

32. Completed Enforcement Actions.

Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or nonjudicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before

reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

2026 Nationwide Permits General Conditions

1. Navigation

- a) No activity may cause more than a minimal adverse effect on navigation.
- b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

2. Aquatic Life Movements

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

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

3. Spawning Areas

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

4. Migratory Bird Breeding Areas

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

5. Shellfish Beds

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

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

6. Suitable Material

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

7. Water Supply Intakes

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

8. Adverse Effects from Impoundments

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

9. Management of Water Flows

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

10. Fills Within 100-year Floodplains

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

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

11. Equipment

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

If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction efforts using techniques (e.g., soil 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 derelict, degraded, or abandoned piles and sheet piles located in navigable waters of the U.S., except for those inside existing work footprints for piers to prevent interference with navigation. Existing creosote piles that are affected by project activities may be completely removed if practicable. In areas of fine-grained substrates, piles may be removed by the direct, vibratory or clamshell pull method to minimize sedimentation, and turbidity impacts and prevent interference with navigation from cut piles. Removed piles should be disposed of in an upland location landward of MHW or OHW and not in wetlands, tidal wetlands, their substrate, or mudflats.*

15. Single and Complete Project

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

16. Wild and Scenic Rivers

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

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

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

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

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

17. Tribal Rights

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

18. Endangered Species

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

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

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

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

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

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

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

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

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

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

19. Migratory Birds and Bald and Golden Eagles

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

20. Historic Properties

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

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

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

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

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

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

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

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

21. Discovery of Previously Unknown Remains and Artifacts

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

22. Designated Critical Resource Waters

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

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

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

23. Mitigation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Safety of Impoundment Structures

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

25. Water Quality

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

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

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

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

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

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

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

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

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

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

26. Coastal Zone Management

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

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

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

Maine Note: For information concerning how to apply to the Maine Office of Community Affairs for a coastal zone management consistency certification, please see:

<https://www.maine.gov/dmr/programs/maine-coastal-program/federal-consistency-review>.

Massachusetts Note: For information concerning how to apply to Mass CZM for a coastal zone management consistency certification, please see:

<https://www.mass.gov/federal-consistency-review-program>.

New Hampshire Note: For information concerning how to apply to NHDES for a coastal zone management consistency certification, please see:

<https://www.des.nh.gov/water/coastal-waters/federal-consistency>.

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

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/utis/getfile/collection/p16021coll9/id/1253>). For complex, atypical, or problematic sites see: <https://www.erdc.usace.army.mil/Media/Fact-Sheets/Fact-Sheet-Article-View/Article/486085/ordinary-high-water-mark-ohwm-research-development-and-training/>.*
- (d) *Vegetated shallows should be delineated when present on the project site. Vegetated shallow survey guidance and maps can be found on the Corps webpage at: <https://www.nae.usace.army.mil/Missions/Regulatory/Jurisdiction-and-Wetlands/>.*
- (e) *All Essential Fish Habitat should be delineated when present on the project site. EFH survey guidance can be found in the current EFH programmatic, which can be found on the Corps webpage at <https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>.*

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

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

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

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

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

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

d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the 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 (NWP) in the New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont will not cause more than minimal adverse environmental impacts, both individually and cumulatively. Before the New England District will verify an activity under one or more NWPs, the activity must be demonstrated to comply with the applicable NWP terms and all applicable NWP General Conditions (GCs) and RCs. Prior to commencement of a “non-notifying” activity (i.e., activities authorized by NWPs which do not require submission of a pre-construction notification [PCN]), the proponent (i.e., the person and/or the entity performing the work) is responsible for ensuring the activity meets all applicable:

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

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

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 NWP's in **all New England States** (unless otherwise specified):

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

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

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

Any safety lights and signals prescribed by the USCG, through regulations or otherwise, must be installed and maintained at the permittee's expense. For required permitting, the applicant shall contact USCG First District Private Aid Program Manager through D01-SMB-D01PrivateAtoN@uscg.mil. 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 NWP's have been determined to result in no more than minimal adverse effects, provided the permittee complies with all terms and conditions of the NWP as applicable to the activity, including all activity thresholds and activity-specific Conservation Recommendations (CRs) identified in the current EFH and Fish and Wildlife Coordination Act (FWCA) Programmatic Consultation (<https://www.nae.usace.army.mil/Missions/Regulatory/Essential-Fish-Habitat/>). The National Marine Fisheries Service (NMFS) has granted General Concurrence (50 CFR 600.920(g)) for the below listed NWP's, and these activities do not require activity-specific EFH consultation.

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

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

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

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

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

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

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

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

State-Specific Regional Conditions

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

N. 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 NWP's in the **State of New Hampshire**:

- U. 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 the New Hampshire Department of Environmental Services and/or New Hampshire Fish and Game provides alternate TOY restrictions.

	TOY Work Restriction	TOY Work Window
Non-tidal Waters	October 2 to July 4	July 5 to October 1
Tidal Waters	March 16 to November 14	November 15 to March 15

For proposed activities that cannot follow the TOY windows/restrictions listed above, alternate, species-specific, work windows may be proposed under a PCN provided they are first coordinated with and authorized in writing by the State of New Hampshire Department of Fish and Game. In order to avoid delays in review, the applicant should include documentation of this coordination and authorization from NH Fish and Game 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 NWP's in the **State of Rhode Island**:

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

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

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



**New Hampshire Department of Environmental Services
WATER QUALITY CERTIFICATION**

In Fulfillment of RSA 485-A:12, III

Certification Number	WQC 2026-USACE-NWP
Activity Name	United States Army Corp of Engineers 2026 Nationwide Permits
Activity Location	State of New Hampshire
Potentially Affected Surface Waters	Waters of the United States in the State of New Hampshire
Owner/Applicant	United States Army Corps of Engineers, New England District
Agent Filing Application on Behalf of Owner/Applicant	Tammy Turley Chief, Regulatory Division U.S. Army Corps of Engineers, New England District 696 Virginia Road Concord, MA 01742-2751
Applicable Federal Law and Regulation Requiring Section 401 Water Quality Certification	Section 404 of the Clean Water Act Section 10 of the Rivers and Harbors Act of 1899 Section 401 of the Clean Water Act
Receipt Date of Certification Request and Reasonable Period of Time	July 18, 2025 Six-month Reasonable Period of Time established by USACE (December 18, 2025)
Decision	Granted with Conditions
Date of Issuance	Date of Signature

A. INTRODUCTION

The United State Army Corps of Engineers (USACE, or the Applicant) is reissuing its Nationwide Permits (NWP), associated general conditions and definitions, and associated regional conditions and definitions. NWPs are available to USACE for authorizing work under Section 10 of the Rivers and Harbors Act of 1899 ([33 CFR 322](#) and [33 U.S.C. 403](#)), and Section 404 of the Clean Water Act ([33 CFR 323](#) and [33 U.S.C. 1344](#)), which have no more than minimal individual and cumulative adverse environmental effects. Within this certification, individuals or entities who are required to apply to USACE for authorization of activities under the NWPs, shall be referred to as “the Proponent.”

In accordance with [33 United States Code \(U.S.C.\) § 1341](#) (Section 401 of the federal Clean Water Act [CWA]), federal regulations promulgated under the CWA at [Title 40 Code of Federal Regulations \(CFR\) Part 121](#), and New Hampshire law under [Revised Statutes Annotated \(RSA\) 485-A:12, III](#), USACE submitted an Application for Water Quality Certification (WQC or “certification”) to the New Hampshire Department of Environmental Services (NHDES) - Watershed Management Bureau (WMB) on July 18, 2025.

The purpose of the certification is to provide a reasonable assurance that discharges into surface waters of the state and waters of the United States, hereinafter collectively referred to as “surface waters”, from authorized activities (or Projects) will comply with applicable water quality requirements, including New Hampshire surface water quality standards specified under [RSA 485-A:8](#) and [New Hampshire Code of Administrative Rules Env-Wq 1700 \(Surface Water Quality Standards\)](#); [33 U.S.C. § 1313](#) (CWA Section 303); effluent limitations, and other limitations under [33 U.S.C. § 1311](#) (CWA Section 301) or [33 U.S.C. §](#)



[1312](#) (CWA Section 302); standards of performance per [33 U.S.C. § 1316](#) (CWA Section 306), or prohibition, effluent standard, or pretreatment standard under [33 U.S.C. § 1317](#) (CWA Section 307); and with any other appropriate requirement of State law (Provisions of the CWA), of which CWA Section 303 is the most applicable provision for the NWP.

B. CERTIFICATION DECISIONS

Based on a review of the Application, and subject to conditions included herein, NHDES has determined that there is reasonable assurance that discharges from the operation of certain authorized activities proposed under the Nationwide Permits will comply with applicable water quality requirements, including New Hampshire Surface Water Quality Standards and Provisions of the CWA.

B-1. NHDES hereby **grants with conditions** this General WQC, for the below numbered NWPs, in accordance with RSA 485-A:12, III, subject to the conditions within this certification:

1. Aids to Navigation
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
22. Removal of Vessels
23. Approved Categorical Exclusions
27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
28. Modifications of Existing Marinas



- 29. Residential Developments
- 31. Maintenance of Existing Flood Control Facilities
- 32. Completed Enforcement Actions
- 33. Temporary Construction, Access, and Dewatering
- 34. Cranberry Production Activities
- 35. Maintenance Dredging of Existing Basins
- 36. Boat Ramps
- 37. Emergency Watershed Protection and Rehabilitation
- 38. Cleanup of Hazardous and Toxic Waste
- 39. Commercial and Institutional Developments
- 40. Agricultural Activities
- 41. Reshaping Existing Drainage and Irrigation Ditches
- 42. Recreational Facilities
- 43. Stormwater Management Facilities
- 44. Mining Activities
- 45. Repair of Uplands Damaged by Discrete Events
- 46. Discharges in Ditches
- 48. Commercial Shellfish Mariculture Activities
- 51. Land-Based Renewable Energy Generation Facilities
- 53. Removal of Low-Head Dams
- 54. Living Shorelines
- 55. Seaweed Mariculture Activities
- 57. Electric Utility Line and Telecommunications Activities
- 58. Utility Line Activities for Water and Other Substances
- 59. Water Reclamation and Reuse Facilities
- A. Activities to Improve Passage of Fish and Other Aquatic Organisms

B-2. NHDES hereby **denies without prejudice** a General WQC for the below NWP's, as NHDES cannot certify that there would be a reasonable assurance that surface water quality standards would be maintained without additional, project-specific review under Individual Water Quality Certification procedures:



- 12. Oil or Natural Gas Pipeline Activities
- 16. Return Water from Upland Contained Disposal Areas
- 17. Hydropower Projects
- 52. Water-Based Renewable Energy Generation Pilot Projects

B-3. A General WQC was not requested for NWPs numbered 2, 21, 24, 25, 30, 49 and 50. Additionally, NWPs numbered 26, 47 and 56 are reserved and do not correspond to any proposed NWP. If USACE, or the USACE New England District, decides to implement these NWPs in the future, Water Quality Certification(s) must be requested at that time, prior to any work commencing as authorized by these NWPs.

B-4. NWP number 8, Oil and Gas Structures on the Outer Continental Shelf, authorizes activities seaward of the territorial seas and USACE has stated that it does not require Water Quality Certification from NHDES.

C. APPLICATION DESCRIPTION

C-1. USACE has the authority to issue Nationwide Permits in accordance with [33 USC 1344\(e\)](#) and [33 CFR 330.1\(b\)](#).

C-2. The current nationwide permits went into effect nationally on February 25, 2022. However, the USACE North Atlantic Division Engineer [suspended the NWPs in the six New England states](#) on January 31, 2022. In New Hampshire, the use of [state-specific general permits](#) was continued instead.

C-3. USACE has stated to NHDES that once the proposed NWPs are implemented, new authorizations of activities under the regional General Permits are expected to be discontinued in the New England States, regardless of regional General Permit expiration dates that are set beyond March 2026.

C-4. An abbreviated chronology of relevant submissions to NHDES, posted on the Federal Register, and posted by NHDES, is detailed in items C-4a through C-4e, below:

C-4a. USACE proposed to reissue and modify the NWPs on July 18, 2025: [Federal Register: Proposal To Reissue and Modify Nationwide Permits](#)

C-4b. USACE applied for Water Quality Certification of the proposed NWPs on July 18, 2025.

C-4b(i). USACE explained, in the application for Water Quality Certification, that the "New England District is not requesting certification of NWPs numbered 2, 21, 24, 25, 30, 49, and 50, as [USACE proposes] not to implement them. Nationwide permits numbered 15, 16, 17, 18, 29, 34, 39, 40, 41, 42, 43, 46, and 59



would authorize activities that may result in discharges and therefore 401 [Water Quality Certification] is required for those NWP. Nationwide permits numbered 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 36, 37, 38, 44, 45, 48, 51, 52, 53, 54, 57, 58, and A would authorize various activities, some of which may result in a discharge and require 401 [Water Quality Certification], and others which may not. In the opinion of [USACE], 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 [USACE does not] deem certification to be necessary for this group of NWPs. However, the final decision of whether certification is needed for any of these seven types of activities rest with the certifying authority. Additionally, NWP 8 only authorizes activities seaward of the territorial seas and therefore does not require water quality certification.”

C-4b(i)1. NHDES concurs with USACE that NWPs numbered 1, 9, 10, 11, 28, 35, and 55 are unlikely to result in a discharge into surface waters but acknowledges that such activities do have the potential to discharge to surface waters. Therefore, activities which are authorized by these NWPs must follow the conditions of this certification.

- C-4c. Reasonable Period of Time: In the WQC application, USACE stated, “The reasonable period of time for certifying authorities to act on the proposed NWPs reissuance is six months, in accordance with 40 CFR 121.6. This provides a consistent reasonable period of time for all certifying authorities. The reasonable period of time ends on December 18, 2025. Certifying authorities can act on the certification request for the proposed NWPs in less time if they choose to do so.”
- C-4d. Revisions to General and Regional Conditions: The [proposed general and regional conditions were revised](#) on October 28, 2025.
- C-4e. NHDES posted a draft version of this WQC, for public comment, from November 26, 2025, to December 12, 2025, meeting the requirements of RSA 485-A:12 III-a(b). Comments received during the public comment period were addressed as indicated by NHDES’s Response to Comments, which will be posted to the [NHDES WQC Website](#).

D. DISCHARGES

Potential and proposed discharges to surface waters, from any potential activities authorized by the NWPs, include discharges of various water quantities and constituents to Surface Waters of the United States and Surface Waters of the State, which may affect the chemical, biological, and physical constituents of those surface waters.



E. ACTIVITIES WHICH REQUIRE INDIVIDUAL WATER QUALITY CERTIFICATION FROM NHDES

- E-1. If an activity is authorized under a Nationwide Permit that has been denied by NHDES, as described in Section B-2 of this Certification, an Individual Water Quality Certification shall be required.
- E-2. If the USACE District Engineer waives any particular limit specified in the NWP's terms and conditions, an Individual Water Quality Certification shall be required.
- E-3. If USACE does not respond to a submitted Pre-Construction Notification (PCN) from an applicant within 45 days of receipt of a complete PCN, the activity shall not be authorized by this Water Quality Certification, and an Individual Water Quality Certification shall be required.
- E-4. If an activity is proposed to involve a surface water withdrawal that exceeds 20,000 gallons per day, averaged over a 7-day period, or more than 600,000 gallons over a 30-day period (as described in [RSA 485-A:12 IV](#)), an Individual Water Quality Certification shall be required.
- E-5. If an activity is proposed to place to fill or dredge in NH Fish and Game designated areas used for recreation harvest (open or closed), whether directly or indirectly, an Individual Water Quality Certification shall be required.
 - E-5a. Maps of designated areas containing shellfish used for recreation harvest are located at the [New Hampshire Coastal Atlas](#).

F. GENERAL CERTIFICATION CONDITIONS: APPLICABLE TO ALL AUTHORIZED ACTIVITIES

Unless otherwise authorized or directed by NHDES, the following conditions shall apply to all activities authorized by any Nationwide Permit:

- F-1. **Compliance with Surface Water Quality Standards:** The Proponent of the authorized activity shall ensure that the discharges from authorized activities will maintain and protect Surface Water Quality Standards of surface waters that are affected by the Project, including the chemical, physical, and biological integrity of those surface waters, to achieve the purposes of the legislative classification of those surface waters.

This condition is necessary to ensure that authorized activities will comply with the Surface Water Quality Standards because those standards apply to all surface waters of the state and any person who undertakes any activity that affects the beneficial uses or the water quality of surface waters. Those standards require, among other things, that all surface waters be restored to meet the water quality criteria for their designated classification, including existing and designated uses, and to maintain the chemical, physical, and biological integrity of surface waters; provide for the protection of designated uses; and maintain surface water quantity at levels that protect existing and designated uses.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; and Env-Wq 1700.



F-2. **Other New Hampshire Authorizations:** Prior to initiating any activity, the Proponent must obtain all other required state permits, certifications, registrations and consistency determinations, including but not necessarily limited to, those from the following NHDES bureaus and programs:

- F-2a. [NHDES Wetlands Bureau](#)
- F-2b. [NHDES Alteration of Terrain Bureau](#)
- F-2c. [NHDES Wastewater Engineering Bureau](#)
- F-2d. [NHDES Land Resource Management Shoreland Program](#)
- F-2e. [New Hampshire Coastal Program](#)
- F-2f. [NHDES Water Use Registration and Reporting Program](#) (Including a Water Conservation Plan (WCP), or waiver of such, as applicable.)

This condition is necessary to ensure that authorized activities will comply with the Surface Water Quality Standards because activities authorized under the NWP's will involve impacts in jurisdictional areas, including dredge, fill, or work in or on the borders of surface waters or impacts that significantly alter the characteristics of terrain in such a manner as to impede the natural runoff or create an unnatural runoff to surface waters. The NHDES permitting programs authorized by NH statute and implemented by the NHDES Water Division address those impacts, including compensatory mitigation where required and potential construction and operation-related impacts to surface waters from certain land alteration projects. Water use data is necessary to understand the effects of cumulative uses, transfers, discharges, and consumptive water losses in aquifers and watersheds in the state. Water use data is also necessary for verifying compliance with Surface Water Quality Standards related to quantity of surface waters.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:12, III; RSA 485-A:18; RSA 488; Env-Wq 2102; Env-Wq 1703.01; Env-Wq 1703.19; Env-Wq 1705.01(a); and Env-Wq 1708.03(a).

F-3. **Mixing Zones:** Certification of the NWP's does not authorize the designation or utilization of any mixing zones. Discharges from any authorized activity must meet New Hampshire Surface Water Quality Standards at the point of discharge, unless a mixing zone request has been approved by NHDES in accordance with Env-Wq 1707, prior to project implementation.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because without additional review of the criteria for mixing zone approval (Env-Wq 1707.02), a mixing zone cannot be designated or approved for use in all applicable waters across New Hampshire. This condition is intended to clarify that this WQC does not constitute a mixing zone, and any mixing zone designation in New Hampshire requires application to NHDES under Env-Wq 1707.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; and Env-Wq 1707.

F-4. **Construction General Permit:** Certification of the NWP's does not authorize discharges under the Environmental protection Agency's (EPA) National Pollutant



Discharge Elimination System (NPDES) Construction General Permit (CGP) for Stormwater Discharges from Construction Activities. As applicable, discharges from any authorized activity must maintain compliance with the conditions of the CGP.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because direct discharge of untreated waters to surface waters may violate surface water quality criteria found in Env-Wq 1703.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; and Env-Wq 1703.

- F-5. Surface Water Intakes:** The Proponent shall install mesh screening on all surface water intakes, with a maximum mesh opening of 0.25 inches. The Proponent shall limit intake velocity to a maximum of 0.5 feet per second (fps) at the screen. If alternative mesh screening sizes or intake velocities are proposed, the Proponent shall coordinate with, and receive written authorization from, NHDES and New Hampshire Fish and Game (NHFGD), prior to the activity commencing.

This condition is necessary to ensure that authorized activities do not withdraw surface waters in a manner that would adversely affect aquatic life through impingement and entrainment of aquatic organisms, and to prevent the spread of invasive plant species and other nuisance species.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; Env-Wq 1703.01; Env-Wq 1703.03(c); Env-Wq 1703.19; and Env-Wq 1708.03(a).

- F-6. Fish Passage and Protection:** If alternate, species-specific, work windows are proposed, the Proponent shall coordinate with, and receive written authorization from, NHDES prior to the activity commencing. The Proponent shall also coordinate with the National Marine Fisheries Service (NMFS), and the United States Fish and Wildlife Service (USFWS), as appropriate. For work in both flowing and tidal waters, in-stream controls (e.g., cofferdams) shall be installed in such a way as to not obstruct fish passage.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because ensuring work does not obstruct volitional fish movement and provides an adequate zone of passage for swimming and drifting organisms, would help protect, mitigate and enhance fish and wildlife resources that are impacted by authorized activities and provide for adequate fish passage.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; Env-Wq 1703.01; Env-Wq 1703.19; and Env-Wq 1708.03(a).

- F-7. Temporary Fill in Salt Marshes:** Temporary fill and mats in salt marshes shall not be left in place for more than two weeks to avoid salt marsh loss and ponding on the marsh surface.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because temporary fill left in salt marshes will smother plants and impact sessile organisms in as short a period as a few weeks. This loss of vegetation will likely result in salt marsh loss and ponding



on the marsh surface. Any impairment of drainage caused by the compression of marsh soils will also result in loss of vegetation, which is difficult to restore without addressing the drainage impairment.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; Env-Wq 1703.01(d); Env-Wq 1703.19; and Env-Wq 1708.

- F-8. **Compliance Inspections:** The Proponent shall allow NHDES to inspect the Project and have access to inspect any records and monitoring equipment at reasonable times to determine compliance with the conditions of this certification. To the extent possible, NHDES will coordinate with the Proponent prior to site visits, except for unannounced Project inspections.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because NHDES's inspections would help ensure adherence to and enforcement of the conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341(a)(4); RSA 485-A:12, III; and RSA 485-A:18.

G. REQUIRED NOTIFICATIONS TO NHDES

- G-1. **Pre-Construction Notification:** The Proponent shall include NHDES as a recipient of any PCNs that are sent to USACE in accordance with General Condition 32 of the NWPs.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because NHDES must be made aware of activities which are to be conducted under the NWPs in order to coordinate with USACE, the Proponent, and other relevant resource agencies. If submitted information indicates that the activity may not meet surface water quality standards, the notifications to NHDES may be used to suggest project modifications or inspections in order to ensure compliance with and enforcement of the conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341(a)(4); RSA 485-A:12, III; and RSA 485-A:18.

- G-2. **Compliance Certification:** The Proponent shall include NHDES as a recipient of any Compliance Certifications that are sent to USACE in accordance with General Condition 30 of the NWPs.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because NHDES must be made aware of when activities, conducted under the NWPs, are complete so NHDES may appropriately target inspection and enforcement of certification conditions, as necessary, to ensure compliance with and enforcement of conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; and RSA 485-A:18.

- G-3. **Transfer of Nationwide Permit Verifications:** The Proponent shall include NHDES as a recipient of any requests or notifications to transfer Nationwide Permit Verifications that are sent to USACE in accordance with General Condition 29 of the NWPs.



This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because NHDES must know who is responsible for the Project, and so NHDES may appropriately target inspections and enforcement of certification conditions, as necessary, to ensure compliance with and enforcement of conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; and RSA 485-A:18.

- G-4. Proposed Modifications to the Project:** The Proponent shall notify NHDES prior to implementation of any proposed modifications to an activity which has already submitted a PCN to USACE or for which USACE has already notified the Proponent, in writing, that the activity may proceed under the NWP.

This condition is necessary to ensure that authorized activities, with any proposed modifications, will comply with Surface Water Quality Standards because alterations to the proposal of an activity may alter the activity's impacts to surface waters of the state. NHDES must be made aware of alterations to activities conducted under the NWPs in order to coordinate with USACE and the Proponent, if the submitted modification information indicates that the activity will not meet surface water quality standards, and so NHDES may appropriately target inspection and enforcement of certification conditions, as necessary, to ensure compliance with and enforcement of conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341(a)(4); RSA 485-A:8; RSA 485-A:12, III; and RSA 485-A:18.

- G-5. Failure to Maintain Surface Water Quality Standards:** If the Proponent fails to maintain Surface Water Quality Standards as specified in Condition F-1 of this certification, the Proponent shall notify NHDES of the deviation by telephone or email no later than 24 hours after each such incident, excluding weekends and Federal holidays, in which case the Proponent shall notify NHDES of the deviation by telephone or email as soon as possible the next business day. The Proponent shall include the following information in the notification, to the extent known: a description of the deviation; the probable cause of the deviation; any corrective actions taken or that will be taken to address the deviation; and how long it will take until the deviation is corrected and operations comply with New Hampshire Surface Water Quality Standards.

- G-5a.** No later than 30 days after each such incident, the Proponent shall submit a written report to NHDES, that contains, to the extent possible, the cause, severity, and duration of the incident, any observed or reported adverse environmental impacts from the incident, pertinent data (including but not limited to: water quality parameter measurements, time/date of incident with corresponding Project inflows, discharges, and impoundment elevations, if applicable), and a description of corrective measures completed or proposed by the Proponent.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because reporting deviations from NH Surface Water Quality Standards will allow NHDES to



know whether the Proponent is meeting those requirements. If the reports identify noncompliance with Surface Water Quality Standards, NHDES may respond to ensure compliance with Surface Water Quality Standards, mitigate unauthorized degradation of surface water quality, or restore and maintain the chemical, physical, and biological integrity of surface waters through enforcement or other mechanisms.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; RSA 485-A:18

- G-6. Submittal of Information to NHDES:** Upon written request of NHDES, the Proponent shall provide to NHDES, such information pertaining to discharges into surface waters by the authorized activity within 5 business days of the request, or other time period mutually agreeable to the Proponent and NHDES.

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because NHDES's evaluation of the requested information would help ensure adherence to and enforcement of the conditions of this certification.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:8; RSA 485-A:12, III; RSA 485-A:18

- G-7. Designated River Corridor:** If the authorized activity requires a PCN to be sent to USACE in accordance with General Condition 32 of the NWPs, and is located within the river corridor of a designated river, identified in [RSA 483](#), the Proponent shall provide a copy of all application materials to both the NHDES Rivers and Lakes Programs Administrator and the appropriate NH Local River Management Advisory Committee (LAC). A list and map of the designated rivers, as well as contact information, may be found at the [NHDES Rivers Management and Protection website](#).

This condition is necessary to ensure that authorized activities will comply with Surface Water Quality Standards because coordination with the NHDES Rivers and Lakes Management and Protection Programs and the appropriate LAC will help ensure that water quality standards will continue to be met in the rivers designated for protection in New Hampshire. The duties of LACs in NH include, in part, to consider and comment on any federal, state, or local governmental plans to approve, license, fund, or construct facilities or applications for permits, certificates, or licenses, that may alter the resource values and characteristics for which the river or segment is designated.

Citations that authorize this condition: 33 U.S.C. § 1341; RSA 485-A:12, III; Env-Wq 1700; RSA 483:8-a, III; and RSA 483:10, IV.

H. MODIFICATION TO THIS CERTIFICATION

- H-1.** In the event that modification(s) to this certification are required by NHDES in order to protect surface water quality, including modification to the operation of the authorized activity that could have a significant or material effect on discharges to surface waters from the Project, certification modifications may be made in accordance with 40 CFR § 121.10:

- H-1a.** Provided that USACE and NHDES agree in writing that NHDES may modify a grant of certification (with or without conditions), NHDES may modify only the agreed-upon portions of the certification. NHDES,



however, is not required to obtain UASCE's agreement on the language of the modification.

H-1b. NHDES shall not, through a modification pursuant to paragraph (a) of this section:

H-1b(i). Revoke a grant of certification (with or without conditions); or

H-1b(ii). Change a grant of certification (with or without conditions) into a denial or waiver of certification.

I. NHDES CONTACT

Notifications, reports, and other items that must be submitted to NHDES under a condition of this certification shall be sent to the NHDES Water Quality Certification Program at wqc@des.nh.gov.

On the date this certification is granted, Daniel Demers is the NHDES Water Quality Certification Supervisor and can be reached directly at daniel.j.demers@des.nh.gov or (603) 271-0699. If you have questions regarding this certification, please contact Daniel Demers. If you are unable to reach the NHDES Water Quality Certification Supervisor, please contact NHDES at (603) 271-3503.

J. ENFORCEMENT

Certification conditions are subject to enforcement mechanisms available to the federal licensing or permitting agency and to the state of New Hampshire, including those provided under RSA 485-A:12, I, RSA 485-A:12, III, and 33 U.S.C. § 1365.

K. APPEAL PROCESS

Any person aggrieved by this decision may appeal to the New Hampshire Water Council ("Council"). An Environmental Fact Sheet with information on appealing a decision of the NHDES can be found at the following link: [CO-7 \(nh.gov\)](#). The Council's rules are available on the [New Hampshire Environmental Council website](#) (or more directly on the [Water Council page](#)). Copies of the rules are also available from the NHDES Public Information Center at (603) 271-2975.

L. SIGNATURE and DATE

Rene J. Pelletier, P.G., Director
NHDES Water Division

12/18/25
Date

Ec: Tammy Turley (USACE); tammy.r.turley@usace.army.mil
Richard Kristoff (USACE); richard.c.kristoff@usace.army.mil
Roberta (Birdie) Budnick (USACE); roberta.k.budnik@usace.army.mil
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David Simmons (USFWS); david_simmons@fws.gov
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Haley Miller (EPA); R1CWA401@epa.gov; miller.haley@epa.gov



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



December 18, 2025

Richard Kristoff
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, Massachusetts 01742-2751

RE: File No. 2025-03; Reissuance of Nationwide Permits

Dear Mr. Kristoff:

The New Hampshire Coastal Program (NHCP) has received the U.S. Army Corps of Engineers' (USACE) federal consistency determination for the proposed reissuance of the Nationwide Permits (NWP), pursuant to Section 307(c)(1) of the Coastal Zone Management Act (CZMA), 16 U.S.C. §1456(c)(1). NWPs are issued by the USACE to authorize categories of activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects. The USACE is proposing to reissue 56 existing NWPs and associated general conditions and definitions, with some modifications. The USACE is also proposing to issue one new NWP, NWP A, which would authorize activities to improve the passage of fish and other aquatic organisms through aquatic ecosystems. The USACE is not proposing to reissue NWP 56 (*Finfish Mariculture Activities*).

In addition, the USACE New England District is not proposing to implement NWP 2 (*Structures in Artificial Canals*), 21 (*Surface Coal Mining Activities*), 24 (*Indian Tribe or State Administered Section 404 Programs*), 25 (*Structural Discharges*), 30 (*Moist Soil Management for Wildlife*), 49 (*Coal Remining Activities*), and 50 (*Underground Coal Mining Activities*), and, therefore, is not requesting CZMA federal consistency review for these NWPs. The USACE New England District is proposing regional conditions and New Hampshire specific conditions.

After reviewing the NWPs, the general conditions, the regional conditions, the New Hampshire specific conditions, and the USACE's federal consistency determination and necessary data and information, the NHCP has determined that the following conditions are necessary to ensure that the NWPs are consistent, to the maximum extent practicable, with the NHCP's enforceable policies:

1. Except for activities authorized under NWPs 20, 22, 27, 32, 37, 38, 48, 55, and NWP A, any activity proposing $\geq \frac{1}{2}$ acre of permanent or temporary impacts to tidal waters or tidal wetlands shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1: "Protect and preserve and, where appropriate, restore the water and related land resources and uses of the coastal and estuarine environments. The resources of primary concern are coastal and estuarine waters, tidal and freshwater wetlands, beaches, sand dunes, and rocky shores."

2. Except for activities authorized under NWPs 20, 22, 27, 32, 37, 38, 48, 55, and NWP A, any activity proposing permanent or temporary impacts ≥ 1000 square feet in tidal special aquatic sites (SAS), as defined in Env-Wt 600, ≥ 100 square feet in tidal submerged aquatic vegetation (SAV), and areas containing shellfish shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1. It is also consistent with current New Hampshire General Permits #s 1, 2, 4-9, 11, 14-18, 22, & 23.

3. All new, improvement, and maintenance dredging > 25 cubic yards and/or $\geq \frac{1}{2}$ acre in tidal waters shall require CZMA federal consistency review by the NHCP, except for maintenance dredging of intakes/outfalls that is conducted during the time of year work window (November 16 – March 14), does not impact SAS, as defined in Env-Wt 600, including SAV, or areas containing shellfish, and includes upland disposal.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #14: "Preserve and protect coastal and tidal waters and fish and wildlife resources from adverse effects of dredging and dredge disposal, while ensuring the availability of navigable waters to coastal-dependent uses. Encourage beach renourishment and wildlife habitat restoration as a means of dredge disposal whenever compatible."

4. All new, improvement, and maintenance dredging in tidal waters with permanent or temporary impacts to SAS, as defined in Env-Wt 600, including SAV, and areas containing shellfish shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #14. It is also consistent with current New Hampshire General Permit #7.

5. All new, improvement, and maintenance dredging in tidal waters that includes near-shore disposal, beach nourishment, open-water disposal, and disposal in confined aquatic disposal cells shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #11 & 14.

NHCP Enforceable Policy #11: *"Protect and preserve the chemical, physical, and biological integrity of coastal water resources, both surface and groundwater."*

6. Living shoreline projects along the shoreline of tidal waters or tidal wetlands that exceed 500 linear feet in total length shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11. It is also consistent with New Hampshire General Permit #20.

7. Living shoreline projects that incorporate structures and fill area, including cobble, gravel, and/or sand fills, sills, breakwaters, or reefs, that extend into tidal waters more than 30 feet from the mean high water line shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11. It is also consistent with New Hampshire General Permit #20.

8. Living shoreline projects along the shoreline of tidal waters or tidal wetlands that consist of an unvegetated cobble, gravel, and/or sand beach (i.e., a pocket beach) shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11.

9. Bank stabilization projects, including, but not limited to, bulkheads, revetments, and rip rap that exceed 500 linear feet in total length along the bank of tidal waters or tidal wetlands shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11. It is also consistent with New Hampshire General Permit #9.

10. Any waiver of the criteria established in NWP 13 (Bank Stabilization) Sections (c) or (d) by the USACE District Engineer for projects located along the bank of tidal waters or tidal wetlands, shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11.

11. Bank stabilization projects along the bank of tidal waters or tidal wetlands that consist of the construction of a pocket beach shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1 & 11.

12. Construction, repair, or replacement of boat ramps that includes the discharge of dredged or fill material > 25 cubic yards and/or $\geq \frac{1}{2}$ acre into tidal waters shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1, 7 & 11.

Enforceable Policy #7: "Provide a wide range of outdoor recreational opportunities including public access in the seacoast through the maintenance and improvement of the existing public facilities and the acquisition and development of new recreational areas and public access."

13. Any waiver of the criteria established in NWP 36 (Boat Ramps) Section (b) by the USACE District Engineer for the construction, repair, or replacement of boat ramps in tidal waters shall require CZMA federal consistency review by the NHCP.

This condition is necessary to ensure consistency with NHCP Enforceable Policy #1, 7 & 11.

14. Activities authorized under NWP A to maintain, modify, or replace existing tide gates shall require CZMA federal consistency review by the NHCP.

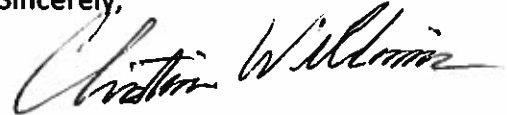
This condition is necessary to ensure consistency with NHCP Enforceable Policy #1.

If a proposed activity exceeds the requirements set forth in the conditions above, applicants shall submit a federal consistency certification and necessary data and information, in accordance with 15 CFR § 930.57 & § 930.58, to the NHCP when the application for authorization under a NWP is submitted to the USACE. Details regarding the federal consistency review process can be found in the NHCP's *Guide to Federal Consistency* located on the NHCP's federal consistency webpage at <https://www.des.nh.gov/water/coastal-waters/federal-consistency>.

If the USACE does not agree with the conditions above, then pursuant to 15 CFR 930.4, this conditional concurrence automatically becomes an objection. In the event of an objection, the USACE may consider using the dispute resolution mechanisms described in 15 CFR 930.44.

Should you have any questions, please feel free to contact me at (603) 559-0025 or at christian.p.williams@des.nh.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Christian Williams". The signature is fluid and cursive, with the first name "Christian" written in a larger, more prominent script than the last name "Williams".

Christian Williams
Program Coordinator
New Hampshire Coastal Program

cc: Roberta Budnik, USACE
Ted Diers, NHDES Water Division
Dave Neils, NHDES Watershed Management Bureau
Steve Couture, NHDES Coastal Program
Dan Demers, NHDES 401 Water Quality Certification Program
Darlene Forst, NHDES Wetlands Bureau