.gov">isa@wampanoagtribe-nsn.gov</a> Beckie Finn, <a href="mailto:envcoord@wampanoagtribe-nsn.gov">envcoord@wampanoagtribe-nsn.gov</a>
Mashpee Wampanoag Tribe	Dale Oakley, <a href="mailto:Dale.OakleyJr@mwtribe-nsn.gov">Dale.OakleyJr@mwtribe-nsn.gov</a> Jason Steiding, <a href="mailto:Jason.Steiding@mwtribe-nsn.gov">Jason.Steiding@mwtribe-nsn.gov</a>
Narragansett Indian Tribe	Dinalyn Spears, <a href="mailto:DSpears@nitribe.org">DSpears@nitribe.org</a> Steven Smith <a href="mailto:ssmith@nitribe.org">ssmith@nitribe.org</a>
Mohegan Tribe	Ken Janus <a href="mailto:kjanus@moheganmail.com">kjanus@moheganmail.com</a> Jean Mcinnis, <a href="mailto:jmcinnis@moheganmail.com">jmcinnis@moheganmail.com</a>
Mashantucket Pequot Tribal Nation	Michael Boland, <a href="mailto:mboland@mptn-nsn.gov">mboland@mptn-nsn.gov</a>

# U.S. Environmental Protection Agency Region 1's Clean Water Act Section 401 Certification of the 2026 Nationwide Permits for Tribal Lands in Connecticut

December 18, 2025

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Tribal Nations in Connecticut (the Mohegan Tribe and the Mashantucket Pequot Tribal Nation) do not have the authority to provide CWA Section 401 certification for projects within their respective Tribal land. EPA's certifications of these Nationwide Permits (NWP) are provided to the extent that the State of Connecticut has no authority to issue such certification for waters within the exterior boundaries of an Indian reservation.

## **Project Description**

On June 18, 2025, the Corps proposed to reissue 56 NWPs and 1 new NWP that would expire in March 2026. 90 FR 26100 (June 18, 2025). The purpose of the NWPs is to authorize categories of activities under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental impacts. For more details see: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

## **The EPA's Public Notice Process**

On June 18, 2025, the EPA received a request for certification from the project proponent. On July 8, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 2, 2025. EPA received no public comments during the public notice period.

## **General Information**

The general information provided in this section does not constitute a certification condition(s).

### *General Applicability*

- The Corps did not request for certification for NWPs 2, 8, 21, 24, 25, 30, 49, and 50, and as such, the certification process did not begin and EPA neither certified nor waived certification. Consequently, if any activity authorized by this NWP may result in a discharge into a water of the United States, on lands that EPA acts as the certifying authority, the Corps must seek CWA 401 certification from EPA.

- If a project proposal does not meet either the general or NWP-specific certification conditions, or if certification is denied for a specific NWP, the project proponent must request an individual certification from EPA Region 1.

#### *Documentation Recommendations*

- Project proponents for potential projects authorized under the NWPs should retain this certification in their files with the applicable NWPs as documentation of EPA's certification decisions for the above-referenced proposed NWPs. This certification is specifically associated with the proposed NWPs described above and expires when those NWPs expire, five years from Corps issuance date, or are otherwise superseded by subsequent reissuance if less than five years.
- Copies of this certification should be kept on the job site and made readily available for reference.

#### *Contact Information*

- The project proponents for potential projects authorized under an NWP are encouraged to contact EPA Region 1 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.
- Prior to work commencing, EPA recommends that project proponents notify the appropriate Tribal Environmental Office, if applicable.
- In the case of a spill, EPA recommends that the project proponent notify EPA Region 1 within 8 hours from discovery. For emergency spills, EPA recommends that the project proponent contact the EPA's National Response Center at 1-800-424-8802 as well as the appropriate personnel identified in the project's Spill Prevention Control and Countermeasures, or similar plan, if applicable.
- If you have any questions regarding this certification, please contact [r1cwa401@epa.gov](mailto:r1cwa401@epa.gov).

## **Certification Decisions**

### ***Waivers of Certification***

On behalf of the Mohegan Tribe and the Mashantucket Pequot Tribal Nation EPA Region 1 is expressly waiving its authority to act on the CWA § 401 request for certification for NWPs 4, 5, 6, 20, 22, 27, 32, 38 and 48.

### ***Grants of Certification with Conditions***

EPA is granting certification with conditions for activities under NWPs 1, 3, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 23, 28, 29, 31, 33, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 51, 52, 53, 54, 55, 57, 58, 59 and A. For NWPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and state or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of state or Tribal law, subject to the conditions listed under the NWPs below, pursuant to CWA Section 401(d).

### **Condition 1: Plan Development and Implementation for Projects that require Pre-Construction Notification (PCN)**

Prior to construction for projects that require a PCN, the project proponent shall develop a plan that includes a copy of the PCN and the following information (if not already included in the PCN):

- Time stamped photo-documentation of the baseline conditions (*i.e.*, 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map, as applicable:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (*e.g.*, sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.
  - Locations where dewatering activities will occur including as applicable locations of cofferdams, temporary berms, piling, and/or dikes.
  - Locations of undergrounding or directional drilling (including bore pits).
  - Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (*e.g.*, spill berms, dikes, spill containment pallets, absorbent materials).
  - Any silt/sediment fencing.
  - Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- A description of how the site will be restored to pre-construction conditions, as applicable, including measures that will be used to promote and maintain:
  - stream hydrology and stability.
  - aquatic resource composition.
  - diversity of native species existing on site and as introduced via restoration activities.
  - stability of soils.
  - establishment of vegetation at the same percent cover as pre-construction activities.
- The timeframe/schedule for revegetation following completion of construction. Revegetation should occur at the earliest practicable date following completion of construction. Drill seeding is the preferred method, where applicable.
- Non-native and invasive species shall not be used for restoration activities.
- Includes the following, as applicable:
  - Cofferdams, temporary berms, pilings, and/or dikes: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - Dredging: Describe how contaminated materials will be managed (*e.g.*, sediment testing data

and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (*i.e.*, sedimentation resuspension) in the water column.

- Erosion and sediment control: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting. If using velocity dissipation structures (e.g., riprap aprons, check dams etc.), structures shall be constructed to include both peak flow rates and total stormwater volume, and provide protection from the erosive potential of high-velocity flows to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. The project proponent shall ensure all erosion and sediment control measures are in place prior to the onset of construction.
- Bank stabilization and channel modification. If the project requires bank stabilization or stream channel modification, include pre-construction cross sections. If the project includes steep bank slopes of 3:1 or greater, include revetment cross sections. Bioengineering techniques suitable for steep slope disturbances are preferred (e.g., vegetated toe, bioengineered boulder toe, etc.) Slopes of disturbed banks shall be designed and installed to not reduce the bottom width of the stream.
- Dewatering: Work shall be completed in the dry unless coordinated with EPA Region 1. Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
- Ditching and trenching: Explain ditching/trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the ditch/trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
- Undergrounding or directional drilling: Describe measures taken to prevent, contain and cleanup any inadvertent return of drilling fluid to the surface (*i.e.*, “frac-outs”).
- Submit the plan to EPA Region 1 at [r1cwa401@epa.gov](mailto:r1cwa401@epa.gov) at least 30 days prior to commencing construction activities.

During construction for projects that require a PCN, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S. The discharge of unset cement, concrete, grout, or water that has contacted uncured concrete or cement, or related washout to waters of the U.S. is prohibited.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud, and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24

hours of detection of a leak, repair the equipment in a staging area or move it offsite.

- Limit vegetation clearing and disturbance to waters. Limit the clearing and grubbing of vegetation and disturbance to areas demarcated on the site map submitted as part of the vegetation restoration and monitoring plan. The boundaries of vegetation to protect shall be flagged in the field prior to beginning construction activities.
- Limit restoration of the channel bed to pre-existing contours and conditions. Any proposed deviations must be specified in advance. For example, if any improvements will be made using natural channel design.
- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (*i.e.*, 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken immediately following implementation. The project proponent shall take remediation condition photos at the same location(s) and direction(s) as in the failure condition photos.
  - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 1 with the required photo-documentation, and descriptions of all observed failures and implemented remedies.
  - Within three weeks of observing a failure, the project proponent shall provide EPA Region 1 with a description of the impacts and effectiveness of the employed adaptive management measures.
- Carry out as applicable:
  - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete, remove sediment and erosion control structures once vegetation is established to the same percent cover as pre-construction conditions, unless they are needed for long term stabilization purposes.
  - Dewatering: Assess all dewatering measures within 24 hours after a severe storm event.

Post construction for projects that require a PCN, the project proponent shall, as applicable:

- Submit a post-construction report, as defined below, within 90 days of completing construction activity to EPA Region 1 at [r1cwa401@epa.gov](mailto:r1cwa401@epa.gov) or, if the Corps requires a post-construction report for the project activity, the applicant may submit that report to EPA to fulfill this post-construction requirement. The project proponent shall include the following items in the post-construction report:
  - Construction dates.
  - As-built drawings.
  - Documentation of site restoration activities using photographs and any field data sheets showing that the site was restored to pre-existing conditions or better. Include photographs of the site restoration areas on a map.
  - Any water quality data gathered before, during, and post-construction and associated maps showing the sample locations.
  - A description of any adaptive management strategies that were employed during construction,

- with a focus on strategy effectiveness.
- Details on the removal of any sediment and erosion control structures, unless they are needed for long term stabilization purposes.
- Effectiveness of the plan developed and implemented as required under this condition, and recommendations to remedy any deficiencies in plan development and implementation where employed measures were ineffective.
- For activities that require dredging, submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 1 at [r1cwa401@epa.gov](mailto:r1cwa401@epa.gov). The project proponent shall include the following items in the post-dredged and disposal report:
  - Dredging and disposal dates.
  - Updated site map displaying the disposal location(s).
  - Dredging and disposal volumes.
  - Water quality monitoring data.
  - Post-dredged bathymetry.
  - Updated site maps displaying any new ditches, spoil piles, widths, and depths.

**Why this condition is necessary:** This condition is necessary to minimize suspended particulates /turbidity caused by construction activities and is necessary to ensure water quality is not degraded by toxic pollutants in toxic amounts, including construction materials, oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project, or discharges from dust abatement activities as well as contaminants in dredged material. This condition also appropriately minimizes impacts from access roads, staging areas, and stockpiling to further ensure that construction activities will result in no more than minimal individual and cumulative adverse environmental effects. This condition will protect water quality because it ensures that the project proponent is using planning and construction practices that will maintain the integrity of the site hydrology and maintain the aquatic resource functions and values, and ensures that appropriate revegetation measures are used to re-establish riparian/wetland vegetation to minimize the adverse impacts of discharges of sediment and pollutants that enter waterways. Limiting the amount of vegetation that is disturbed will minimize the adverse environmental impacts of any potential discharges. Monitoring for at least three growing seasons, or until replanted areas meet monitoring success criteria, will provide an adequate indication that the restoration effort is able to demonstrate restoration is successful.

The general conditions in the Corps' NWP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition. GC 32 only requires agency coordination in certain circumstances. Additionally, GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some aquatic resource protections, but greater specificity is needed to determine what measures are suitable to comply with applicable water quality requirements.

**Citations:** 33 U.S.C. 1341(a)(4); 40 CFR 230.10(c)-(d); 40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74; 40 CFR 230.75

## **Condition 2: Special Aquatic Resources**

Projects or activities expected to have potential discharges into the below special aquatic resources areas on Tribal lands in Connecticut are not covered by this certification and applicants must request a project-specific CWA Section 401 certification from EPA Region 1 consistent with 40 CFR 121.5.

- **Wetlands classified as peatlands:** For the purposes of this condition, peatlands are permanently or seasonally waterlogged areas containing organic soils classified as a Histosol with a specific thickness of an accumulation of peat (i.e., organic matter) and include fens, bogs, and salt marshes.<sup>1</sup>
- **Natural Springs:** Within 100 feet of the water source in natural spring areas. For the purposes of this condition, a spring water source is defined as any location where there is flow emanating from a distinct point at any time during the growing season. Some examples of spring-fed wetlands are hanging gardens. Some examples of spring-fed headwater slopes are peat-accumulating wet meadows and fens (see above). These resources may be identified using U.S. Fish and Wildlife Service’s online digital National Wetland Inventory maps, or other aquatic resource mapping tools.
- **Riffle and Pool Complexes:** For the purposes of this condition, riffle and pool complexes are steep gradient sections of streams recognizable by their hydraulic characteristics. 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 associated with riffles. Pools are characterized by a slower stream velocity, a steaming flow, a smooth surface, and a finer substrate.
- **State-listed Special Aquatic Resources:** For the purposes of this condition, State-listed Special aquatic resources are those aquatic (estuarine and palustrine) habitats that are state-ranked critical habitats by the Connecticut Department of Energy and Environmental Protection<sup>2</sup>.

**Why this condition is necessary:** This condition is necessary to ensure a case-by-case review of any point source discharges into waters of the United States that are proposed in these specific aquatic resource site types which are inherently difficult to replace and have important ecological functions and values. Discharges into these systems have the potential to alter water circulation patterns and hydroperiods, release nutrients causing shifts in native to non-native species composition, release chemicals that adversely impact biota

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<sup>1</sup> It is a general rule that a soil is classified as an organic soil (Histosol) if more than half of the upper 80 cm (32 inches) of the soil is organic or if organic soil material of any thickness rests on rock or on fragmental material having interstices filled with organic materials. Generally, organic soil materials have organic carbon content by weight of 12 percent or more. See the following for more information on what constitutes “organic soil material”, limits between Histosols and soils of other orders, problematic hydric soils situations, and other indicators to identify peatlands: Soil Survey Staff. 1999. Soil taxonomy: A basic system of soil classification for making and interpreting soil surveys. 2nd edition. Natural Resources Conservation Service. U.S. Department of Agriculture Handbook 436. <https://www.nrcs.usda.gov/resources/guides-and-instructions/soil-taxonomy>; United States Department of Agriculture, Natural Resources Conservation Service. 2025. Hydric soils of problematic conditions and altered materials, Version 1.0.

<https://usace.contentdm.oclc.org/utills/getfile/collection/p266001coll1/id/11824>; United States Department of Agriculture, Natural Resources Conservation Service. 2024. Field Indicators of Hydric Soils in the United States, Version 9.0. <https://www.nrcs.usda.gov/sites/default/files/2024-09/Field-Indicators-of-Hydric-Soils.pdf>

<sup>2</sup> <https://ct-deep-gis-open-data-website-ctdeep.hub.arcgis.com/datasets/CTDEEP::critical-habitats/about>

(plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, or otherwise change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Project specific information is needed to ensure compliance with water quality requirements.

**Citations:** 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(a)(3); 40 C.F.R. 230.10(c); 40 C.F.R. 230.10(d); 40 C.F.R. 230.20-24; 40 C.F.R. 230.21-22; 40 CFR 230.41; 40 C.F.R. 230.45; 40 C.F.R. 230.75(c); Subpart E of 40 CFR Part 230, 404(b)(1)

### **Condition 3: Specific condition for NWP 7**

Outfall design and placement shall include an appropriate energy dissipation structure (e.g., rip rap aprons) and shall be sized to prevent high pressure discharge. For intake structures, project proponents shall use an intake screen that reduces the size of aquatic organisms that can be entrained (e.g., a Johnson-type screen/intake), where feasible. Intake velocities shall not exceed 0.5 feet per second.<sup>3</sup>

**Why this condition is necessary:** This condition is necessary to ensure that outfall structures and intakes are constructed such that they provide localized erosion control at the point(s) of discharge while minimizing habitat degradation and assimilative capacity of the waterbody. Erosion from outfall structures due to improperly designed and placed structures increases sedimentation that alters stream and wetland hydrology (e.g., scouring and deposition) and uncontrolled stormwater contaminants harm aquatic organisms and habitat. Impingement controls for intake structures reduce the size of aquatic organisms that can be entrained and minimize impacts to aquatic species.

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.30; 40 CFR 230.70; 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75

### **Condition 4: Specific Condition for NWP 13**

For projects using gabions, the project proponent shall visually inspect and repair any damage to gabions and the gabion installation area after construction is completed at least once a year after spring flows.

**Why this condition is necessary:** This condition is necessary to reduce the individual and cumulative adverse environmental effects caused by hard bank stabilization structures on aquatic biodiversity, habitat, and aquatic resource functions and services. This condition is also necessary to minimize the potential for gabion failure and corresponding water quality impacts. Gabion failure leads to erosion and sediment release, which can significantly affect aquatic ecosystem diversity, productivity and stability, and can potentially release wire into the environment that can impact aquatic habitat. Rock released from damaged gabions can impact channel flow, which can interfere with aquatic habitat processes and infrastructure.

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<sup>3</sup> Additional guidance on water intakes is available from the U.S. Fish and Wildlife Service: <https://www.fws.gov/sites/default/files/documents/water-intake-recommendations.pdf>

**Citations:** 40 CFR 230.10(c)-(d); 40 CFR 230.72; 40 CFR 230.74

**Condition 5: Specific Condition for NWP 16**

The project proponent shall provide EPA Region 1 with a description of the return water from the upland disposal area prior to discharge, including a description of the nature of the dredged material and a description of any contaminants present in the discharge. The project proponent shall also provide an analysis of how the return water may impact the physiochemical conditions of the receiving water prior to discharge, including a description of how the project proponent will ensure controls are in place to ensure compliance with applicable water quality requirements.

**Why this condition is necessary:** This condition is necessary to ensure any return water meets applicable water quality requirements and does not degrade receiving waters. Dredged material from industrial and urban areas, stormwater and agricultural runoff, as well as from areas of natural deposits of minerals and other natural substances, often contain contaminants from these sources and may have the potential to alter the chemistry of receiving waters, including but not limited to, nutrients, metals, organic carbon, and invasive species. To ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem from contaminants are addressed, the project proponent should consider the unique nature of dredged material and the related contaminant pathway to understand the physicochemical conditions of each disposal site under consideration.

**Citation:** 40 CFR 230.10(b)-(d); 40 CFR 230.11; 40 CFR 230.12; 40 CFR 230.22; 40 CFR 230.31; 40 CFR 230.32; 40 CFR 230.61

**Condition 6: Specific Condition for NWP 40**

The project proponent shall ensure that any return water flows back into waters of the U.S. does not contain levels of toxic and priority pollutants in excess of effluent limitation guidelines established under Section 307 of the Clean Water Act.

**Rationale:** This condition is necessary to ensure that return water to waters of the U.S. meets water quality requirements. Agricultural runoff can degrade receiving waters due to contaminants, including toxic and priority pollutants that are subject to effluent limitations pursuant to Section 307 of the Clean Water Act. Project specific information is needed to consider the contaminants proposed for discharge and the aquatic environment at the proposed discharge site to ensure that all appropriate and practicable measures to minimize harm to the aquatic ecosystem are addressed.

**Citations:** 33 U.S.C. 1317(a)(1); 40 CFR 401.15; 40 CFR 230.10(c); 40 CFR 230.31; 40 CFR 230.32

Tammy Turley, Regulatory Division  
U.S. Army Corps of Engineers New England District  
696 Virginia Road  
Concord, MA 01742-2751

**RE: SECTION 401 WATER QUALITY CERTIFICATION &  
FEDERAL COASTAL CONSISTENCY**

Department of the Army  
Nationwide Permitting for the State of Connecticut 2026  
CT DEEP Certification No.: 202504998-WQC (non-tidal),  
202504997-WQC (tidal) & 202505000-FCC

This Certification is in response to the June 18, 2025 application requesting Federal Clean Water Act Section 401 (33 U.S.C. § 1341) Water Quality Certification of the United States Army Corps of Engineers (Corps) **Nationwide Permits (NWP) 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18 19, 20, 22, 23, 27, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40,41, 42, 43, 44, 45, 46, 48, 51, 52, 53, 54, 57, 58, 59 and A.** The Proposal to Reissue and Modify Nationwide Permits was published in the Federal Register (Federal Register/Vol. 90, No. 116) on June 18, 2025. The June 18, 2025, certification request (revised October 7, 2025), also included General Conditions on all the NWP, New England Regional Conditions, and specific State of Connecticut Regional Conditions.

The June 18, 2025, application did not include a request for certification on the following **NWPs: 2, 21, 24, 25, 30, 49, and 50** as Corps Region 1 is not proposing to implement them. Further the Corps has stated NWPs numbered **1, 9, 10, 11, 28, 35, and 55** are not reasonably expected to result in a discharge into Waters of the United States and has deemed certification is not necessary, though a certifying authority may still require certification.

The Department of Energy and Environmental Protection (CT DEEP) published a Notice of Tentative Determination on the Corps' request for certification on the 2026 NWPs on October 28, 2025 in accordance with public notice requirements in the Federal Clean Water Act Section 401(a)(1) and Section 22a-6h of the Connecticut General Statutes.

Pursuant to Section 401 of the Federal Clean Water Act, CT DEEP hereby **waives** the Water Quality Certification in entirety for:

- NWP 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 Scientific Measurement Devices
- NWP 6 Survey Activities
- NWP 20 Response Operations for Oil or Hazardous Substances
- NWP 22 Removal of Vessels
- NWP 27 Aquatic Ecosystem Restoration, Enhancement and Establishment Activities

- NWP 32 Completed Enforcement Actions
- NWP 38 Cleanup of Hazardous and Toxic Waste
- NWP 48 Commercial Shellfish Mariculture Activities

This certification does not apply in cases where the CT DEEP Commissioner has deemed an activity to have greater than minimal direct, indirect, secondary or cumulative impacts to state waters. Pursuant to Section 401 of the Federal Clean Water Act, CT DEEP hereby **denies** Water Quality Certification for the following NWP's in the State of Connecticut:

- NWP 12 Oil or Natural Gas Pipeline Activities
- NWP 17 Hydropower Projects
- NWP 23 Approved Categorical Exclusions
- NWP 34 Cranberry Production Activities
- NWP 43 Stormwater Management Facilities
- NWP 44 Mining Activities
- NWP 51 Land Based Renewable Energy Generation Facilities
- NWP 52 Water Based Renewable Energy Generation Pilot Projects
- NWP 59 Water Reclamation and Reuse Facilities

As required by 40 CFR § 121.7, CT DEEP cannot certify prospective discharges for both non-tidal and tidal waters for the activities authorized by the NWP's listed above due to insufficient information contained in the application which is needed to determine if such discharges will comply with Connecticut's Water Quality Standards, [Sections 22a-426-1 - 22a-426-9](#), inclusive of the Regulations of Connecticut State Agencies. Additionally, some of the NWP's identified involve discharges with a scope and nature that exceed minimal environmental impacts. This Certification is structured and conditioned based upon the State of Connecticut's land-use regulatory programs and authority. CT DEEP directly regulates activities undertaken by state agencies in or affecting inland wetlands or watercourses in accordance with [Sections 22a-36 - 22a-45a](#), inclusive of the Connecticut General Statutes (CGS). Major objectives of the Inland Wetland & Watercourses regulatory program are to protect and preserve inland wetlands through regulating the use thereof by minimizing disturbance and pollution; maintaining and improving water quality; preventing damage from erosion, turbidity or siltation and preventing loss of fish and other beneficial aquatic organisms, wildlife and vegetation and the destruction of the natural habitats thereof.

Additionally, CT DEEP regulates all activities conducted in tidal wetlands and in tidal, coastal, or navigable waters in Connecticut under the Structures, Dredging and Fill statutes, CGS Sections [22a-359 - 22a-363h](#), inclusive, and the Tidal Wetlands statutes, CGS Sections [22a-28 - 22a-35](#), inclusive. The major objectives of the permitting programs are to avoid or minimize navigational conflicts, encroachments into the state's public trust area, and adverse impacts on coastal resources and uses, consistent with Connecticut's Coastal Management Act (CCMA), CGS Sections [22a-90 - 22a-112](#), inclusive. CT DEEP has therefore conditionally granted

certification for tidal waters as water quality concerns will be addressed under the state's coastal permitting programs.

Such terms, limitations, and conditions of this Certification are outlined in the **Specific Nationwide Permit Certification Conditions** and the **General Terms and Conditions for all NWP**s contained in this Certification. The State of Connecticut has determined that the following conditions have been deemed necessary to demonstrate that the goals of the Connecticut Water Quality Standards will be achieved in the Corps' administration and implementation of the NWP program.

The Connecticut Water Quality Standards provide the basis for water quality management decision-making by CT DEEP and are a critical component in the state's effort to achieve the fundamental goal established in Section 101(a) of the Federal Clean Water Act of protecting and maintaining the physical, chemical and biological integrity of the nation's waters. In accordance with the state regulations, the CT DEEP Commissioner may require implementation of Best Management Practices in order to demonstrate that an activity or discharge will not cause additional biological, chemical or physical stress on the regulated waterbody that would result in degradation of water quality.

#### **TIDAL, COASTAL AND NAVIGABLE WATERS**

With respect to tidal, coastal and navigable waters, CT DEEP hereby **grants with conditions** Section 401 Water Quality Certification for the following NWP:s: **3, 7, 13, 14, 15, 18, 19, 31, 33, 36, 37, 53, 54, 57, 58 and A**. The conditional granting of Section 401 Water Quality Certification is subject to the prospective permittee obtaining the appropriate Connecticut Structures, Dredging and Fill authorization or Tidal Wetland authorization from CT DEEP.

Pursuant to Section 307(c)(1) of the federal Coastal Zone Management Act, the following NWP:s **3, 7, 13, 14, 15, 18, 19, 31, 33, 36, 37, 53, 54, 57, 58 and A** were reviewed and determined to be consistent with the enforceable policies of Connecticut's federally approved Coastal Management Program as contained in CGS Sections 22a-90 through 22a-112.

#### **NON-TIDAL WATERS, WETLANDS AND WATERCOURSES**

Pursuant to Section 401 of the Federal Clean Water Act, and except for those activities specifically waived or denied herein, CT DEEP hereby **grants with conditions** Water Quality Certification for nontidal waters, wetlands and watercourses for the following NWP:s: **3, 7, 13, 14, 16, 18, 19, 29, 31, 33, 36, 37, 39, 40, 41, 42, 45, 46, 53, 57, 58 and A**. Activities conducted under any of the NWP:s shall comport with Sections 301-303, 306 and 307 of the Federal Clean Water Act, as implemented in Connecticut under the water quality standards contained within Section 22a-426-1 *et seq.* of the Regulations of Connecticut State Agencies, and with state specific terms, limitations and conditions specified in this Certification for the NWP:s dated June 18,

2025, revised October 7, 2025.

Additionally, CT DEEP has granted certification for activities conducted by any department, agency or instrumentality of the state, except any local or regional board of education, or for activities conducted on state-owned properties as water quality concerns shall be addressed under the state's Inland Wetlands & Watercourses Act.

<p><b>Nationwide Permit</b></p>	<p><b>Specific Nationwide Permit Certification Conditions</b></p> <p>Thresholds and criteria established in this table apply to a single and complete project as defined in 33 CFR § 330.2(i).</p> <p>Individual Water Quality Certification is required for activities that result in greater than 0.20 acres of permanent impact to Waters of the United States.</p>
<p><b>NWP 3 Maintenance</b></p>	<ul style="list-style-type: none"> <li>• Drawdowns of an impoundment for a dam/levee repair shall not exceed 18 months or one growing season (April through September).</li> <li>• Removal of accumulated sediments from a waterbody shall be managed or placed at an upland location.</li> <li>• Individual Water Quality Certification is required for maintenance activities that exceed a cumulative measurement along the centerline of the watercourse of 100 linear feet immediately upstream and/or downstream the structure, including removal of displaced riprap, and/or the replacement of riprap within 50 feet upstream and 50 feet downstream of existing structures.</li> </ul>
<p><b>NWP 7 Outfall Structures and Associated Intake Structures</b></p>	<ul style="list-style-type: none"> <li>• Construction shall occur during low (at or below the normal water elevation) or no-flow condition and/or behind a cofferdam.</li> <li>• Intake structures such as dry hydrants, if located within a stream, must be equipped with an appropriately sized mesh screen to prevent entrainment, and the intake velocity must not exceed 0.5 foot-per-second to prevent impingement of aquatic organisms.</li> </ul>

	<ul style="list-style-type: none"> <li>• Individual Water Quality Certification is required for new outfalls within Waters of the United States. This condition does not apply to the relocation of an existing outfall.</li> </ul>
<p><b>NWP 13 Bank Stabilization</b></p>	<ul style="list-style-type: none"> <li>• Work shall be conducted “in-the-dry” (i.e., work that occurs when the stream or waterbody limits are waterward of the activity and / or work that occurs behind an installed cofferdam). Confinement of a work area by cofferdam techniques using sand bag placement, sheet pile installation (vibratory method only), portable dams, or similar confinement devices is allowed any time of the year. The removal of such confinement devices is allowed at any time of the year.</li> <li>• Bank protection shall not extend into the bed of a stream except for what is necessary to provide a proper connection between the embankments and stream channel bottom.</li> <li>• Bank stabilization measures shall restore the pre-eroded geometry and character of the streambank or shoreline and incorporate natural and nature-based measures where feasible.</li> <li>• Individual Water Quality Certification is required for the use of grouted rip rap, poured/uniform concrete, poured asphalt or asphalt pieces.</li> <li>• Individual Water Quality Certification is required for stream relocation.</li> <li>• Individual Water Quality Certification is required for bank stabilization activities that exceed 200 linear feet cumulatively. For work in watercourses “cumulatively” means for all prospective bank stabilization in a single and complete project, whether it is focused on one streambank or both streambanks, measured at the ordinary high water (OHW) elevation on each bank, e.g. 150 linear feet along the eastern streambank and 50 linear feet along the western bank.</li> </ul>

<p><b>NWP 14 Linear Transportation Projects</b></p>	<ul style="list-style-type: none"> <li>• Permanent wetland crossings shall be constructed in such a manner as to maintain or improve the hydraulic and ecological connectivity between the wetlands on either side of the road or fill feature. Crossing structures commonly include, but are not limited to, spans and culverts. To meet this condition, at least one span or culvert shall be sized to accommodate aquatic and terrestrial habitat.</li> <li>• If crossing a large wetland system, spans or culverts shall be placed at intervals of no more than 50 feet apart.</li> <li>• Unconfined, in-stream work, not including installation and removal of cofferdams, is limited to the low-flow period, July 1–September 30.</li> <li>• Individual Water Quality Certification is required for activities involving slip lining or relining a culvert that changes the invert elevation.</li> </ul>
<p><b>NWP 16 Return Water from Upland Contained Disposal Areas</b></p>	<ul style="list-style-type: none"> <li>• Upland placement of dredged spoils shall be located outside of Waters of the United States and state defined inland wetlands under CGS Section 22a-38.</li> </ul>
<p><b>NWP 18 Minor Discharges</b></p>	<p style="text-align: center;">Granted</p>
<p><b>NWP 19 Minor Dredging</b></p>	<p style="text-align: center;">Granted</p>
<p><b>NWP 29 Residential Developments</b></p>	<ul style="list-style-type: none"> <li>• This Certification does not authorize construction of new residential development projects in Waters of the United States that are located within a FEMA designated 100-year floodplain.</li> </ul>

<p><b>NWP 31 Maintenance of Existing Flood Control Facilities</b></p>	<ul style="list-style-type: none"> <li>• Removal of sediment and associated vegetation from a natural stream is prohibited.</li> </ul>
<p><b>NWP 33 Temporary Construction, Access and Dewatering</b></p>	<ul style="list-style-type: none"> <li>• At no time shall material stockpiles be staged over or within Waters of the United States without secondary containment. Construction equipment shall only be temporarily staged over or within Waters of the United States if protective measures, such as mats, crossing structures and/or low-density machinery, are utilized and all regulated areas are restored to pre-disturbance conditions.</li> <li>• Upon completion of the regulated work all temporary fills shall be removed and the affected area(s) returned to the pre-construction elevation, condition, and re-vegetated as appropriate.</li> <li>• Individual Water Quality Certification is required for activities:       <ul style="list-style-type: none"> <li>a. That have a physical disturbance or cause the removal of vegetation to 200 linear feet of a bank of a watercourse. This requirement excludes tree clearing activities conducted pursuant to an established vegetation management plan and does not include stumping and or grubbing activities.</li> <li>b. That require placement of temporary construction mats within 5 acres or more of the Waters of the United States for a single and complete project.</li> <li>c. Where there is a discharge to Waters of the United States and there is more than 75 percent of existing vegetation of a federally defined wetland system of 0.5 acres or greater is cleared and results in a permanent conversion of the wetland habitat type (for example: Forested to Scrub/Shrub). This does not apply to wetland systems that are dominated by Phragmites australis and other non-native invasive plants.</li> </ul> </li> </ul>
<p><b>NWP 36 Boat Ramps</b></p>	<ul style="list-style-type: none"> <li>• Construction shall occur during low (at or below the normal water elevation) or no-flow condition and/or behind a cofferdam between July 1 and March 15. The cofferdam shall be constructed of non-erodible materials (steel sheets, sandbags, aqua barriers, or</li> </ul>

	<p>geotextile liner; earthen cofferdams are not permissible).</p> <ul style="list-style-type: none"> <li>• Individual Water Quality Certification is required for activities that result in greater than 0.20 acres of permanent impact or placement of 75 cubic yards of precast concrete, rock, crushed stone into Waters of the United States.</li> </ul>
<b>NWP 37 Emergency Watershed Protection and Rehabilitation</b>	Granted
<b>NWP 39 Commercial and Institutional Developments</b>	<ul style="list-style-type: none"> <li>• This Certification does not authorize construction of new commercial and institutional developments in Waters of the United States that are located within a FEMA designated 100-year floodplain.</li> <li>• Individual Water Quality Certification is required for new road or driveway crossings.</li> </ul>
<b>NWP 40 Agricultural Activities</b>	<ul style="list-style-type: none"> <li>• This Certification does not authorize the conversion of wetlands to open water.</li> </ul>
<b>NWP 41 Reshaping Existing Drainage and Irrigation Ditches</b>	This Certification does not authorize the placement of hard armament (i.e. riprap) or relocation of a drainage or irrigation ditch.
<b>NWP 42 Recreational Facilities</b>	Granted
<b>NWP 45 Repair of Uplands Damaged by Discrete Events</b>	Granted
<b>NWP 46 Discharges in Ditches</b>	<ul style="list-style-type: none"> <li>• Construction of a new ditch shall not excessively drain a wetland such that the activity would result in habitat and/or areal loss.</li> </ul>

<p><b>NWP 53 Removal of Low Head Dams</b></p>	<ul style="list-style-type: none"> <li>• Relict small-dam removals may not result in the loss (upland conversion) of greater than or equal to 0.20 acres of wetland habitat upstream of the structure.</li> <li>• Work must occur “in-the-dry” (behind cofferdams).</li> </ul>
<p><b>NWP 57 Electric Utility Line and Telecommunications Activities</b></p>	<ul style="list-style-type: none"> <li>• The backfill of the utility trench shall match the existing ground surface and shall occur with native materials, to the extent practicable for industry standard, and may not intercept surface or subsurface water flow from any wetland or waterway. Trench plugs shall be installed, as needed, to prevent the dewatering of surface and / or subsurface waters, wetlands or waterways.</li> <li>• Temporary fill, including fill for construction access roads and matting, shall be removed upon completion of work and the affected area shall be completely restored to pre-construction ground surface elevation and condition, and re-vegetated with native species as appropriate.</li> <li>• At no time shall material stockpiles be staged over or within Waters of the United States without secondary containment. Construction equipment shall only be temporarily staged over or within Waters of the United States if protective measures, such as mats, crossing structures and/or low-density machinery, are utilized and all regulated areas are restored to pre-disturbance conditions.</li> <li>• Materials excavated from utility trenches may be temporarily side cast into Waters of the United States for no more than three months prior to trench backfilling, provided the material is properly stabilized and not placed in such a manner that it is dispersed by currents or other forces or alters flow and circulation patterns.</li> <li>• This Certification does not authorize construction of new substations or telecommunications compounds in Waters of the United States located within a FEMA designated 100-year floodplain.</li> </ul>

	<ul style="list-style-type: none"><li>• Activities that involve Horizontal Directional Drilling (“HDD”) shall have appropriate plans for: Mobilization / de-mobilization, sequence of construction, monitoring BMPs for frack out and notification procedures and a remediation plan if a drilling fluid release occurs. A copy of the HDD plan shall be maintained at the drilling entry and exit pit locations and shall ensure that all contractors and subcontractors comply with its terms.  In the event of a detectable release of drilling fluid into Waters of the United States from HDD, the Prospective Permittee shall conduct monitoring for dissolved oxygen levels in the immediate vicinity of the release as well as within a 50 foot off-set both upgradient and downgradient of the release point. In the event of a drilling fluid release, the Prospective Permittee shall follow the BMP’s established in the HDD Plan and notify the Corps within 24 hours of the inadvertent release. The limits of the impacted wetlands and/or waterbody from the release shall be identified, delineated and monitored for the duration of the remaining HDD work. Any BMP installed to mitigate the release of drilling fluid shall not be removed until after construction has been completed, the site has been stabilized, and all remediation efforts have been completed.</li><li>• Individual Water Quality Certification is required for activities:<ul style="list-style-type: none"><li>a. That have a physical disturbance or cause the removal of vegetation to 200 linear feet of a bank of a watercourse. This requirement excludes tree clearing activities conducted pursuant to an established vegetation management plan and does not include stumping and/or grubbing activities.</li><li>b. That require placement of temporary construction mats within 5 acres or more of the Waters of the United States for a single and complete project.</li><li>c. Where there is a discharge to Waters of the United States and more than 75 percent of existing vegetation of a wetland system of 0.5 acres or greater is cleared and results in a permanent conversion of that wetland habitat</li></ul></li></ul>
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	<p>type (for example: Forested to Scrub/Shrub)– this does not apply to wetland systems that are dominated by <i>Phragmites australis</i> and other non-native invasive plants.</p>
<p><b>NWP 58 Utility Line Activities for Water and other Substances</b></p>	<ul style="list-style-type: none"> <li>• The backfill of the utility trench shall match the ground surface shall occur with native materials, to the extent practicable for industry standard, and may not intercept wetland or waterway drainage below, or on, the ground surface. Trench plugs shall be installed, as needed, to prevent the dewatering or diversion surface and / or subsurface waters, wetlands or waterways.</li> <li>• Temporary fill, including fill for construction access roads, must be removed upon completion of work and the area shall be completely restored to pre-construction elevation and condition, and re-vegetated with native species as appropriate.</li> <li>• Materials excavated from the utility trench may be temporarily side cast into Waters of the United States for no more than three months prior to trench backfilling, provided the material is properly stabilized and not placed in such a manner that it is dispersed by currents or other forces or alters flow and circulation patterns.</li> </ul>
<p><b>NWP A - Activities To Improve Passage of Fish and Other Aquatic Organisms</b></p>	<p style="text-align: center;">Granted</p>

### General Conditions

For those NWP's which CT DEEP has granted Section 401 Water Quality Certification, the following general conditions for **NON-TIDAL WATERS, WETLANDS and WATERCOURSES** shall apply. Where no NWP is specified for a condition, the condition applies to all NWP's for which this Water Quality Certification is granted.

1. **Wildlife Coordination.** In order to be eligible under this Section 401 Water Quality Certification, prospective permittees must ensure that a proposed activity will not threaten the continued existence of water or wetland dependent state endangered, threatened or special concern species. Prospective permittees shall check CT DEEP Wildlife Division's [Natural Diversity Data Base Maps](#) (NDDB) prior to either undertaking an activity or applying for a Pre-Construction Notice (PCN) under any of the NWP's.

If a project is located within a mapped NDDB area and is a non-reporting activity, the prospective permittee shall submit a request for a Natural Diversity Database Review and receive a final determination letter from CT DEEP NDDB prior to conducting activity.

To protect water or wetland dependent state listed species and the water quality necessary for their survival, all mitigative measures identified by the CT NDDB environmental review process and described in the final determination letter shall be followed when conducting an activity under a NWP. To reduce delays the final determination letter from NDDB should be included with the application for a PCN to the Corps.

The submission of an Individual Section 401 Water Quality Certification application is required if any of the Best Management Practices identified in the NDDB final determination letter cannot be adhered to by the prospective permittee. Alternatively, if a prospective permittee determines that a BMP is not practicable, the prospective permittee may request written approval from CT DEEP's Land and Water Resources Division waiving the BMP or allowing an alternative BMP. If such alternative BMP is not consistent with the NDDB letter then an individual 401 Water Quality Certification will be required. Receipt of such written approval will allow the prospective permittee to remain eligible for coverage under the NWP.

2. **Fisheries Coordination.** In order to be eligible under this Section 401 Water Quality Certification, prospective permittees shall submit a [Fisheries Consultation Form](#) to the

CT DEEP Fisheries Division prior to conducting any in-water work. To protect existing and designated uses of waters such as propagation of fish, shellfish and wildlife and the water quality necessary for their protection, all recommendations required in the Fisheries Consultation Form shall be followed when conducting any activity under a NWP. To reduce delays a completed Fisheries Consultation Form should be included with the application for a PCN to the Corps.

Individual Section 401 Water Quality Certification is required if any of the Best Management Practices identified in the Fisheries Consultation Letter cannot be adhered to by the prospective permittee. Alternatively, if a prospective permittee determines that a BMP is not practicable, the prospective permittee may request written approval from CT DEEP's Land and Water Resources Division waiving the BMP or allowing an alternative BMP. If such alternative BMP is not consistent with the Fisheries Consultation letter then an individual 401 Water Quality Certification will be required. Receipt of such written approval will allow the prospective permittee to remain eligible for coverage under the NWP.

3. **Ineligible Activities:** The following limited activities that are potentially authorized by the 2026 Nationwide Permits are **not eligible** for Section 401 Water Quality Certification under any of the Nationwide Permits and will instead require Individual Section 401 Water Quality Certification:

- Detention or retention of stormwater in non-tidal waters, wetlands or watercourses including any watercourse or wetland crossing that by design or default functions to provide stormwater detention, and any construction of a stormwater detention or retention basin in non-tidal waters or wetlands.
- Piping, boxing, enclosing or covering of a non-tidal watercourse for a purpose other than a driveway, rail or roadway crossing.
- Slip lining or culvert relining that changes invert elevation.
- Activities that have an adverse impact whether it is direct, indirect or secondary impact(s) to: Special Wetlands,<sup>(1)</sup> Threatened, Endangered, or Special Concern Species,<sup>(2)</sup> or Significant Natural Communities/Critical Habitats<sup>(2)</sup> identified by the Connecticut Natural Diversity Database.
- Activities within a FEMA established floodplain that would adversely affect the hydraulic characteristics of the floodplain.<sup>(3)</sup>

4. **State Jurisdictional Waters & Vernal Pools.** Individual Water Quality Certification is required if the operation of a facility has a discharge to Waters of the United States and clearcuts the tree canopy that shades a state-defined jurisdictional vernal pool. If there is more than 50 percent removal of the tree canopy that currently shades a state defined jurisdictional vernal pool depression or the tree canopy within the 100-foot envelope around the perimeter of the vernal pool, then the prospective permittee shall take the following actions:
- a. Prior to the start of work the vernal pool depression limits shall be flagged.
  - b. If vegetation must be removed from the vernal pool depression it shall be minimized to the extent practicable and shall not occur during the amphibian breeding season (April 1 – June 1).
  - c. “Access Routes” within the 100-foot envelope of a vernal pool during the amphibian breeding season (April 1 – June 1) shall be minimized to the maximum extent practicable. Use of equipment should be restricted to existing access roads and other improved surfaces such as construction mats during this period. If construction matting must be placed, raised sections such as “air bridges” should be implemented near staggered openings in exclusionary fencing around the vernal pool depression to allow for safe amphibian passage to and from the pool.
  - d. Placement of temporary or permanent fill or use of equipment within the vernal pool depression is not allowed at any time.
  - e. Herbicide applications within vernal pool depressions shall follow the following guidelines:
    1. Applications are prohibited during amphibian breeding season (April 1-June 1).
    2. Herbicide applications after June 1 shall be targeted by application to cut stumps using herbicides approved for use near water.
    3. Applicators shall strictly follow label guidelines for application and shall only be applied by individuals that are licensed to do so by the CT DEEP Pesticides Program.
  - f. Install and maintain Erosion and Sedimentation (E&S) control BMPs as necessary to protect water quality and to limit the potential for soil deposition into a vernal pool. If installation of E&S controls is necessary during the

breeding season, use of measures such as silt fence with staggered openings shall be used to maintain amphibian access to and from the vernal pool.

g. During vegetation removal associated with the protection of overhead utilities, compatible right-of-way species within the vernal pool must be protected to the maximum extent practicable at all times. Use of the following measures is required:

- If vegetation must be removed, it must be done selectively either by hand or with equipment that can reach over, cut, and remove it.
- Trees that are hand-felled must then be lifted, not dragged, out of the vernal pool.
- Trees located outside of the vernal pool shall not be felled into the pool unless there are safety considerations that dictate otherwise.
- If cut vegetation, or portions thereof, cannot be safely lifted out of the vernal pool it may be left in place.
- Do not disturb existing downed woody debris within the vernal pool.

If more than 50 percent of the existing tree canopy that currently shades a vernal pool is removed, an amphibian habitat restoration plan shall be implemented that promotes native woody shrubs (compatible right-of-way species associated with overhead utility projects) and introduces herbaceous cover that facilitates adequate soil surface moisture for amphibians, provides predator protection, and generates leaf litter for a duff layer.

## **5. Installation, Replacement of Culverts and Bridges.**

- A. Closed bottom culverts shall be embedded into the surrounding substrate and shall be provided with a minimum of 12" of natural bottom substrate within the structure.
- B. New structures (including replacements) shall have a minimum of 1.2 times width of the bank full width of the watercourse channel with a single clear span unless otherwise determined to be not practicable. The use of bridge piers or similar support structures where necessary does not prevent a structure from being considered a single clear span. The clear span for closed-bottom structures is measured as the span within a single structure. The individual measurements of multiple closed-bottom clear spans cannot be combined to meet the above bank full-width standard.
- C. Replaced or maintained culverts shall be aligned with the stream channel upstream and downstream of the original culvert. Relocation of a watercourse is prohibited.

- D. All culverts and bridges shall be designed to pass the appropriate flood frequency flow to the extent practicable:
- i. Drainage Area equal to or less than 1 square mile - shall pass the 50-year flood frequency flow.
  - ii. Drainage Area greater than 1 square mile but less than or equal to 10 square miles shall pass the 100-year flood frequency flow with 1 foot of freeboard
  - iii. Drainage Area greater than 10 square miles but less than 1,000 square miles shall pass the 100-year flood frequency flow with 2 feet of freeboard.
  - iv. The slope of the culvert shall be consistent with the pre-existing slope of the watercourse and the stream channel both upstream and downstream of the culvert.

6. **Erosion and Sedimentation Controls and Water Handling.** In constructing or maintaining the activities authorized herein, the prospective permittee shall employ best management practices in accordance with Section 22a-426-1 of the Regulations of Connecticut State Agencies, consistent with the terms and conditions of this certification, to control storm water discharges and erosion and sedimentation and to prevent pollution. Such practices to be implemented by the prospective permittee at the site include, but are not necessarily limited to:

- a. Prohibiting dumping of any quantity of oil, chemicals or other deleterious material on the ground;
- b. Immediately informing the CT DEEP Emergency Response and Spill Prevention Division at (860) 424-3338 (24 hour phone line) of any adverse impact or hazard to the environment, including any discharges, spillage, or loss of oil or petroleum or chemical liquids or solids, which occurs or is likely to occur as the direct or indirect result of the activities authorized herein;
- c. Separating staging areas at the site from the regulated areas by silt fences or straw/hay bales at all times;
- d. Prohibiting storage of any fuel and refueling of equipment within 25 feet from any wetland or watercourse;

- e. Preventing pollution of wetlands and watercourses in accordance with the document “ [Connecticut Guidelines for Soil Erosion and Sediment Control](#)” as revised. Said controls shall be inspected by the permittee for deficiencies at least once per week and immediately after each rainfall with an amount of 0.5 inch or greater and at least daily during prolonged rainfall. The permittee shall correct any such deficiencies within 48 hours of said deficiencies being found;
- f. Stabilizing disturbed soils in a timely fashion to minimize erosion. If a grading operation at the site will be suspended for a period of 30 or more consecutive days, the permittee shall, within the first 7 days of that suspension period, accomplish seeding and mulching or take such other appropriate measures to stabilize the soil involved in such grading operation. Within 7 days after establishing final grade in any grading operation at the site the permittee shall seed and mulch the soil involved in such grading operation or take such other appropriate measures to stabilize such soil until seeding and mulching can be accomplished.
- g. Prohibiting the storage of any materials at the site which are buoyant, hazardous, flammable, explosive, soluble, expansive, radioactive, or which could in the event of a flood be injurious to human, animal or plant life, below the elevation of the 500-year flood. Any other material or equipment stored at the site below said elevation by the permittee or the permittee's contractor must be firmly anchored, restrained or enclosed to prevent flotation. The quantity of fuel stored below such elevation for equipment used at the site shall not exceed the quantity of fuel that is expected to be used by such equipment in one day.
- h. Immediately informing the CT DEEP’s Land & Water Resources Division at (860) 424-3019 and the Corps Regulatory Division at (978) 318-8338, of the occurrence of pollution or other environmental damage resulting from construction or maintenance of the authorized activity or any construction associated therewith in violation of this certification. The permittee shall, no later than 48 hours after the permittee learns of a violation of this certification, report same in writing to the Commissioner. Such report shall contain the following

information:

- (i) the provision(s) of this certification that has/have been violated;
  - (ii) the date and time the violation(s) was first observed and by whom;
  - (iii) the cause of the violation(s), if known
  - (iv) if the violation(s) has ceased, the duration of the violation(s) and the exact date(s) and times(s) it was corrected;
  - (v) if the violation(s) has not ceased, the anticipated date when it will be corrected;
  - (vi) steps taken and steps planned to prevent a reoccurrence of the violation(s) and the date(s) such steps were implemented or will be implemented;
- i. Dewatering during construction shall adhere to the “Connecticut Guidelines for Soil Erosion and Sediment Control” as revised. Dewatering activities shall be limited to immediate work areas and not drain extensive areas of a waterbody or reduce water levels such that fish or other aquatic organisms are killed.
  - j. Water handling systems shall be constructed in a manner that does not exacerbate erosion.
  - k. Temporary stream crossings shall be designed in a manner that prevents construction vehicles from damaging stream banks and continually tracking sediment and other pollutants into the stream.
  - l. Fresh concrete, concrete wash water, or slurry from construction activities shall not be discharged to Waters of the U.S. to avoid pH impacts. Activities with the potential for concrete discharges shall be performed in confinement.

For information and technical assistance, contact CT DEEP’s Land & Water Resources Division at (860) 424-3019.

- 7. Stormwater Quality.** Installation of any new stormwater management system shall be designed in accordance with the “Connecticut Stormwater Manual” dated March 30, 2024, as revised.
- 8. Excavated Materials.** Unless otherwise authorized, all excavated material shall be staged and managed in a manner which prevents additional impacts to wetlands and

watercourses.

9. **Waiver request and Individual Permit:** Individual Water Quality Certificate is required when a prospective permittee requests a waiver for any proposed activity that does not meet each of the eligibility criteria of an NWP and such waiver request is granted by the Corps District Engineer.
10. **Mitigation.** Project activities that result in adverse effects above mitigation thresholds must provide compensation to offset losses of water resource area, function, or both. Mitigation under this 401 Water Quality Certification shall be consistent with federal mitigation guidelines, including the joint Federal Rule *Compensatory Mitigation for Losses of Aquatic Resources* (33 CFR Part 332) and the Corps' *New England District Compensatory Mitigation Standard Operating Procedures*, to the greatest extent possible.

#### **TERMS of Certification**

1. **Rights.** This certification is subject to and does not derogate any present or future property rights or other rights or powers of the State of Connecticut, and conveys no property rights in real estate or material nor any exclusive privileges, and is further subject to any and all public and private rights and to any federal, state, or local laws or regulations pertinent to the property or activity affected hereby. This certification does not comprise the permits or approvals as may be required by Chapters 440, 446i, 446j and 446k of the Connecticut General Statutes.
2. **Expiration of Certification.** The Section 401 Water Quality Certifications contained herein shall be valid until such time as the Department of the Army Nationwide Permits for the State of Connecticut expires or is modified, suspended, revoked or reissued.
3. **Transfer of Certification.** This authorization is not transferable without the written consent of the CT DEEP Commissioner.
4. **Certification of Documents.** Any document, including but not limited to any notice, which is required to be submitted to the CT DEEP Commissioner under this certification shall be signed by the permittee, a responsible corporate officer of the permittee, a general partner of the permittee, or a duly authorized representative of the permittee and by the individual or individuals responsible for actually preparing such document, each of whom shall certify in writing as follows:

“I have personally examined and am familiar with the information submitted in this document and all attachments and certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief, and I understand that any false statement made in this document or its attachments may be punishable as a criminal offense in accordance with Section 22a-6 under Section 53a-157 of the Connecticut General Statutes.”

5. **Submission of Documents.** The date of submission to the CT DEEP Commissioner of any document required by this certification shall be the date such document is received by the CT DEEP Commissioner. Except as otherwise specified in this certification, the word “day” as used in this certification means the calendar day. Any document or action which falls on a Saturday, Sunday, or legal holiday shall be submitted or performed by the next business day thereafter.

Any document or notice required to be submitted to the CT DEEP Commissioner under this certification shall, unless otherwise specified in writing by the CT DEEP Commissioner, be directed to:

Director, Land & Water Resources Division  
Bureau of Water Protection and Land Reuse  
Department of Energy & Environmental Protection  
79 Elm Street  
Hartford, Connecticut 06106-5127

Issued by the Commissioner of Energy & Environmental Protection on December 8, 2025

  
Emma Cimino  
Deputy Commissioner

CC: Nathaniel Margason, US EPA Region 1

## APPENDIX

### DEFINITIONS

- (l) **Special Wetlands:** Include vernal pools, bogs, fens, cedar swamps, spruce swamps, calcareous seepage swamps, and wetlands that provide habitat for threatened or endangered species or species of special concern as designated by the State of Connecticut Natural Diversity Database. The following definitions for bogs, calcareous seepage wetlands, cedar swamps, fens, spruce swamps, and vernal pools apply for the purposes of the NWP:

**Bog:** a peat accumulating wetland dominated by sphagnum moss. Typical plant species include sphagnum moss, leatherleaf, black spruce, pitcher plant and sundew.

**Calcareous Seepage Swamp:** a forested wetland characterized by the discharge of groundwater with a chemistry influenced by an underlying limestone geology.

**Cedar Swamp:** a forested wetland characterized by the presence of Northern White Cedar or Atlantic White Cedar.

**Fen:** a peat accumulating wetland dominated by sedges and/or ericaceous shrubs. Typical plant species include low sedges, ericaceous shrubs, sphagnum and other mosses.

**Spruce Swamp:** a forested wetland characterized by the presence of Red or Black Spruce.

**Vernal Pool:** an often-temporary body of water occurring in a shallow depression of natural or human origin that fills during spring rains and snow melt and typically dries up during summer months. Vernal pools supporting populations of species specially adapted to reproducing in these habitats. Such species may include wood frogs, mole salamanders (*Ambystoma* sp.), fairy shrimp, fingernail clams, and other amphibians, reptiles and invertebrates. Vernal pools lack breeding populations of fish. **All vernal pools are subject to the jurisdiction of the Connecticut Department of Energy and Environmental Protection under Connecticut Water Quality Standards.**

- (2) **Threatened, Endangered or Special Concern Species; Significant Natural Communities/Critical Habitats:** Species listed by CT DEEP pursuant to Chapter 495 of the Connecticut General Statute as threatened or endangered species or species of special concern. General locations of threatened and endangered species and species of special concern, and significant natural communities/critical habitats are identified on maps published by CT DEEP entitled “Natural Diversity Data Base Areas” and on the CTECO Interactive Map Viewers at [www.cteco.uconn.edu](http://www.cteco.uconn.edu).
- (3) **Adverse Effect to Hydraulic Characteristics:** An adverse effect to hydraulic characteristics includes an increase in flood water surface elevation, an increase in flood flow velocity or a restriction of flood flow conveyance in a manner that would impact upstream, downstream or adjacent property. For state actions, receipt of a Flood Management Certification under Section 25-68d of the Connecticut General Statutes is considered to fulfill this condition.

August 28, 2025

Stephan A. Ryba  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers,  
New York District  
26 Federal Plaza  
New York, NY 10278

Marty P. Wargo  
Chief, Environmental Analysis Branch  
U.S. Army Corps of Engineers,  
478 Main Street  
Buffalo, NY 14202

Tammy R. Turley  
Chief, Regulatory Division  
New England District  
U.S. Army Corps of Engineers  
Virginia Road, Concord, MA 01742-2751

Re: **F-2025-0388 (DA)**  
U.S. Army Corps of Engineers – Proposed 2026  
New York, Buffalo and New England Districts’  
Regional Conditions, the Reissuance and  
Modification of the Nationwide Permit Program,  
the issuance of one new Nationwide Permit.  
Statewide Coastal Areas and Geographical Location  
Descriptions

Dear Sirs and Madam:

The Department of State (DOS) has completed its review of the U.S. Army Corps of Engineers (Corps) consistency determination indicating that the proposed reissuance and modification of its nationwide permits (NWPs) and issuance of one (1) new NWP and proposed regional conditions, pursuant to 33 CFR Part 330 is and will be conducted in a manner consistent to the maximum extent practicable<sup>1</sup> with the New York State Coastal Management Program.

Based upon the regional conditions published by the New York, Buffalo, and New England Districts of the Corps on June 18, 2025, DOS issues the following decisions:

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<sup>1</sup> See 15 CFR 930.32 for the requirement that federal agency actions be consistent with the state’s enforceable coastal policies to the maximum extent practicable.

**I. Pursuant to 15 CFR § 930.41, DOS concurs with the Corps consistency determination for the following NWP's anywhere in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154 (Interstate Consistency Review)<sup>i</sup> and § 930.53(1) (Geographic Location Description [GLD])<sup>ii</sup>:**

1. Aids to Navigation
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities
10. Mooring Buoys
15. U.S. Coast Guard Approved Bridges
16. Return Water from Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil and Hazardous Substances
22. Removal of Vessels
24. Indian Tribe or State Administered Section 404 Programs
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
34. Cranberry Production Activities
37. Emergency Watershed Protection and Rehabilitation
41. Reshaping Existing Drainage Ditches and Irrigation Ditches
46. Discharges in Ditches
53. Removal of Low-Head Dams

**II. Pursuant to 15 CFR § 930.41 and § 930.43, DOS conditionally concurs with the Corps' consistency determination for the following NWP's in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154<sup>i</sup> and § 930.53(1)<sup>ii</sup>, subject to the following conditions:**

3. Maintenance

NWP 3 shall only apply to projects located in non-tidal waters where the activities to be authorized primarily involve the repair/replacement in-place or landward of a lawful structure or fill, with no waterward expansion or increase in footprint, unless:

- the projects are proposed solely within the artificial canals identified by DOS at: <https://www.stone-env.net/opdgig-coastal-atlas/>; or
- the projects would be authorized by the New York State Department of Environmental Conservation under the [Great Lakes Erosion Control General Permit](#).

6. Survey Activities

NWP 6 shall only apply where the activities to be authorized would be limited to sample plots or transects for wetland delineations and historic resources surveys.

11. Temporary Recreational Structures

NWP 11 shall only apply where the activities to be authorized are for structures that are in place for no more than 30 days in a given calendar year and are for non-residential purposes.

13. Bank Stabilization

NWP 13 shall only apply where the activities would be authorized by New York State Department of Environmental Conservation under the [Great Lakes Erosion Control General Permit](#) or would occur within the artificial canals identified by DOS at: <https://www.stone-env.net/opdgif-coastal-atlas/>.

35. Maintenance Dredging of Existing Basins

NWP 35 shall only apply in tidal waters that are located outside of the New York City Waterfront Revitalization Program.

**III. Pursuant to 15 CFR § 930.41 and § 930.43, DOS conditionally concurs with the Corps' consistency determination for the following NWP's in the New York State coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154<sup>i</sup> and § 930.53(1),<sup>ii</sup> with the exception and condition that these NWP's would not apply where the activities would occur within or affect the New York City Waterfront Revitalization Program:**

- 2. Structures in Artificial Canals
- 28. Modifications of Existing Marinas
- 35. Maintenance Dredging of Existing Basins (see additional condition in Section II above)
- 36. Boat Ramps
- 38. Cleanup of Hazardous and Toxic Waste

**IV. Pursuant to 15 CFR § 930.41 and § 930.43 DOS objects to the Corps' consistency determination for the following NWP's anywhere in the New York coastal area and within areas outside of the New York State coastal area that are described within the New York State Coastal Management Program pursuant to 15 CFR § 930.154<sup>i</sup> and § 930.53(1)<sup>ii</sup>:**

- 5. Scientific Measuring Devices
- 7. Outfall Structures and Associated Intake Structures
- 8. Oil and Gas Structures on the Outer Continental Shelf
- 9. Structures in Fleeting and Anchorage Areas
- 12. Oil or Natural Gas Pipeline Activities
- 14. Linear Transportation Projects
- 21 Surface Coal Mining Activities
- 23. Approved Categorical Exclusions
- 25. Structural Discharges
- 27. Aquatic Ecosystem Restoration, Enhancement and Establishment Activities
- 29. Residential Developments
- 32. Completed Enforcement Activities
- 33. Temporary Construction, Access, and Dewatering
- 39. Commercial and Institutional Developments
- 40. Agricultural Activities

42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
54. Living Shorelines
55. Seaweed Mariculture Activities
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
- A. [NEW] Activities To Improve Passage of Fish and Other Aquatic Organisms

### **Basis for Decision**

The nationwide permits listed in **II** and **III** that do not meet the conditions as listed above for those permits, **and** all of the permits listed in **IV** above, would authorize activities which would not be consistent with one or more of the State's CMP policies and federally approved amendments to the CMP.

First, in **II**, where the listed conditions are not complied with, the activities should not be subject to a nationwide permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11, #12, #13, # 14, # 15, # 16, # 17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21 , #22); preventing the impairment of scenic resources (Policies #24 and #25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39). These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Next, in **II and III**, where the activities would be located within the CMP special management area New York City Waterfront Revitalization Program (NYC WRP), the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the NYC WRP policies pertaining to: water dependent uses (Policies #1, #2, #3, and #8); appropriate development in appropriate areas (Policies #1, #2, #3, #8, #9, and #10); the protection, preservation, and where practicable restoration of designated significant coastal fish and wildlife habitats (Policy #4); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #4, #5, and #7); flooding and erosion hazards and increasing climate resilience (Policy #6); infringements on the public use of coastal waters and water related recreational uses (Policies #3, and #8); preventing the impairment of scenic resources (Policy #9); the preservation and protection of

freshwater and tidal wetlands and the benefits derived from them (Policies #4, and #5); and the protection of the quality of coastal waters (Policies #4, #5, and #7).

Further, in **IV**, the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to: water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11, #12, #13, #14, #15, #16, #17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21, #22); preventing the impairment of scenic resources (Policies 24 and 25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39). These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Finally, the NWP's listed in **II**, where the listed conditions are not complied with, **II and III**, where the activities would be located within the NYC Waterfront Revitalization Program, and **IV** above were determined not to be consistent to the maximum extent practicable with the State CMP policies for several reasons: 1) the specific nature of the authorized activity is unknown (e.g. structures in fleeting and anchorage areas, residential developments, approved categorical exclusions, completed enforcement actions); 2) the size, extent and duration of the authorized activity is limitless (e.g. utility line backfill and bedding, structural discharges, maintenance dredging of existing basins); 3) the established thresholds for an activity are excessive (e.g. bank stabilization, headwaters and isolated waters discharges, 1/2 acre loss of waters); 4) the provisions of the permits do not reflect the existing conditions of the geographic areas in which the authorized activity would occur; 5) coordinated review of authorized activities will be limited and expedited review by the Corps would exclude valuable local knowledge of on-site conditions and potential effects on local resources (e.g. water-based renewable energy); 6) the mitigation condition does not advocate "avoidance" and viable alternatives or advocating activities that would advance relevant CMP policies as the principal means of minimizing adverse effects on coastal waters, habitats, wetlands, scenic areas, special aquatic sites (mitigation banks vs. on-site mitigation); and 7) the authorized activities could be inconsistent with locally adopted and State and federally approved plans as expressed in federally approved amendments to the CMP.

#### **Alternative Measures - Regional Conditions**

Pursuant to 15 CFR § 930.43(a)(3), DOS should describe alternative measures which, if adopted by the Corps, would allow the Corps to proceed with the reissuance, modification, and issuance of new NWP's in a manner consistent to the maximum extent practicable with the CMP. According to 33 CFR § 330.4(d)(2), the Division or District Engineers may establish regional conditions for NWP's that would make them consistent with the CMP and as such, DOS has reviewed the proposed regional conditions for the New York, Buffalo and New England Districts.

To ensure that the Corps' NWP's and activities authorized by them would be consistent with the CMP and approved LWRPs, the following condition applies to:

1) the NWP's listed in **II** above that do not meet the stated conditions and

2) the NWP's listed in **II and III** when the activity to be authorized would occur within the NYC Waterfront Revitalization Program

And

3.) the NWP's listed in **IV** above

Activities authorized pursuant to these Nationwide Permits shall be submitted to DOS for review by the applicant. DOS will review the proposed activities pursuant to 15 CFR Part 930 Subparts D and I where applicable. DOS concurrence with an applicant's consistency certification shall not be presumed unless DOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of DOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63.

Submissions should be submitted to:

Consistency Review Unit  
Office of Planning, Development and Community Infrastructure  
New York State Department of State  
99 Washington Avenue  
One Commerce Plaza, Suite 1010  
Albany, NY 12231

Electronic submissions should be emailed to:

[CR@dos.ny.gov](mailto:CR@dos.ny.gov)

The submission shall include the necessary data and information pursuant to the New York Coastal Management Program and 15 CFR § 930.58<sup>iii</sup>:

Should you have any questions regarding this consistency decision please contact Jennifer Street ([jennifer.street@dos.ny.gov](mailto:jennifer.street@dos.ny.gov)).

Sincerely,



Kisha Santiago  
Deputy Secretary of State  
Office of Planning, Development and  
Community Infrastructure

KSM/dn

cc: OCM – Jeffery L. Payne – via e-mail  
OCM – Kerry Kehoe, David Kaiser – via e-mail  
COE/HQ – Katherine McCafferty – via e-mail  
COE/Buffalo District – Bridget Brown – via e-mail  
COE/New York District – Christopher Mink – via e-mail  
COE/New England District – Birdie Budnik – via e-mail

NYSDEC/Central Office – Scott Sheeley – via e-mail  
NYSOGS – Ralph Hill – via e-mail  
NYS DPS – Sarah Crowell & Chase Chaskey – via e-mail

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<sup>i</sup> All references to 15 CFR 930.154 Interstate Consistency review for New York State refer to New York State's Interstate Consistency Review Authority as described as follows:

New York State Coastal Management Program Part II Section 9 page 24 Table 4: Interstate Activities as approved by the Office of Ocean and Coastal Resource Management on March 28, 2006

In Connecticut State waters:

- Construction of structures (e.g. bulkheads, revetments, groins, jetties, piers, docks, islands, etc.) or conduct of activities such as the mooring of vessels in navigable waters, or obstruction or alteration of navigable waters pursuant to Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, et. seq.), in the Byram River within 50' of the federal navigation channel in the Byram River or, where there is no federal navigation channel in the Byram River, within the Byram River within 50' of the border of New York and Connecticut upstream to the US Route 1 bridge.
- Discharge of dredged and fill materials and other activities in the waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) in Long Island Sound and Fishers Island Sound waterward of the 20' bathymetric contour closest to the Connecticut shoreline.
- Map of these areas can be found at: <https://www.stone-env.net/opdgig-coastal-atlas/>

<sup>ii</sup> All reference to 15 CFR 930.53(1) Geographic Location Description review for New York State refer to New York State's Renewable Energy Geographic Location Description. New York State Coastal Management Program Part II Section 9 page 24 Table 5: Renewable Energy Geographic Location Description as approve by the Office of Coastal Management on April 19, 2023, see map at: <https://www.stone-env.net/opdgig-coastal-atlas/>

In New York State's Offshore Renewable Energy Geographic Location Description for research, siting, construction, operations and maintenance, and decommissioning of offshore renewable energy generation infrastructure, and transmission infrastructure where the activity would be authorized under Section 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

<sup>iii</sup> Necessary data and information as reflected in the New York State Coastal Management Program Part II Section 9 page 12-13

1. Copy of the federal permit, license, etc. application.
2. Copy of the completed Federal Consistency Assessment Form, which includes a signed consistency certification and written analysis of the proposed activity's consistency with the policies of the State's CMP. Form at: [https://dos.ny.gov/system/files/documents/2020/09/fcaf\\_fillable.pdf](https://dos.ny.gov/system/files/documents/2020/09/fcaf_fillable.pdf)
3. Copy of all supporting documentation submitted with the federal application, including a detailed description of the proposed activity, its associated facilities and coastal effects, map(s) showing the geographic location of the proposed activity, site map(s) and diagram(s) drawn to scale showing all components of the activity and their location on the site, recent color photographs of the site, written statement on the purpose and need for the activity, identification of the owners of the abutting upland properties and underwater lands, and written analysis of alternatives to the proposed activity considered by the applicant.
4. Copy of the final Environmental Impact Statement, if required by the federal agency or by a state agency having jurisdiction over the proposed activity.
5. Copies of permit, license, etc. applications and related correspondence submitted to involved state agencies (e.g. DEC, OGS, SHPO, NYPA, PSC).
6. For energy facilities subject to Articles VII or 10 of the New York State Public Service Law all documentation submitted to the Siting Board for its consideration through to the conclusion of its public hearing process. Energy facilities undergo an extensive review by the State's Siting Board. DOS will participate in the review process when appropriate and advise the Siting Board of coastal policy concerns applicable to the proposed energy facility. DOS will coordinate its federal consistency review of major energy facilities with the Siting Board and other agencies involved in the Article VII or Article 10 processes.
7. For other necessary data and information see 15 CFR Subpart D.