

August 28, 2025

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

Dear Sirs and Madam:

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

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

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

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

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

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

3. Maintenance

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

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

6. Survey Activities

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

11. Temporary Recreational Structures

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

13. Bank Stabilization

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

35. Maintenance Dredging of Existing Basins

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

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

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

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

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

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

### **Basis for Decision**

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

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

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

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

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

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

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

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

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

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

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

And

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

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

Submissions should be submitted to:

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

Electronic submissions should be emailed to:

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

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

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

Sincerely,



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

KSM/dn

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

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

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

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

In Connecticut State waters:

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

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

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

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

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