

PUBLIC NOTICE

US Army Corps
of Engineers

New York District
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

Buffalo District
1776 Niagara Street
Buffalo, N.Y. 14207
ATTN: Regulatory Branch

**New York State Nationwide
Permit Regional Conditions**
Issue Date: March 9, 2011
Expiration Date: April 25, 2011

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On February 16, 2011, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue 48 of its existing nationwide permits (NWP) and issue two new NWP. The U.S. Army Corps of Engineers Headquarters is seeking comments on the proposed reissuance of the NWP as outlined in the Federal Register. In addition, the New York District and the Buffalo District are seeking comments on the herein proposed New York State regional conditions to the NWP and the possible need for additional regional conditions.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWP require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWP have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2010-0035 and/or ZRIN 0710-ZA05 at www.regulations.gov, or by email to NWP2012@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the February 16, 2011 Federal Register notice. Comments on the proposed NWP are due by April 18, 2011.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWP may be more than minimal. An enclosure for this public notice

(Enclosure 1) lists the proposed regional conditions currently under consideration by the New York District and the Buffalo District for their portions of New York State, as shown in Enclosure 2. The New York District and the Buffalo District are seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWP are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the entire state of New York. Comments on regional issues relating to the proposed NWP and regional conditions for the State of New York are to be sent to: Brian Orzel, USACE, New York District, 26 Federal Plaza, Room 1937, New York, New York 10278. Comments relating to regional conditions are due by April 25, 2011. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP. The final NWP will go into effect on or before March 19, 2012.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP, are available for viewing at the New York District Office at the above address or on the Internet at www.regulations.gov, docket number COE-2010-0035. Final decision documents will be prepared for those NWP that are issued. In addition, the national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at <http://www.usace.army.mil/CECW/Pages/nnpi.aspx>, www.regulations.gov, docket number COE-2010-0035, or the Federal Register address listed above.



Richard L. Tomer
Chief, Regulatory Branch

Index of Proposed Nationwide Permits, Conditions, and Definitions

Nationwide Permits

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Definitions

- Best management practices (BMPs)
- Compensatory mitigation
- Currently serviceable
- Discharge
- Enhancement
- Ephemeral stream
- Establishment (creation)
- High Tide Line
- Historic property

Independent utility
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete linear project
Single and complete non-linear project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

ENCLOSURE 1
PROPOSED NATIONWIDE PERMIT REGIONAL CONDITIONS
AND DESIGNATED CRITICAL RESOURCE WATERS IN THE
BUFFALO AND NEW YORK DISTRICTS
(NEW YORK STATE)

I. Nationwide Permit Specific Regional Conditions:

(Note: See Sections II and III for additional regional conditions that may apply)

* Unless otherwise noted, all proposed regional conditions listed in this enclosure are applicable for activities in the entire state of New York.

Nationwide Permit 1 - Aids to Navigation

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 2 - Structures in Artificial Canals

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 3 - Maintenance

Permit-specific Regional Conditions (Buffalo and New York Districts):

a. The Pre-Construction Notification (PCN) (Nationwide General Permit Condition No. 30 – Pre-Construction Notification) for activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, must include evidence of such depths. If this information is not available, the PCN must include evidence of the existing depths immediately outside the proposed work area.

b. Every effort should be made to prevent additional encroachment into the beds of New York waterbodies. All repair or rehabilitation activities should focus on using the area immediately behind the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, any additional fill proposed within waters of the U.S. shall require a PCN. The PCN must include justification for a waterward extension of the bulkhead, such as geologic conditions, engineering requirements, etc.

Nationwide Permit 4 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 5 - Scientific Measurement Devices

Permit-specific Regional Conditions (Buffalo and New York Districts):

a. A PCN is required for any meteorological stations proposed within open waters.

Nationwide Permit 6 - Survey Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 7 - Outfall Structures and Associated Intake Structures

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 8 - Oil and Gas Structures on the Outer Continental Shelf

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 9 - Structures in Fleeting and Anchorage Areas

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. A PCN is required for all activities and shall require submission of a completed copy of Enclosure 4 with the application.

Nationwide Permit 10 - Mooring Buoys

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. Mooring buoys must be tagged with the name and the address of the owner. The placement of buoys must not hinder navigation, create unsafe conditions to the public, or hinder safe access to and from a person’s property. Buoys must be placed so that each moored vessel will avoid contact or interference with any other moored vessel or structure.

Buffalo District Only Permit-specific Regional Conditions:

- b. All mooring buoys must be approved by the Ninth Coast Guard District prior to installation. Information concerning the approval process may be obtained by calling (216) 902-6074 or by writing to: Commander (OAN), Ninth Coast Guard District, ATTN: Private Aids to Navigation, 1240 East Ninth Street, Cleveland, Ohio 44199-2060.

Nationwide Permit 11 - Temporary Recreational Structures

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 12 - Utility Line Activities

Permit-specific Regional Conditions (Buffalo and New York Districts):

a. For Aerial Transmission Lines Across Navigable Waters:

- 1. The following minimum clearances are required for aerial transmission lines across navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges or the clearances which would be required by the United States Coast Guard for new fixed bridges in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

<i>Nominal System Voltage (kV)</i>	<i>Min. additional clearance (ft.) above clearance required for bridges</i>
115 and below	20
136	22
161	24
230	26
350	30
500	35
700	42
750 and above	45

2. Clearances for communication lines and other aerial crossings must be a minimum of 10 feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

3. Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wire above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wire(s), at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

b. For Buried Cables and Pipelines Across Navigable Waters and Federal Navigation Channels:

1. This nationwide permit is not applicable to activities on the following waterways: (1) Arthur Kill; (2) Atlantic Ocean; (3) East River; (4) Harlem River; (5) Hudson River, downstream of the southern limit of the New York State Barge Canal at Waterford, New York; (6) Jamaica Bay/Rockaway Inlet, 20 foot deep entrance channel from the mouth of the inlet, upstream to the second channel bend at Rockaway Point; (7) Kill Van Kull; (8) Long Island Sound; (9) Lower New York Bay; (10) Newark Bay; (11) Raritan Bay; (12) Rondout Creek/Harbor, downstream of the Route 9W highway bridge; and (13) Upper New York Bay, including Bay Ridge, Red Hook and Buttermilk Channels.

2. For waterways within which this nationwide permit is still applicable, the top of the cable or pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line, plus any fill material placed above the line. In cases where the channel's existing bottom is already deeper than, or almost as deep as the authorized project depth, the utility line shall be located a minimum of 4 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 4 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

3. This nationwide permit is not applicable for single and complete linear projects in navigable waters that would exceed 500 linear feet, in situations where the utility line would be located in a waterway but would not cross the waterway.

4. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a cable or pipeline crossing (e.g., "WARNING – CABLE [or PIPELINE] CROSSING"), unless specifically authorized otherwise by the District Engineer.

5. Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. If the post-completion survey reveals a discrepancy between the authorized and actual alignment of the cable or pipeline, the permittee shall note clearly these discrepancies in the survey.

c. A PCN is required for any utility line or transmission facility whenever the Federal Energy Regulatory Commission (FERC) requires an Environmental Impact Statement.

Nationwide Permit 13 - Bank Stabilization

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of rip-rap stone material and/or vegetative stabilization measures, in lieu of vertical structures (i.e. wood, concrete or sheet pile bulkheads/retaining walls). A PCN, including written justification, will be required for any proposed vertical structures.

Nationwide Permit 14 - Linear Transportation Projects

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 15 - U.S. Coast Guard Approved Bridges

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 16 - Return Water From Upland Contained Disposal Areas

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 17 - Hydropower Projects

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 18 - Minor Discharges

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 19 - Minor Dredging

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 20 - Oil Spill Cleanup

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 21 - Surface Coal Mining Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 22 - Removal of Vessels

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 23 - Approved Categorical Exclusions

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 24 – Indian Tribe or State Administered Section 404 Program

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 25 - Structural Discharges

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 26 – Reserved

Nationwide Permit 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 28 - Modifications of Existing Marinas

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 29 - Residential Developments

Permit-specific Regional Conditions (Buffalo and New York Districts):

a. The proposed impacts to waters of the United States shall include those direct impacts associated with construction of the proposed project, as well as any indirect, or reasonably anticipated future impacts which may occur as a result of the project (e.g., filling waters of the United States to increase size of usable yard space, impacts to existing hydrologic regimes, etc.).

New York District Only Permit-specific Regional Conditions:

b. This NWP is not applicable for activities located in the following areas:

1. The Great Swamp in Putnam and Dutchess Counties
2. Mianus River and directly adjacent wetlands
3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please contact the Trust for Public Land at the following address:

The Trust for Public Land
Mid-Atlantic Regional Office
666 Broadway
New York, N.Y. 10012

Nationwide Permit 30 - Moist Soil Management for Wildlife

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 31 - Maintenance of Existing Flood Control Facilities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 32 - Completed Enforcement Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 33 - Temporary Construction, Access and Dewatering

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 34 - Cranberry Production Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 35 - Maintenance Dredging of Existing Basins

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. All NWP 35 activities require a PCN.
- b. All PCN submittals must include:
 1. Documentation that the dredging depths were previously authorized or details on what establishes the controlling depths;
 2. An assessment of impacts that the proposed work will have on endangered species and essential fish habitat including the direct, indirect and cumulative impacts of the proposed dredging.
 3. A location map, color photographs of the proposed dredged material disposal site, and any other pertinent information (i.e. delineation report, soil survey, etc.) which clearly demonstrate that the proposed disposal site does not include any waters of the U.S.

Nationwide Permit 36 - Boat Ramps

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 37 - Emergency Watershed Protection and Rehabilitation

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 38 - Cleanup of Hazardous and Toxic Waste

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 39 - Commercial and Institutional Developments

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. This NWP is not applicable for activities located in the following waterbodies:
 1. The Great Swamp in Putnam and Dutchess Counties
 2. Mianus River and directly adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York.

Nationwide Permit 40 - Agricultural Lands

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 41 - Reshaping Existing Drainage Ditches

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. The PCN must include documentation on serviceability of the ditch system and a history of maintenance activity.

New York District Only Permit-specific Regional Conditions:

- b. This NWP is not available for activities located in the following waterbodies:
 1. The Great Swamp in Putnam and Dutchess Counties
 2. Mianus River and directly adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York

Nationwide Permit 42 - Recreational Facilities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. This NWP is not available for activities located in the following waterbodies:
 - 1. The Great Swamp in Putnam and Dutchess Counties
 - 2. Mianus River and directly adjacent wetlands.
 - 3. Harbor Herons System in Staten Island, New York

Nationwide Permit 43 - Stormwater Management Facilities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. This NWP is not applicable for activities located in the following waterbodies:
 - 1. The Great Swamp in Putnam and Dutchess Counties
 - 2. Mianus River and directly adjacent wetlands.
 - 3. Harbor Herons System in Staten Island, New York.

Nationwide Permit 44 - Mining Activities:

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. This NWP does not authorize the discharge of dredged or fill material associated with sand/gravel mining within stream channels or peat mining.

Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 46 – Discharges in Ditches

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. The PCN shall include documentation regarding the history of the construction and maintenance of the ditch.

Nationwide Permit 47– Reserved

Nationwide Permit 48 – Existing Commercial Shellfish Aquaculture Activities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. The applicant shall submit a location map and latitude and longitude or UTM coordinates to the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, for charting purposes prior to initiation of the aquaculture activities.

Nationwide Permit 49 – Coal Remining Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit 50 – Underground Coal Mining Activities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit A – Land-Based Renewable Energy Generation Facilities

Permit-specific Regional Conditions (Buffalo and New York Districts): None

Nationwide Permit B – Water-Based Renewable Energy Generation Pilot Projects

Permit-specific Regional Conditions (Buffalo and New York Districts):

- a. This permit does not authorize work or structures within a Federal Navigation Channel.

Buffalo District Only Permit-specific Regional Conditions:

- b. The Buffalo District is considering recommending that the Great Lakes and Ohio River Division Engineer use his discretionary authority to modify (such as through the inclusion of regional conditions), suspend, or revoke this nationwide permit within the Regulatory boundaries of the Buffalo District.

II. General Regional Conditions:

These conditions apply to ALL Nationwide Permits.

A. Construction Best Management Practices (BMP's): Unless specifically approved otherwise, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control practices must be designed, installed and maintained in accordance with the latest version of the "*New York Standards and Specifications for Erosion and Sediment Control*". This document is available at: <http://www.dec.ny.gov/chemical/29066.html>.

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.
2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with these specifications would result in more adverse impacts to the aquatic environment.
3. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.
4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
5. No in-stream work shall occur during periods of high flow.

6. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations and wetland conditions.
7. All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)
8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete.
9. New stormwater management facilities shall be located outside of waters of the U.S. A waiver of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it can be shown that it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).
11. In accordance with Nationwide Permit General Condition 2 (Aquatic Life Movements), either a bottomless culvert or bridge must be used where practicable. If the stream cannot be spanned, a culvert may be installed with its bottom buried below the grade of the stream bed. If the stream cannot be crossed as discussed above, a PCN to the Corps is required. The PCN must include: justification as to why at least one the above methods is not practicable; an evaluation of the effects the crossing would have on aquatic species movements; and alternate measures that would be employed to minimize these effects.
12. For projects that would involve the slip lining of an existing culvert, the applicant must submit a PCN which includes an evaluation of its effects upon aquatic life movements and low or high flow conditions in order to show compliance with Nationwide Permit General Conditions 2 (Aquatic Life Movements) and 9 (Management of Water Flows).

B. No regulated activity authorized by a Nationwide Permit can cause the loss of areas classified as a bog or fen in the State of New York, as determined by the Buffalo or the New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the determination:

Reschke, C. 1990. *Ecological Communities of New York State*. New York Natural Heritage Program. New York State Department of Environmental Conservation. Latham, N.Y. 96p. This document is available at the following location: <http://www.dec.ny.gov/animals/29389.html>

C. National Wild and Scenic Rivers (NWSR): The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #15, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Therefore, a PCN is required for any NWP which would impact the designated portions of the Genesee River and the Upper Delaware River. (Note: the applicant may not commence work under any NWP until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the PCN package.) Information regarding NWSR may be found at: <http://www.rivers.gov/wildriverslist.html>

D. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 30, the applicant shall also include: (Note: the 45-day review process will not begin until all of the required information is submitted.)

1. **New York State/USACE Joint Application Form:** The application form shall be completed and signed and shall clearly indicate that the submission is a PCN.
2. **Drawings:** The PCN must include legible project drawings on 8.5" x 11" paper. Full size drawings may be submitted in addition to the reduced plans to aid in the application review. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross section). In addition, each illustration should be identified with a figure or attachment number. The location map shall include the Latitude and Longitude or UTM coordinates of the project.
3. **Color photographs:** The photos should be sufficient to accurately portray the project site, keyed to a location map and not taken when snow cover is present.
4. **Avoidance and Minimization:** The PCN must include a written narrative explaining how avoidance and minimization of temporary impacts and permanent losses of waters of the U.S. were achieved on the project site (i.e. site redesign, reduction in scope, alternate methods, etc). It should include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonably foreseeable direct and indirect effects to waters of the U.S. from the proposed construction practices.
5. **Mitigation:** The PCN must include a compensatory mitigation and monitoring plan for all projects resulting in the loss of greater than 1/10th of waters of the United States; or for which a waiver of the 300 linear foot limit on intermittent and ephemeral streams is being requested. The plan shall be prepared in accordance with the Federal Regulations on compensatory mitigation entitled "Compensatory Mitigation for Losses of Aquatic Resources: Final Rule", dated April 10, 2008 (33 CFR 325 and 332), which is available at: <http://www.usace.army.mil/CECW/Documents/cecwo/reg/materials/33cfr332.pdf>. In accordance with 33 CFR Part 320.4(r)(1) consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses.
6. **Nationwide Rivers Inventory:** The PCN shall indicate if a river segment listed within the National Park Service Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the PCN shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ny.html>.
7. **Historic or Cultural Resources:** In accordance with General Condition 20, a PCN is required for any activity which may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places. Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include a written statement indicating if any such properties may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed, the statement shall include a list of resources checked in the determination. Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties shall be provided with the PCN. Information regarding cultural resources may be found at: <http://nysparks.state.ny.us/shpo/>. In addition, assistance regarding the determination of the presence of historic or cultural resources at or near the project site should be directed to SHPO.
8. **Endangered Species** (See General Condition 19): The PCN must include a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed Threatened and Endangered (T&E) species or designated critical habitat that might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. The PCN must include a copy of any

correspondence from the USFWS and/or NMFS regarding the presence of T&E species or evidence that the applicant has utilized the USFWS T&E website: <http://www.fws.gov/northeast/nyfo/es/esdesc.htm>. Information on NMFS species (both T&E and EFH) can be found at: <http://www.nero.noaa.gov/nero>. Website evidence shall include a County list of T&E species. For projects located in counties containing T&E species, the PCN shall also include a discussion of potential T&E habitat within the project site. If there is potential habitat for any Federally listed species within the project site the following should be submitted:

- a. The results of any habitat surveys and presence/absence surveys.
- b. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule and project activities (e.g. land clearing, utilities, stormwater management).
- c. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
- d. A description of the area to be impacted by the proposed project, including the species and number of trees to be removed.
- e. The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 minute topographic quadrangle (quad) with the name of the quad(s) and latitude/longitude clearly labeled.
- f. A description of conservation measures to avoid or minimize impacts to listed species.

Please note that there are no known threatened or endangered (T&E) species under the jurisdiction of the National Marine Fisheries Service (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of T&E species should be directed to the U.S. Fish and Wildlife Service (USFWS).

9. **100 Year Floodplain:** For permanent fills within waters of the United States within the 100 year floodplain, documentation of compliance with FEMA-approved state or local floodplain management requirements.

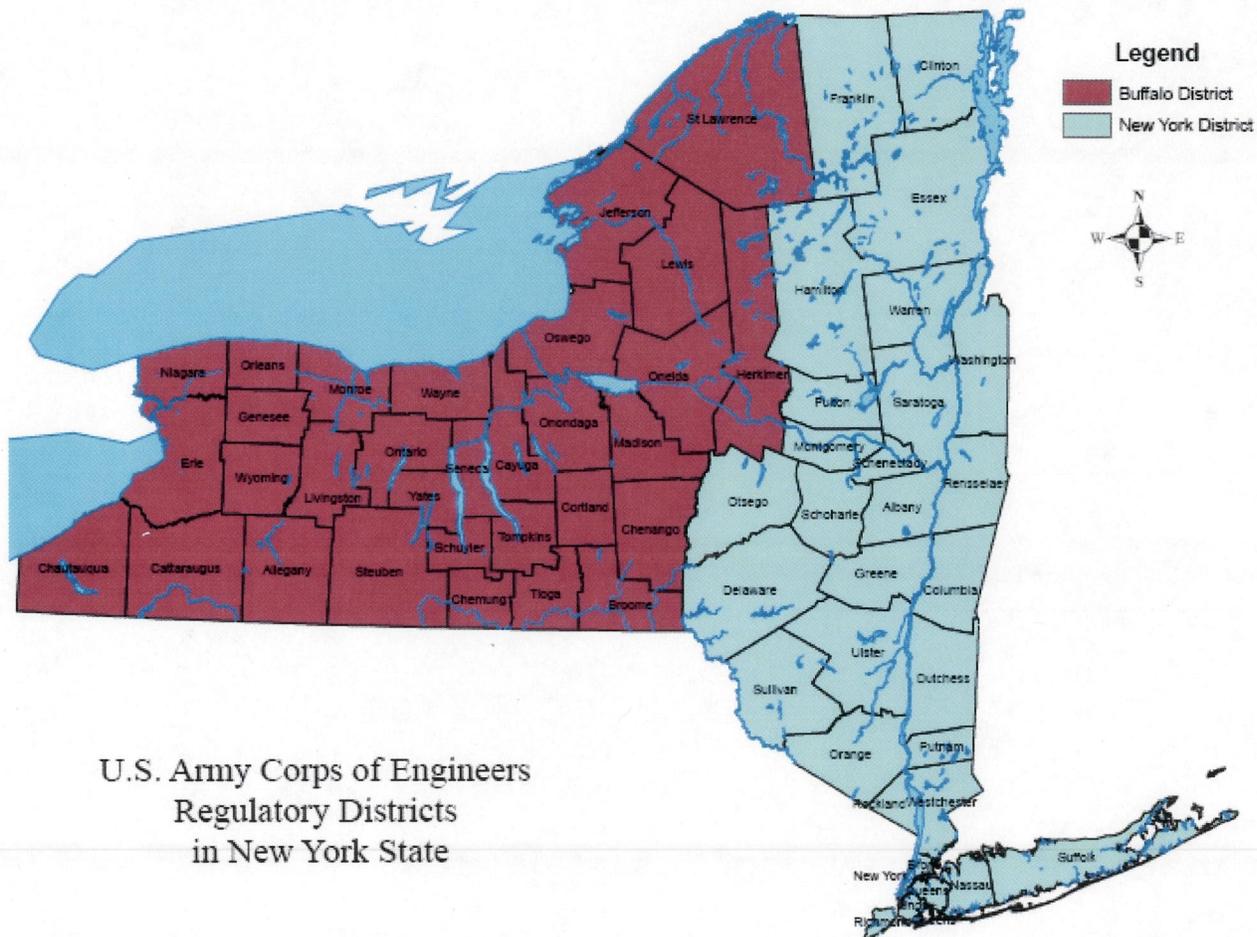
III. CRITICAL RESOURCE WATERS

In accordance with NWP General Condition (GC) #21, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #21 in the 76 FR 9202 for a list of these NWPs).

Critical Resource Waters in New York State include the following:

1. **Great Lakes Breeding Population of the Piping Plover (*Charadrius melodus*):** Designated critical habitat for the Great Lakes breeding population of the piping plover is defined as lands 0.62 miles inland from the normal high water line from the mouth of the Salmon River, Oswego County, northward to Eldorado Road, Jefferson County, encompassing approximately 17 miles.
2. **East-of-Hudson portion of the New York City Water Supply:** This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 3.
3. **Hudson River National Estuarine Research Reserves (NERR):** The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

ENCLOSURE 2



U.S. Army Corps of Engineers
Regulatory Districts
in New York State

ENCLOSURE 3





DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
 ATTENTION OF:

Regulatory Branch, POC: Sophia Squires

Commercial Mooring Buoy Application Additional Information

SUBJECT: Permit Application Number NAN-____ - ____

Company Name:

Phone:

Attn:

Address:

Initial () Renewal () If Renewal, USCG Permit No. _____

Purpose: _____

LOCATION OF MOORING:

Anchorage: _____ Chart: _____ On Scene Depth(ft): _____

Position: _____ N _____ W

*Please provide a copy of the NOAA chart showing your proposed mooring buoy location and the swing radius; also identify the Anchorage Ground, if applicable

MOORING BUOY DATA:

No. of anchors: _____ Lbs per anchor: _____ Type: _____

Chain size (in): _____ Scope (yards): _____

Pendant length (yards): _____ Circum/dia (in): _____ Type: _____

VESSEL/BARGE DATA:

Max size (LxBxD): ___ x ___ x ___ Max no. of barges: _____

Configuration (# abreast x # astern): ___ x ___ Watch circle (yards): _____

Swing Radius (yards): _____

Watch Circle = the square root of:(length of scope² minus water depth²); $\sqrt{(\text{scope}^2 - \text{water depth}^2)}$

Swing Radius = Watch Circle + Barge(s) Length Astern + Pendant Length(s). Add 10% of the Swing Radius for safety. You must maintain an additional 10% of your Swing Radius from any adjacent mooring buoy Swing Radius for safety and maneuvering.

ENCLOSURE 4