

Enclosure B

The New England District Regulatory Division proposes to issue the following Regional Conditions (RCs) to ensure that activities which would be authorized by the proposed 2026 Nationwide Permits (NWP) in the New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont would cause no more than minimal adverse environmental impacts, both individually and cumulatively. Before the New England District will verify an activity under one or more NWP, the activity must be demonstrated to comply with the applicable NWP terms and all applicable NWP General Conditions (GCs) and RCs. For activities authorized by NWPs which do not require submission of a preconstruction notification (PCN), that is NWPs which are “non-notifying,” prior to commencement of the activity, the proponent (i.e., the person and/or the entity performing the work) is responsible for ensuring the activity meets the terms of the applicable NWP and any applicable GCs and RCs, and any applicable State Water Quality Certification (WQC) and Coastal Zone Management Act Consistency Determination conditions.

Regional Conditions

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

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

Exceedance of permanent loss thresholds within streams, 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 blasting	See RC E
Involving living shoreline construction	See RC F
Located within Essential Fish Habitat	See RC J
Located within the Saint John and Saint Croix River basins	See RC O
Authorized by NWP 48, Commercial Shellfish Mariculture Activities and within the State of Maine	See RC Q
Located within vernal pools within the State of Maine	See RC R
Located within important or rare resources within the State of Maine	See RC S

- A. Additional PCN Requirement (Specific Resources): A PCN is required for any proposed activities which would result in the permanent loss of waters of the U.S. at or above the listed thresholds to the following aquatic resources:

Aquatic Resource:	Threshold:
Freshwater Wetlands	4,356 square feet (0.1 acre)
Tidal and Non-Tidal Stream:	200 linear feet or 0.03 acre (whichever is less)
Tidal Wetland	500 square feet (0.01 acre)
Tidal Submerged Aquatic Vegetation (SAV)	25 square feet (0.0006 acre)
Mudflat	1,000 square feet (0.02 acre)
Intertidal	1,000 square feet (0.02 acre)

- B. **Additional PCN Requirement (Federal Projects):** A PCN is required for any proposed activities which 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 activities, and the 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 which would be located in and 0.25 mile up- or downstream of a Wild and Scenic River (WSR) segment, or in tributaries within 0.25 mile of a WSR segment; 2) any proposed activities which would be located in wetlands within 0.25 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.
- D. Additional PCN Requirement (Temporary Fills): A PCN is required for any proposed activities which would involve discharges of temporary fill (33 CFR 323.2(e) and (f)) greater than 0.1 acre to be left in place in wetlands for more than one growing season.
- E. Additional PCN Requirement (Blasting): A PCN is required for any proposed activities which would involve blasting within waters of the U.S. associated with work such as dredging, trenching, pile installation, etc.
- F. Additional PCN Requirement (NWP 54 Living Shorelines): A PCN is required for any proposed activities which would involve the construction of a new living shoreline or maintenance to an existing living shoreline.
- 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. The USCG can be reached for questions and review through the appropriate points of contacts listed at WEBSITE.

Only actual Aids to Navigation (AtoN) are permitted by USCG; floats, balls, markers, mooring balls, and “high flier flags” are not considered AtoN. Safety lights and signals required by the USCG shall be installed and maintained at the authorized facilities. The USCG can be reached through its Private AtoN application site, <http://www.usharbormaster.com> or steven.r.pothier@uscg.mil, U.S. Coast Guard, Waterways Management Branch, First Coast Guard District (dpw), 408 Atlantic Avenue, Boston, Massachusetts 02110 or (617) 823-3947.

For marine safety information/charting, activities owners should use the First District’s Marine Safety Information form available at the following address: [https://www.navcen.uscg.gov/sites/default/files/pdf/lnms/LNM Information Form.pdf](https://www.navcen.uscg.gov/sites/default/files/pdf/lnms/LNM%20Information%20Form.pdf). The form should be emailed to D01-SMB-LNM@uscg.mil. The USCG can help make the determination on potential charting needs and support the applicant and state permittees to chart potential hazards with NOAA either directly or through the USCG’s Local Notice to Mariners (LNM).

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

- 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 authorized work.
- 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 *New England District Compensatory Mitigation Standard Operating Procedures* (April 26, 2024) and any superseding versions thereof (<https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/>).
- J. Essential Fish Habitat: Essential Fish Habitat (EFH) includes a) tidal waters (i.e., below MHW or the HTL as applicable), and b) non-tidal streams or waterbodies below the OHW mark that support or historically supported diadromous fish. See Appendix E of the 2025 EFH Programmatic Consultation (*consultation pending*) and/or any superseding versions thereof for guidance on non-tidal waterbodies with diadromous fish (*link pending*).
 - 1. For proposed activities 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 project proponent shall review the current EFH Programmatic Consultation to ensure additional conservation recommendations (CRs) are not required for their proposed project.
 - i. A PCN is required for any proposed project which would exceed the activity-based thresholds that are included within the current EFH Programmatic Consultation.
 - ii. For all activities which do not exceed the activity-based thresholds included within the current EFH Programmatic Consultation, the project proponent should implement the activity-specific applicable CRs.
 - 2. The following NWPs have been determined to result in no more than minimal adverse effects, provided the permittee complies with all terms and conditions of the NWP as applicable to the activity, including all activity-specific CRs identified in the current EFH Programmatic Consultation. The National Marine Fisheries Service (NMFS) has granted General Concurrence* (50 CFR 600.920(g)) for the below listed NWPs, and these activities do not require activities-specific EFH consultation.

**Consultation for general concurrence with NMFS is ongoing and this RC will be updated as necessary as a result of that consultation.*

- 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 *New England District Compensatory Mitigation Standard Operating Procedures* (April 26, 2024) and any superseding versions thereof (<https://www.nae.usace.army.mil/Missions/Regulatory/Mitigation/>). 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.
- N. Emergency Procedures: This provision is for temporary emergency measures that are required immediately to stabilize and/or reopen access, but will be removed, restored or modified at later time. This provision covers structures or work in or affecting navigable waters of the U.S. and the discharge of dredged or fill material into waters of the U.S., including wetlands, necessary for temporary repairs or protection measures associated with an emergency (as defined below). Temporary measures under this provision shall be limited to the minimum necessary to alleviate the immediate emergency and stabilize the situation in safe working order. Measures to eliminate imminent future failure or loss may be permissible.

If using this provision the applicant shall:

- (a) Contact the Corps Field Office Chief at least 48 hours in advance before temporary repairs are to be made to obtain approval (enforcement discretion) for use of this provision and receive avoidance and minimization measures that shall be implemented. Interagency coordination may be required at this time.
- (b) Submit an as built plan to the Corps within 10 days after the temporary repairs are implemented.
- (c) Submit a PCN for a permanent repair within 6 months of the temporary fill being placed.

An emergency, as determined by the Corps by the use of 33 CFR 325.2(e)(4), is one which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a Department of the Army permit is not undertaken within a time period less than the normal time to process the request under standard processing procedures. See Corps website emergency factsheet for appropriate contacts at: <https://www.nae.usace.army.mil/missions/regulatory/state-general-permits/maine-general-permit/>).

State-Specific Regional Conditions

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

- O. Additional PCN Requirement (Saint John and Saint Croix River basins): A PCN is required for any proposed work within the Saint John and Saint Croix River basins that requires approval of the International Joint Commission. In addition, a PCN is required if any temporary or permanent use, obstruction, or diversion of international boundary waters could affect the natural flow or levels of waters on the Canadian side of the boundary; or if any construction or maintenance of remedial works, protective works, dams, or other obstructions in waters downstream from boundary waters could raise the natural level of water on the Canadian side of the boundary.
- P. Additional PCN Requirement and Time of Year Windows and Restrictions: Work shall be completed in the dry to the extent possible (see NWP GC 12, Soil Erosion and Sediment Controls). The term “in water work” does not include conditions where the work site is “in the dry” (i.e., intertidal areas exposed at low tide stages or work behind cofferdams that are installed in the dry).

In water work (including physical alterations) for non-tidal waters shall be conducted during the following TOY work windows (see below table) unless approval is obtained from the Maine Department of Inland Fisheries and Wildlife (IFW) using this form: <https://www.nae.usace.army.mil/missions/regulatory/state-general-permits/maine-general-permit/>. If in water work cannot be completed during the TOY work window and no approval from IFW is obtained, then the project requires a PCN and waiver from the District Engineer.

In water work (including physical alterations) within tidal waters, shall be conducted during the following TOY work windows (see below table) unless approval is obtained from the Maine Department of Marine Resources (DMR) through: <https://www.nae.usace.army.mil/missions/regulatory/state-general-permits/maine-general-permit/>. If in water work cannot be completed during the TOY work window

and no approval from DMR is obtained, then the project requires a PCN and waiver from the District Engineer.

	TOY Work Restriction	TOY Work Window
Non-Tidal Waters	October 2 to July 14	July 15 to October 1
Tidal Waters	April 16 to November 14	November 15 to April 15

- Q. Additional PCN Requirement (NWP 48, Commercial Shellfish Mariculture Activities): A PCN is required for any activities proposed under NWP 48 which would install gear for a commercial shellfish operation within a site greater than 5 acres in size.
- R. Additional PCN Requirement (Vernal pools): A PCN is required for any proposed discharges of dredged or fill material within a vernal pool depression located within waters of the U.S. Please note that the State of Maine may regulate additional vernal pools that the Corps does not.
- S. Additional PCN Requirement (Important or Rare Resources): A PCN is required for any proposed discharges of dredged or fill material within any of the following aquatic resources or resource types identified as specifically important or rare within the State of Maine which warrant additional protections: (*list pending*)
- T. Agency Coordination: In addition to and in accordance with the agency coordination outlined in NWP General Condition 32(d), USACE will additionally coordinate all activities that require a waiver, and all activities proposed within 100 feet of shellfish areas.