13. Bank Stabilization.
Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

In addition, this NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to

provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature based solutions for bank stabilization activities include the use of construction materials for seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; vegetative stabilization; bioengineering; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment. Nature-based solutions should be appropriate for the physical and biological characteristics of the site.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Note 2: Under 33 CFR 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments,

riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

**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 NWPs 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 reaeration 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* d*erelict, 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 NWPs.

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. (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 NWPs 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 NWPs 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.*

**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/xkgbur861/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.*

**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.

_____

(Transferee)

_____

(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* 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/utils/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 NWPs 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 NWPs, 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.

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 (NWPs) 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.*

| **Applicable to All New England States** | |
|---|---|
| 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 |
| **Applicable to Specific New England States** | |
| 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 NWPs 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.

| **Aquatic Resource** | **Threshold** |
|---|---|
| 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)

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

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

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

   Sector Long Island Sound: (New York to Connecticut border at Port Chester, Connecticut to Rhode Island border at Watch Hill) SECLISSPWMarineEvent@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

   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/marking, 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. 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.

**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 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 NWPs 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 NWPs, and these activities do not require activity-specific EFH consultation.

| Nationwide Permit | Authorized Activities with General Concurrence |
|---|---|
| NWPs: 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. Regional Condition N is reserved for the State of Connecticut.

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

V. Additional PCN Requirement and Time-of-Year Windows and 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 RIDEM and CRMC provide alternate TOY restrictions.

| | **TOY Work Restriction** | **TOY Work Window** |
|---|---|---|
| Non-Tidal Waters | November 1 to June 30 | July 1 to October 31 |
| Tidal Waters | February 1 to October 14 | October 15 to January 31 |
| Anadromous Waters | March 1 to June 30 | July 1 to February 28/29 |

For proposed activities that cannot follow the TOY windows/restrictions listed above, alternate work windows may be proposed under a PCN provided they are first coordinated with and authorized in writing by RIDEM. RIDEM may place additional constraints to protect anadromous fish species in the fall. In order to avoid delays in review, the applicant should include documentation of this coordination and authorization from RIDEM 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 Regional Conditions apply to all applicable NWPs 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.

**RHODE ISLAND**
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**
**OFFICE OF WATER RESOURCES**
235 Promenade Street, Providence, Rhode Island 02908-5767

**Via email**

December 15, 2025

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

**RE: 401 Water Quality Certificate Decision Letter for the Department of Army Nationwide Permits**
**WQC No. 25-086**

Dear Ms. Turley:

The Rhode Island Department of Environmental Management Office of Water Resources (RIDEM OWR) has reviewed the proposed Nationwide Permits (NWPs) and accompanying General Conditions as published in the Federal Register, 90 Fed. Reg. 26100 (June 18, 2025). A request for Water Quality Certification was submitted to RIDEM OWR on the same date and accepted by RIDEM as a complete Certification Request under Application No. IA-0000008418. Included in the application documents was a detailed identification of which Nationwide Permits were not to be implemented in New England, as well as which Nationwide Permits you were seeking certification for. This "Proposal to Reissue and Modify Nationwide Permits" applies to all State waters that also meet the definition of Waters of the United States.

RIDEM OWR issued a Public Notice for the proposed reissuance and modifications to the Nationwide Permits on October 7, 2025, pursuant to Section 1.17(D) of the RIDEM Water Quality Regulations, 250-RICR-150-05-1. No public comments were received. RIDEM OWR has reviewed all materials submitted as part of the Certification Request pursuant to the procedures outlined in Section 1.17 of the Water Quality Regulations.

As noted in the cover letter dated June 18, 2025, that accompanied your Certification Request, the New England District has informed RIDEM that it intends not to implement the following NWPs in any of the New England States:

- NWP 2-Structures in Artificial Canals
- NWP 21-Surface Coal Mining Activities
- NWP 24-Indian Tribe or State Administered Section 404 Programs
- NWP 25-Structural Discharges
- NWP 30-Moist Soil Management for Wildlife
- NWP 49-Coal Remining Activities
- NWP 50-Underground Coal Mining Activities

Accordingly, RIDEM OWR has not reviewed those activities for certification, and as such none of the above-identified activities are granted Certification. Such activities would require Individual Applications to the US Army Corps of Engineers (USACE) and separate Requests for Certification to RIDEM OWR under Section 401 of the Clean Water Act (CWA).

As noted in the aforementioned June 18, 2025 cover letter, activities authorized under NWP 8 (Oil & Gas Structures on the Outer Continental Shelf) only involves activities seaward of the territorial seas and thus does not require State Certification pursuant to Section 401 of the CWA. Additionally, no activities are currently proposed for previous NWPs 26, 47 or 56, which are currently listed in the Federal Register as "Reserved".

USACE's New England District has opined that NWPs numbered 1, 9, 10, 11, 28, 35, and 55 could not reasonably be expected to result in a discharge into waters of the United States and the USACE does not deem certification to be necessary for this group of NWPs. Nevertheless, USACE has noted that the final decision of whether Certification is needed for any of these seven types of activities rests with the certifying authority, RIDEM. In reviewing these activities as published and described in the Federal Register, RIDEM is in agreement that activities authorized under NWPs 1 (Aids to Navigation), 10 (Mooring Buoys), 11 (Temporary Recreational Structures) and 28 (Modifications of Existing Marinas) would not result in discharges into Waters of the US and therefore do not require Certification under Section 401 if the CWA in order to be implemented in Rhode Island. We find, however, that certain activities authorized under Activities 9 (Structures in Fleeting and Anchorage Areas), 35 (Maintenance Dredging of Existing Basins) and 55 (Seaweed Mariculture Activities) could in fact result in discharges that may involve water quality impacts within Waters of the State that are also Waters of the US. We will therefore exercise our authority to make a Water Quality Certification Decision for those activities. Our decisions on these are detailed later in this decision letter.

In consideration of the above, and after due evaluation of the proposed reissuance and modifications to the Nationwide Permits pursuant to the Water Quality Regulations, the RIDEM OWR hereby conditionally grants the State's Water Quality Certification pursuant to Section 401 of the Clean Water Act for the following listed activities that meet the definition and requirements of Self Verification (SV) and Pre-Construction Notification (PCN) activities covered by the following Nationwide Permits as published in the Federal Register, 90 Fed. Reg. 26100 (Section B, "Nationwide Permits") on June 18, 2025:

- NWP 3 – Maintenance
- NWP 4 – Fish & Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water from Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 27 – Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
- NWP 29 – Residential Developments
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 39 – Commercial & Institutional Developments

- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage & Irrigation Ditches
- NWP 42 – Recreational Facilities
- NWP 44 – Mining Activities
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharge in Ditches
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 55 – Seaweed Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunication Activities
- NWP 58 – Utility Line Activities for Water and Other Substances
- NWP 59 – Water Reclamation and Reuse Facilities
- NWP A – Activities to Improve Passage of Fish and Other Aquatic Organisms.

All of the NWPs in the preceding list are granted Water Quality Certification subject to the following conditions:

1) The activity meets all requirements specified in the applicable NWP, including notification requirements if applicable, as well as all General Conditions (Section C, "Nationwide Permits General Conditions").

2) All project proponents/applicants have obtained all applicable State approvals as listed below:

    a. Freshwater Wetlands Approval under the "Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act", 250-RICR-150-15-3 (DEM FWW Rules) as applicable, pursuant to the Fresh Water Wetlands Act, RIGL Section 2-1-18 et seq.;"
    b. RIDEM approval under the "Rules and Regulations for Dam Safety", 250-RICR-130-05-1, pursuant to "Inspection of Dams and Reservoirs", RIGL Section 46-19-1.
    c. State Water Quality Certification approval under the "Water Quality Regulations", 250-RICR-150-05-1 pursuant to RIGL Sections 42-17.1 and 46-12-1 et seq.;
    d. Dredge Permit under the "Rules and Regulations for Dredging and the Management of Dredged Material", 250-RICR-150-05-2, pursuant to RIGL 46-6.1
    e. Freshwater Wetlands Approval under the "Coastal Resources Management Council – Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast", 650-RICR-20-00-9 (CRMC FWW Rules) as applicable.
    f. Assent from the RI Coastal Resources Management Council under the Red Book regulations, 650-RICR-20-00-1.

Water Quality Certification is hereby **waived** for any activities in freshwater non-tidal wetlands covered under the NWPs that are considered Exempt from permitting by RI DEM under the DEM FWW Rules, 250-RICR-150-15-3.6 as applicable; or that are considered exempt from permitting by the RI CRMC under the CRMC FWW Rules, 650-RICR-20-00-9.6 as applicable.

This Water Quality Certification **does not authorize** any activities under NWP 32 or NWP 43. Water Quality Certification for those two NWP's is **denied.**

NWP 32 for "Completed Enforcement Actions" would potentially allow significant discharges to remain within Waters of the US that are also Waters of the State under certain conditions. In all likelihood, in such instances, the State will be pursuing separate enforcement actions. In resolving such actions, RIDEM would not pursue a remedy to resolve the violations that would fail to meet the standards set forth in our Rules and Regulations. As currently set forth in NWP 32, it is our determination that this NWP could likely result in an outcome that would not satisfy our current Water Quality Standards set forth in either the Water Quality Regulations, 250-RICR-150-

05-1 or the Standards Applicable to Regulated Projects set forth in the Freshwater Wetlands Regulations, 250-RICR-150-15-3. Accordingly, Water Quality Certification for this NWP is denied, and such projects or activities will require an individual Water Quality Certification under Section 401 of the Clean Water Act prior to receiving a permit from USACE.

NWP 43 for "Stormwater Management Facilities" is inconsistent with RIDEM standards within the aforementioned Freshwater Wetlands Regulations that prohibits the placement of any structural stormwater best management practices within freshwater wetlands. It is the position of RIDEM that treatment of stormwater runoff should take place prior to any discharge of the stormwater towards wetlands or other waters and their buffers, and the filling of wetlands or waters for the placement of such structures reduces both the flowpath of the runoff prior to reaching the wetland resource as well as the wetland's/water's innate ability to provide further treatment of that treated runoff. This reduction in water quality treatment is inconsistent with RIDEM's water quality standards and is entirely avoidable. Accordingly, Water Quality Certification for this NWP is denied, and such projects or activities will require an individual Water Quality Certification under Section 401 of the Clean Water Act prior to receiving a permit from USACE. Note, however, that activities limited to maintenance of existing, approved stormwater management facilities may be Exempted from permitting and therefore waived as described above.

This Water Quality Certification also does not authorize any activity or proposed project that is determined to require an USACE Individual Permit. This Water Quality Certification shall be valid until such time as the Nationwide Permits are-individually or collectively-modified, suspended, revoked or re-issued.

If you have any questions regarding the contents of this Water Quality Certification decision letter, you may contact either Neal Personeus at neal.personeus@dem.ri.gov, or the undersigned at chuck.horbert@dem.ri.gov.

Sincerely,

Charles A. Horbert Digitally signed by Charles A. Horbert
Date: 2025.12.15 15:41:37 -05'00'

Charles A. Horbert, Deputy Administrator, Groundwater & Freshwater Wetlands Protection
Federal 401/State WQC Program
Office of Water Resources
Rhode Island Department of Environmental Management

ec: Terry Gray, Director, RIDEM
Eric Beck, Administrator for Groundwater & Freshwater Wetlands Protection
Ronald Gagnon, Chief, Office of Customer & Technical Assistance (Dredge)
Christina Hoefsmit, Deputy Administrator, Office of Compliance & Inspection (Dams)
Jeffrey Willis, Executive Director, RI CRMC
Amy Silva, RI CRMC
Neal Personeus, RIDEM WQC Program
Martin Wencek, RIDEM Freshwater Wetlands Program
Nancy Freeman, RIDEM Freshwater Wetlands Program
Andy Charpentier, RIDEM Freshwater Wetlands Program
Eric Schneider, RI DEM Division of Marine Fisheries
Lisa Rhodes, MA Department of Environmental Protection, Wetlands Program
Jeffrey Caiola, CT Department of Energy & Environmental Protection
Elizabeth Waterhouse, US Army Corps of Engineers, New England District
Erica Sachs, US EPA
Haley Miller, US EPA

State of Rhode Island
**Coastal Resources Management Council**
Oliver H. Stedman Government Center
4808 Tower Hill Road, Suite 116
Wakefield, RI 02879-1900

Phone (401) 783-3370
Fax (401) 783-3767

**December 18, 2025**

Ms. Elizabeth Waterhouse
Senior Project Manager, Regulatory Division
R.I. State Lead
New England District
U.S. Army Corps of Engineers

RE: **CRMC File 2025-06-071**
Federal Consistency Objection, Reissuance of the U.S. Army Corps of Engineers 2026 Nationwide Permits

Dear Ms. Waterhouse,

The Rhode Island Coastal Resources Management Council (CRMC) is in receipt of the federal consistency determination and supporting materials submitted by U.S. Army Corps of Engineers (ACOE) seeking CRMC concurrence for the above referenced Federal action. The federal consistency determination is dated and was received by this office via email on **June 24, 2025**. The Proposal to Reissue the Nationwide Permits was published in the Federal Register on June 18, 2025. The proposed action would reissue the AOCE's 2026 Nation Wide Permits (NWPs). NWPs 2, 21, 24, 25, 30, 49, and 50 will not be implemented in the New England District and have not been reviewed for federal consistency per the ACOE's June 24th submittal. If an activity subject to any of the above-mentioned NWPs is proposed, the activity will require an independent federal consistency review by the CRMC.

## I. CRMC's Federal Consistency Review Authority

The proposed action is a direct Federal activity subject to the Coastal Zone Management Act (CZMA) at 16 U.S.C. § 1456(c) and the CZMA's implementing regulations at 15 C.F.R. Part 930 Subpart C. NWP activities will occur within and/or will affect the coastal zone of Rhode Island and must be "consistent to the maximum extent practicable" with the Rhode Island Coastal Resources Management Plan (RICRMP). The ACOE's Consistency Determination states that "activities authorized by the proposed NWPs will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the state's approved management program." The CRMC has determined that the ACOE's Consistency Determination is in accordance with 15 C.F.R. § 930 and is issuing an *objection* (in-part) in this matter.

## II. Concurrence with Select NWPs

The CRMC has reviewed the proposed reissuance of the NWPs against the CRMP enforceable policies. All NWPs with the exception of NWPs 32 and 43, as discussed below, are consistent to the maximum extent practicable with the CRMC's Coastal Resources Management Plan. Furthermore, The CRMC *concurs* with activities in freshwater non-tidal wetlands covered under the NWPs that are considered Exempt from permitting by the RI CRMC under the CRMC Freshwater Wetland Rules, 650-RICR-20-00-9.6 as applicable; or that are considered Exempt from permitting by the RI DEM under the DEM FWW Rules, 250-RICR-150-15-3.6 as applicable.

This consistency decision does not authorize any activity or proposed project that is determined to require an IP from the USACE. Should the ACOE agree per 15 C.F.R. 930.41(d), this consistency decision shall be valid until such time as the Nationwide Permits are-individually or collectively modified, suspended, revoked or re-issued.

## III. Objection to Select NWPs

This Federal Consistency Decision *objects* to any activities under NWP 32 or NWP 43.

NWP 32 for "Completed Enforcement Actions" would potentially allow structures, work, or discharge of dredged or fill material that are in violation of a CRMC permit to remain in place. In those cases, the CRMC would likely be pursuing separate enforcement actions under its enforceable policies/standards which would conflict NWP 32. At current, the NWP may reasonably result in outcomes that would be inconsistent with the standards in the CRMC's Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast, 650-RICR-20-00-9, and/or the standards set forth in the Coastal Resources Management Program (Red Book), 650-RICR-20-00-01. As such the CRMC objects to this NWP and any activities or projects will require a federal consistency decision from the CRMC prior to receiving a permit from the ACOE.

NWP 43 for "Stormwater Management Facilities" is inconsistent with standards in the CRMC's Freshwater Wetlands in the Vicinity of the Coast regulations that prohibit the placement of any structural stormwater best management practices within freshwater wetlands. The CRMC objects to such activities and projects which will require a separate federal consistency decision from the CRMC unless the project or activity is otherwise exempt from permitting.

Please contact Kevin Sloan (ksloan@crmc.ri.gov) should you have any questions regarding this concurrence.

Sincerely,

Jeffrey M. Willis, Executive Director
Coastal Resources Management Council

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 (NWPs) 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 NWPs.

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.[1] EPA reviewed the draft NWPs and applicable conditions and has determined that any discharge from activities authorized by the proposed NWPs 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.

[1] 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.

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 NWPs. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 1 at 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 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, ogs1@maliseets.com<br>Sharri Venno, envplanner@maliseets.com<br>Rhonda Cochran, rcochran@maliseets.com<br>Carolyn Merriam, cmerriam@maliseets.com<br>Sam St. John, samstjohn7@yahoo.com |
| Mi'kmaq Nation | Shannon Hill, shilll@micmac-nsn.gov<br>Cherish Cole, ccole@micmac-nsn.gov<br>David Macek, dmacek@micmac-nsn.gov<br>Dena Winslow, dwinslow@micmac-nsn.gov<br>Fred Corey, fcorey@micmac-nsn.gov |
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| Passamaquoddy Tribe of Indians Pleasant Point Reservation | Marvin Cling, marvin@wabanaki.com<br>William (Billy) Longfellow, wlongfellow@wabanaki.com<br>Bruce Doughty, bdoughty@wabanaki.com<br>Chris Soctomah, chrissoctomah@wabanaki.com<br>Ralph Dana, ralphdana@wabanaki.com |
| Wampanoag Tribe of Gay Head (Aquinnah) | Brett Stearns, isa@wampanoagtribe-nsn.gov<br>Beckie Finn, envcoord@wampanoagtribe-nsn.gov |
| Mashpee Wampanoag Tribe | Dale Oakley, Dale.OakleyJr@mwtribe-nsn.gov<br>Jason Steiding, Jason.Steiding@mwtribe-nsn.gov |
| Narragansett Indian Tribe | Dinalyn Spears, DSpears@nitribe.org<br>Steven Smith ssmith@nitribe.org |
| Mohegan Tribe | Ken Janus kjanus@moheganmail.com<br>Jean Mcinnis, jmcinnis@moheganmail.com |
| Mashantucket Pequot Tribal Nation | Michael Boland, mboland@mptn-nsn.gov |

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

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 Narragansett Indian Tribe do not have the authority to provide CWA Section 401 certification for projects within Narragansett Indian Tribe Trust lands in Rhode Island. EPA's certifications of these Nationwide Permits (NWPs) are provided to the extent that the State of Rhode Island 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 NWP 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.

## Certification Decisions

### *Grants of Certification with Conditions*

EPA is granting certification with conditions for activities under NWPs 1, 3, 4, 5, 6, 7, 9, 10 ,11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 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:
  - <u>Cofferdams, temporary berms, pilings, and/or dikes</u>: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
  - <u>Dredging</u>: 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.
  - <u>Erosion and sediment control</u>: 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 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 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. 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 Rhode Island 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.[1]

- **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 Resource Protection Waters are those aquatic habitats (estuarine and palustrine) that are state ranked as rare natural communities by Rhode Island Department of Environmental Management (RIDEM) Natural Heritage Program[2].

**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 (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

[1] 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/utils/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

[2] State-listed aquatic natural communities include deep emergent marsh, rich red maple – ash swamp, salt marsh, dwarf shrub fen/bog, sea level fen, Atlantic white cedar swamp, coastal plain pondshore, coastal plain quagmire, brackish marsh, acidic graminoid fen and floodplain forest. See the current Rhode Island Natural Heritage List: Natural Communities linked at https://rinhs.org/species/rare-species/

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); 250 R.I. Code R. 250-RICR-150-05-1.28; Statute [§42-17.1-2(33)]

**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.[3]

**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.

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

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

[3] 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

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