

# **U.S. Environmental Protection Agency Region 1's Clean Water Act Section 401 Certification of the 2025 Maine General Permits**

September 30, 2025

Clean Water Act (CWA) Section 401 requires applicants for Federal licenses or permits to conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). In this case, the Wabanaki Tribal Nations in Maine (the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe of Indians, the Passamaquoddy Tribe of Indians Pleasant Point Reservation, Penobscot Nation, and the Mi'kmaq Nation) do not have the authority to provide CWA Section 401 certification for projects on tribal lands in Maine, therefore, the EPA is making the certification decision for the 2025 Maine General Permits in Indian Country in Maine. Additionally, the state of Maine does not have authority to provide CWA section 401 certification for projects within Acadia National Park, which is a land of exclusive federal jurisdiction in relevant respects. Therefore, EPA is making the certification decision for the 2025 Maine General Permits in Acadia National Park.

Applicable water quality requirements on federally recognized tribal lands in Maine are currently set by the State of Maine<sup>1</sup>. 40 CFR Part 131.

## **Project Description**

The U.S. Army Corps of Engineers (Corps) New England District is in the process of issuing 37 regional general permits (GPs) for activities subject to Corps jurisdiction in waters of the U.S., including wetlands; and navigable waters within the State of Maine and adjacent ocean waters to the seaward limit of the outer continental shelf (NAE-2025-00485). The GPs numbered between 1 and 60 mirror the current 2021 NWP and the 2026 NWP. The 37 GPs are proposed to ensure coverage between October 2025 (the expiration of existing Maine GPs) until the reissuance of the NWP in March 2026.

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

On June 13, 2025, the EPA received a request for certification from the project proponent. On July 3, 2025, the EPA issued a public notice regarding the proposed project and provided the opportunity for the public to submit comments until August 7, 2025. EPA received no public comments during the public notice period.

<sup>1</sup> Letter from Curt Spalding, EPA Region 1 Administrator, to Patricia Aho, Maine DEP Commissioner (February 2, 2015) (referencing EPA's analysis of Maine's Water Quality Standards applied to waters of Indian lands in Maine).

## Certification Decisions

### ***Grants of Certification without Conditions***

EPA is granting certification without conditions for GP(s) #1, 4, 5, 6, 11, 17, 20, 27, 29, 42, 43, 46, 48, 53 and 55. For GPs that EPA grants certification without conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any federal and state or tribal laws or regulations implementing those sections; and any other water quality-related requirement of state or tribal law.

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

EPA is granting certification with conditions for GPs #3, 7, 12, 13, 14, 15, 18, 33, 38, 39, 41, 51, 52, 54, 57, 58, 60, A, B, and C. For GPs that EPA grants certification with conditions, EPA has determined that the activity will comply with the applicable water quality requirements, including any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and state or tribal laws or regulations implementing those sections; and any other water quality-related requirement of state or tribal law, subject to the conditions listed under the GP below, pursuant to CWA Section 401(d).

#### *General condition for GPs #3, 7, 12, 13, 14, 15, 18, 33, 38, 39, 41, 51, 52, 54, 57, 58, 60, A, B, and C:*

Prior to construction, the project proponent shall develop a plan that:

- Includes time stamped photo-documentation of the baseline conditions (*i.e.*, 50 feet upstream of the project area, within the project area, and 100 feet downstream of the project area).
- Identifies on a site map:
  - Project site with all waters of the U.S. demarcated. Identify all locations where the project will cross jurisdictional waterbodies and identify the ordinary high-water mark and/or wetland boundaries; the planned work area where wetlands/aquatic resources will be removed, disturbed, and/or protected; buffer zones; and areas to be restored/reclaimed, as well as site access points and other approved work areas.
  - Staging areas and stockpiling of materials and equipment, including locations for containment booms and/or absorbent materials, and/or hazardous materials. Stockpiles (*e.g.*, sediment, soil, or other construction materials) shall be stored at least 50 feet from where it may enter waters of the U.S.
  - Construction access points.
  - Disturbance limits.
  - Locations where site dredging and placement of dredged material activities will occur.
  - Locations where hazardous materials are stored. Identify where containment booms and/or absorbent materials are located for corrective action if needed. Hazardous materials shall be stored in leak-proof containers with appropriate secondary containment measures (*e.g.*, spill berms, dikes, spill containment pallets, absorbent materials).
  - Any silt/sediment fencing.
  - Photo-reference sites. The project proponent shall indicate the directional view and location where photos were taken on the site map.
- Includes a description of how the site will be restored to pre-construction conditions, including stream hydrology and stability/or aquatic resource composition and diversity of native species to be used. Non-native and invasive species shall not be used for restoration activities.
- Includes the following as applicable:

- Cofferdams, temporary berms, pilings, and/or dikes: Describe installation and maintenance practices for any cofferdams, temporary berms, pilings, and/or dikes.
- Dredging: Describe how contaminated materials will be managed (e.g., sediment testing data and information to identify whether sediments are clean or contaminated), if included in the project dredged area. Describe methods for minimizing dredging impacts (i.e., sedimentation resuspension) in the water column.
- Erosion control: Identify the types and locations of sediment and erosion control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, and/or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting.
- Dewatering: Describe methods for dewatering, including the equipment that would be used to conduct the dewatering activities. Identify the locations and timing, including length of time the area is to be dewatered. Explain removal method of the temporary structures and/or fill and what measures will be taken to minimize downstream turbidity and adaptive management measures that will be taken and employed to prevent the draining of waters of U.S., including wetlands.
- Ditching: Explain trenching and material placement techniques and stabilization methods to be employed, as well as timing. In wetlands, the top 6 to 12 inches of the trench shall be backfilled with topsoil from the trench, unless other techniques are approved. Include activity timing needs for ditching and stabilization.
- Submit the plan to EPA Region 1 at R1CWA401@epa.gov.

During construction, the project proponent shall:

- Visually inspect construction activities daily.
- Prevent sediment, debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes from entering waters of the U.S.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud and other materials prior to arriving on the project site.
- Inspect all equipment daily and prior to entering any waters of the U.S. for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the U.S.; and within 24 hours of detection of a leak, repair the equipment in a staging area or move it offsite.
- Limit vegetation clearing and disturbance to waters.
- Limit restoration of the channel bed to pre-existing contours and conditions.
- Photo-document any failures or increased turbidity due to construction activities.
  - Within 24 hours of observing a failure or marked increase in turbidity associated with construction, the project proponent shall remedy and implement any additional adaptive management measures to stabilize the activity and prevent further unauthorized discharges into waters of the U.S. The project proponent shall photo-document the failure (i.e., 50 feet upstream of failure, at the incident site, and at least 100 feet downstream of the failure) and the adaptive management measures taken immediately following implementation. The project proponent shall take photos at the same location and direction as the photos in the plan.
  - Within 48 hours of observing any failure, the project proponent shall provide EPA Region 1 with the above mentioned photo-documentation, and descriptions of all observed failures and remedies.
  - Within three weeks of observing a failure, the project proponent shall provide EPA Region 1 with a description of the impacts and effectiveness of the adaptive management measures.
- Carry out as applicable:
  - Erosion control: Inspect sediment and erosion control measures daily during project implementation and within 12 hours of precipitation events. After construction is complete,

remove sediment and erosion control structures, unless they are needed for long term stabilization purposes.

- Dewatering: Assess all dewatering measures within 24 hours after a storm event.

Post construction, the project proponent shall as applicable:

- Submit a copy of the as-builts and a post dredged and disposal report within 45 days of each dredging or disposal event to EPA Region 1 at R1CWA401@epa.gov. The project proponent shall include the following items in the post-dredged and disposal report:
  - Dredging and disposal dates.
  - Updated site map displaying the disposal location(s).
  - Dredging and disposal volumes.
  - Water quality monitoring data.
  - Post-dredged bathymetry.
  - Updated site maps displaying any new ditches, spoil piles, widths and depths.

Specific condition for GP 7:

Permitted outfalls under GP 7 shall utilize velocity reducing structures and/or rock aprons to prevent erosion.

Specific condition for GP C:

This grant with conditions is for structures in non-wetland waters of the United States. For work that proposes installation of new structures in wetlands, an individual water quality certification will be required.

**Why these conditions are necessary:** This rationale applies to all the conditions above. Operations would result in sediment resuspension, including when the materials are dredged, transported to the disposal site, and potentially at the disposal site. Dredging activities would result in turbidity impacts and potentially dissolved oxygen and contaminant impacts. Turbidity characteristics and plumes would vary in the water column over time (e.g., based on the equipment used for the overall process, volume dredged, type of material, currents, sediment quality). These conditions are necessary to minimize suspended particulates/turbidity caused by construction activities. These conditions help protect water quality, the aquatic ecosystem, and wetlands from suspended particulates/turbidity and other pollutants that can significantly affect aquatic ecosystem diversity, productivity and stability. The general conditions in the GP package do not address concerns about resuspension and turbidity caused by construction and dredging activities, thereby justifying the inclusion of this condition.

Although GC 11 (equipment), GC 12 (soil erosion and sediment controls), and GC 13 (removal of temporary structures and fills) provide some protections, it is still not clear that all appropriate water quality measures would be taken to minimize potential adverse water quality impacts. General conditions included in the GPs also do not address dewatering activities.

**Citation:** 40 CFR 230.10(c)-(d); 40 CFR 230.20-230.24; 40 CFR 230.70-230.75

## ***Denials of Certification***

EPA is denying certification for GP(s) 19 and 45.

### ***GP 19 – Minor Dredging***

This denial of certification applies to the water quality-related impacts from activities subject to GP 19 that occur within tribal lands and lands of exclusive federal jurisdiction surrounded by the State of Maine.

The State of Maine is denying GP 19 on the grounds that the Corps can utilize GP B, which the State is granting certification with conditions, for dredging activities. EPA is taking the same approach and denying certification for GP 19 and granting certification with conditions for GP B. Applicable water quality requirements on federally recognized tribal lands in Maine are currently set by the State of Maine. Maine Department of Environmental Protection, Land Use Planning Commission, and Maine Coastal Program have denied water quality certification for the proposed GP 19, and thus it would be incongruous and inconsistent for EPA to certify GP 19 on tribal lands, where Maine's state Water Quality Standards also currently apply, given that the State has determined it is denying certification for GP 19.

### ***GP 45 – Repair of Uplands Damaged by Discrete Events***

This denial of certification applies to the water quality-related impacts from activities subject to GP 45 that occur within tribal lands and lands of exclusive federal jurisdiction surrounded by the State of Maine.

The State of Maine is denying certification for GP 45 on the grounds that GP 45 does not align with the Maine Department of Environmental Protection Chapter 310 Wetlands and Waterbodies Protection rules. EPA is taking the same approach and denying certification for GP 45. Applicable water quality requirements on federally recognized tribal lands in Maine are currently set by the State of Maine. Maine Department of Environmental Protection, Land Use Planning Commission, and Maine Coastal Program have denied water quality certification for the proposed GP 45, and thus it would be incongruous and inconsistent for EPA to certify GP 45 on tribal lands, where Maine's state Water Quality Standards also currently apply, given that the State has determined it is denying certification for GP 45.