



**US Army Corps
of Engineers®**

PUBLIC NOTICE

New York & Buffalo Districts

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Nationwide Permits Reissuance Request for Comments

On June 18, 2025, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue 56 existing nationwide permits (NWP) and issue one new NWP. One NWP is not proposed for reissuance.

NWPs are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWPs require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWPs:

The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2025-0002 at **www.regulations.gov**, or by email to **2026nationwidepermits@usace.army.mil** or by mail to U.S. Army Corps of Engineers, Attn: CECW-CO-R, 441 G Street NW, Washington, DC 20314-1000. Instructions for submitting comments are provided in the June 18, 2025, Federal Register notice. Comments on the proposed NWPs are due by July 18, 2025.

Regional Issues Concerning the Proposed NWPs, 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 an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWPs are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWPs may be more than minimal. An enclosure for this public notice (Public Notice Enclosure 2) lists the proposed regional conditions currently under consideration by the New York and Buffalo Districts for the State of New York. The New York and Buffalo Districts are seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWPs are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of New York. Comments on regional issues relating to the proposed NWPs and proposed regional conditions should be sent

to cenan.publicnotice@usace.army.mil or by mail to U.S. Army Corps of Engineers, Attn: New York District Regulatory Branch, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 16-406, New York, New York 10278-0090. Comments relating to regional conditions are due by August 4, 2025. 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's are issued, the final regional conditions will be issued after they are approved by the Division Commander.

401 Water Quality Certification and Coastal Zone Management Act:

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWP's. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWP's.

Draft Decision Documents:

Draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP's, are available for viewing at www.regulations.gov, docket number COE-2025-0002. Final decision documents will be prepared for the NWP's that are issued.

Enclosed is an index of the proposed NWP's and conditions (Public Notice Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, at www.regulations.gov in docket number COE-2025-0002, or at the following Federal Register address: <https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissue-and-modify-nationwide-permits>.



Stephan A. Ryba
Chief, Regulatory Branch
New York District

Index of Proposed Nationwide Permits, General Conditions, and Definitions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
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 or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities

Public Notice Enclosure 1

44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
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
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
- A. Activities to Improve Passage of Fish and Other Aquatic Organisms

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits

- 29. Transfer of Nationwide Permit Verifications
- 30. Compliance Certification
- 31. Activities Affecting Structures or Works Built by the United States
- 32. Pre-Construction Notification

District Engineer's Decision

Further Information

Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Direct effects
Discharge
Ecological reference
Enhancement
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Loss of waters of the United States
Nature-based solutions
Navigable waters
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
Tribal lands

Public Notice Enclosure 1

Tribal rights
Vegetated shallows
Waterbody

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

B. Nationwide Permits

1. Aids to Navigation.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

2. Structures in Artificial Canals.

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

3. Maintenance.

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

a. The Nationwide General Permit Condition No. 32 – Pre-Construction Notification (PCN) for activities proposed under NWP 3.b. 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. Such evidence may include but is not limited to construction drawings of the original structure; or project drawings of past excavation activities in the vicinity. 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 landward of the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, a PCN shall be required for any encroachment proposed within tidal waters of the U.S. or any extensions, excluding the placement of toe stone protection recommended/required by state/federal resource agencies (i.e. NYSDEC, NYSDOS, USFWS & USEPA), which exceed 18 inches waterward of the existing bulkhead within non-tidal waters. The PCN must include justification for a waterward extension of the bulkhead (e.g. geologic conditions, engineering requirements, etc.).

New York District Only Permit-specific Regional Conditions:

c. As discussed in Section G-E.8. below, if any work is proposed within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.

d. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

e. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with a PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

f. If tide gate replacement or maintenance is proposed, tide gates shall be replaced with self-regulating tide gates that allow tidal flow and fish passage but can be set to close at a specified

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

water level, unless it can be demonstrated that a self-regulating tide gate would not be practicable due to ecological or public safety reasons. A PCN is required for all tide gate replacements and maintenance in which a one-way gate is proposed. The PCN shall describe fully the existing conditions of the tide gate and the habitat upstream of the gate and include documentation of its condition, function and maintenance over the previous decade.

REMINDER TO APPLICANT: For projects involving culvert maintenance or replacement, please take particular note of the requirements of General Regional Conditions G-B.1 and B.2. below. For projects involving aerial transmission lines, note clearance requirements as outlined in 33 CFR 322.5(i) (See NWP #57).

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.

Buffalo District Only - Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with a PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

5. Scientific Measurement Devices.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below.
- b. The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP within Essential Fish Habitat (EFH) as discussed in Section G-E.8. below.
- c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the Pre-Construction Notification (PCN) for USACE coordination with National Marine Fisheries Service (NMFS).

6. Survey Activities.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Work cannot preclude the passage of anadromous fishes within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below.
- b. The use of in-water explosives is prohibited within EFH as discussed in Section G-E.8. below.

7. Outfall Structures and Associated Intake Structures.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- a. As discussed in Section G-E.8. below, within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be granted a variance by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meet or exceed the “wedge wire” design technology.
- b. Within Essential Fish Habitat (EFH), the applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.
- c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the Pre-Construction Notification (PCN) for USACE coordination with National Marine Fisheries Service (NMFS).

8. Oil and Gas Structures on the Outer Continental Shelf.

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

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 Pre-Construction Notification (PCN) is required for all activities and shall include submission of a completed copy of Enclosure 3 entitled “**Commercial Mooring Buoy Application Additional Information**”.
- b. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a PCN is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

10. Mooring Buoys.

Permit-specific Regional Condition (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 Condition:

- 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 (716) 843-9322 or by writing to: Buffalo Aids to Navigation (ATON) Officer or Waterways Management Branch Chief, United States Coast Guard Sector Buffalo, Waterways Management Branch, 1 Fuhrmann Blvd, Buffalo, NY 14203-3105.

Note: Buffalo District Regional Permit (RP) #87-000-1 Special Condition #12 authorizes commercial and non-commercial mooring buoys. The RP includes activities authorized by NWP 10 to simplify permitting when other structures (i.e. docks, hoists, etc.) are also proposed. Both the NWP 10 and RP have

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

similar conditions relating to mooring buoys, therefore either permit may be used for non-commercial mooring buoys. (<https://www.lrb.usace.army.mil/Missions/Regulatory/New-York-Permit-Information/>)

New York District Only Permit-specific Regional Conditions:

- c. Within Essential Fish Habitat (EFH) as discussed in Section G-E.8. below, water depths in the mooring area must be sufficient such that any moored vessels float at all stages of the tide.
- d. Within EFH, mooring buoys are prohibited in areas with submerged aquatic vegetation (SAV).
- e. Within EFH, as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

11. Temporary Recreational Structures.

Buffalo District Only Permit-specific Regional Condition:

- a. This NWP may not be used within the Buffalo District for the placement of seasonal structures that are not associated with a specific event. Seasonal structures may be authorized by Buffalo District Regional Permit #87-000-1 (<https://www.lrb.usace.army.mil/Missions/Regulatory/New-York-Permit-Information/>)

New York District Only Permit-specific Regional Conditions:

- b. Within Essential Fish Habitat (EFH) as discussed in Section G-E.8. below, all temporary structures must be located with sufficient water depths such that the structures float at all stages of the tide.
- c. This NWP does not authorize the placement of any temporary structures within Essential Fish Habitat (EFH) as discussed in Section G-E.8. below, in areas with submerged aquatic vegetation (SAV).
- d. Within tidal waters, this NWP authorizes only the placement of seasonal structures that are associated with a specific event.
- e. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

NWP 12. Oil or Natural Gas Pipeline Activities.

- a. For Submerged Pipelines Across Navigable Waters and Federal Navigation Channels:

1. This nationwide permit is not applicable to activities on the following waterways across deep-draft Federal Navigation Channels: (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 proposed submerged pipelines buried within navigable waterways, excluding waters listed in 12.a.1. above:

- i. The top of the pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.
- iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.
- vi. 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. For proposed submerged pipelines placed on the waterway bottom within navigable waters, excluding waters listed in 12.a.1. above and Federal project channels, fleeting or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

4. This nationwide permit is not applicable for single and complete linear projects in navigable waters that would exceed 500 linear feet and the pipeline is located in but would not cross the waterway, unless a variance is issued by the District Engineer.

5. 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 pipeline crossing (e.g., "WARNING PIPELINE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the pipeline remains in place.

6. 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 pipeline across the waterway. If the post-completion survey reveals a discrepancy between the authorized and actual alignment of the pipeline, the permittee shall note clearly these discrepancies in the survey.

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

New York District Only Permit-specific Regional Conditions:

c. For those waterways not already disqualified by Condition 12.a.1. above, and located within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- d. For those waterways not already disqualified by Condition 12.a.1. above, and located within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- e. Within Essential Fish Habitat (EFH), this NWP does not authorize the discharge into waters of the United States of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.
- f. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service.

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 vegetative stabilization measures and/or rip-rap stone material, in lieu of vertical structures (i.e. wood, concrete, stacked rectangular rock or sheet pile bulkheads/retaining walls). Applicants are encouraged to consider the use of Living Shorelines (See NWP #54), as an option to control bank erosion as appropriate. Any woody vegetation utilized as part of the activity must be native species in order to maintain riparian buffers. In addition to notification requirements outlined in the NWP, a Pre-Construction Notification (PCN) will be required for any proposed vertical structures placed below the applicable high water line and shall include written justification as to why other natural methods (i.e. vegetation, bioengineering, etc.) are not practicable, along with any proposed mitigation measures for adverse impacts (i.e. 1:2 to 1:3 sloped toe stone, measures to facilitate movement of wildlife if necessary, etc.).
- 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 landward of the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, a PCN shall be required for any encroachment proposed within tidal waters of the U.S. or any extensions, excluding the placement of toe stone protection recommended/required by state/federal resource agencies (i.e. NYSDEC, NYSDOS, USFWS & USEPA), which exceed 18 inches waterward of the existing bulkhead within non-tidal waters. The PCN must include justification for a waterward extension of the bulkhead (e.g. geologic conditions, engineering requirements, etc.).

New York District Only Permit-specific Regional Conditions:

- c. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.
- d. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- e. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with a PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Note: For clarification, the Buffalo & New York Districts do not consider the term “sills” to include offshore breakwaters or wave attenuation devices. Please contact the appropriate District for further clarification.

14. Linear Transportation Projects.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.

b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

REMINDER TO APPLICANT: For projects involving culverts, please take particular note of the requirements of General Regional Conditions G-B.1. and B.2. below.

15. U.S. Coast Guard Approved Bridges.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

16. Return Water From Upland Contained Disposal Areas.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

17. Hydropower Projects.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

area shall be submitted with the Pre-Construction Notification (PCN) for USACE coordination with National Marine Fisheries Service (NMFS).

18. Minor Discharges.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.
- b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

19. Minor Dredging.

Buffalo District Only Permit-specific Regional Condition:

- a. This NWP may not be used within the Buffalo District for minor dredging to improve recreational use as those activities may be authorized by Buffalo District Regional Permit 81-000-1.
(<https://www.lrb.usace.army.mil/Missions/Regulatory/New-York-Permit-Information/>)

New York District Only Permit-specific Regional Conditions:

- b. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.
- c. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- d. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).
- e. Within National Marine Fisheries Service (NMFS) Threatened or Endangered (T&E) habitat, any proposed dredging that would not use a mechanical dredge shall require that justification be submitted as part of the required PCN.

20. Response Operations for Oil or Hazardous Substances.

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

21. Surface Coal Mining Activities. No regional conditions.

22. Removal of Vessels.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.

b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

23. Approved Categorical Exclusions.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with a Pre-Construction Notification (PCN) to USACE for coordination with National Marine Fisheries Service (NMFS).

24. Indian Tribe or State Administered Section 404 Programs.

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

25. Structural Discharges.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year.

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.

b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

26. [Reserved]

27. Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) as discussed in Section G-E.8. below, any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.

b. Within Essential Fish Habitat or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, the applicant shall include anadromous fish information in the required Pre-Construction Notification (PCN) for USACE coordination with the National Marine Fisheries Service.

28. Modifications of Existing Marinas.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, in-water work shall be avoided from March 1 to June 30 of any year. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.

b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

29. Residential Developments.

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 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.).

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

b. This NWP may not be used in New York State for the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.

c. Whenever a multiple-lot subdivision is submitted to the Corps of Engineers for review, it must be designed, to the maximum extent practicable, such that wetlands are not located on the resulting individual lots. If the applicant cannot design the subdivision in accordance with this requirement, the Pre-Construction Notification (PCN) must include a discussion as to why this requirement cannot be accomplished, along with a detailed description as to how the wetland areas on each individual lot will be adequately protected.

i. All areas within the multiple-lot subdivision that are components of compensatory mitigation, including waters of the United States and associated upland buffers, must be covered by a conservation easement or other legal protective covenant.

ii. For all other waters of the United States, following completion of work authorized by this nationwide permit, a copy of this permit and regional conditions, along with permit drawings showing the locations of waters of the United States, must be provided with the deed to all individual lots that will contain waters of the United States.

New York District Only Permit-specific Regional Conditions:

d. 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 adjacent wetlands
3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: <http://www.dec.ny.gov/animals/27238.html> or 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

e. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. Justification must be submitted as part of the required PCN if a variance of this seasonal work window is requested.

30. Moist Soil Management for Wildlife.

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

31. Maintenance of Existing Flood Control Facilities.

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

32. Completed Enforcement Actions.

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

33. Temporary Construction, Access, and Dewatering.

Buffalo District Only Permit-specific Regional Conditions: None

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

New York District Only Permit-specific Regional Conditions:

- a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A Pre-Construction Notification (PCN) is required if a variance of this seasonal work window is requested.
- b. Within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

34. Cranberry Production Activities.

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

35. Maintenance Dredging of Existing Basins.

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

- a. In addition to the Pre-Construction Notification (PCN) requirements of General Condition #32, 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 (EFH) including the direct, indirect and cumulative impacts of the proposed dredging.
 3. A location map, address and 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.

New York District Only Permit-specific Regional Conditions:

- b. All NWP 35 activities located within New York District require a PCN.
- c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- d. Within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below in-water work shall be avoided from March 1 to June 30 of any year. A PCN is required if a variance of this seasonal work window is requested.
- e. Within National Marine Fisheries Service (NMFS) Threatened or Endangered (T&E) habitat, any proposed dredging that would not use a mechanical dredge shall require that justification be submitted as part of the required PCN.

36. Boat Ramps.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of SAV, and a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be included with the PCN to USACE for coordination with National Marine Fisheries Service (NMFS).

37. Emergency Watershed Protection and Rehabilitation.

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 vegetative stabilization measures and/or rip-rap stone material, in lieu of vertical structures (i.e. wood, concrete, stacked rectangular rock or sheet pile bulkheads/retaining walls). Any woody vegetation utilized as part of the activity must be native species in order to maintain riparian buffers. In addition to notification requirements outlined in the NWP, a Pre-Construction Notification (PCN) will be required for any proposed vertical structures placed below the applicable high water line and shall include written justification as to why other natural methods (i.e. vegetation, bioengineering, etc.) are not practicable, along with any proposed mitigation measures for adverse impacts (i.e. 1:2 to 1:3 sloped toe stone, measures to facilitate movement of wildlife if necessary, etc.).

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 landward of the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, a PCN shall be required for any encroachment proposed within tidal waters of the U.S. or any extensions, excluding the placement of toe stone protection recommended/required by state/federal resource agencies (i.e. NYSDEC, NYSDOS, USFWS & USEPA), which exceed 18 inches waterward of the existing bulkhead within non-tidal waters. The PCN must include justification for a waterward extension of the bulkhead (e.g. geologic conditions, engineering requirements, etc.).

New York District Only Permit-specific Regional Condition:

c. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service (NMFS).

38. Cleanup of Hazardous and Toxic Waste.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. For those activities that are located within Essential Fish Habitat (EFH) waters as defined in Section G-E.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

b. Within EFH or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, the applicant shall include anadromous fish information in the required

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Pre-Construction Notification (PCN) for USACE coordination with the National Marine Fisheries Service.

c. For those activities that would impact more than 0.5 acres of waters of the United States, and are located within EFH, a PCN is required for USACE coordination with the National Marine Fisheries Service.

39. Commercial and Institutional Developments.

a. This NWP may not be used in New York State for the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.

b. Whenever a multiple-lot subdivision is submitted to the Corps of Engineers for review, it must be designed, to the maximum extent practicable, such that wetlands are not located on the resulting individual lots. If the applicant cannot design the subdivision in accordance with this requirement, the preconstruction notification (PCN) must include a discussion as to why this requirement cannot be accomplished, along with a detailed description as to how the wetland areas on each individual lot will be adequately protected.

i. All areas within the multiple-lot subdivision that are components of compensatory mitigation, including waters of the United States and associated upland buffers, must be covered by a conservation easement or other legal protective covenant.

ii. For all other waters of the United States, following completion of work authorized by this nationwide permit, a copy of this permit and regional conditions, along with permit drawings showing the locations of waters of the United States, must be provided with the deed to all individual lots that will contain waters of the United States.

New York District Only Permit-specific Regional Conditions:

c. 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 adjacent wetlands
3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: <http://www.dec.ny.gov/animals/27238.html> or 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

d. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. Justification must be submitted as part of the required Pre-Construction Notification (PCN) if a variance of this seasonal work window is requested.

40. Agricultural Activities. None.

41. Reshaping Existing Drainage and Irrigation Ditches.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- 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 adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation web site at: <http://www.dec.ny.gov/animals/27238.html> or contact the Trust for Public Land at the following address:

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New York, N.Y. 10012

42. Recreational Facilities.

- a. This NWP may not be used in New York State for the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.

New York District Only Permit-specific Regional Condition:

- 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 adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: <http://www.dec.ny.gov/animals/27238.html> or contact the Trust for Public Land at the following address:

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New York, N.Y. 10012

43. Stormwater Management Facilities.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

- 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 adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: <http://www.dec.ny.gov/animals/27238.html> or 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

44. Mining Activities.

- a. This NWP may not be used in New York State for the discharge of dredged or fill material associated with mining of accumulated sediments (i.e. gravel and point bars) within stream channels. This NWP also may not be used for peat mining.

45. Repair of Uplands Damaged by Discrete Events.

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

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

a. Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of vegetative stabilization measures and/or rip-rap stone material, in lieu of vertical structures (i.e. wood, concrete, stacked rectangular rock or sheet pile bulkheads/retaining walls). Any woody vegetation utilized as part of the activity must be native species in order to maintain riparian buffers. A Pre-Construction Notification (PCN) will be required for any proposed vertical structures placed below the applicable high water line and shall include written justification as to why other natural methods (i.e. vegetation, bioengineering, etc.) are not practicable, along with any proposed mitigation measures for adverse impacts (i.e. 1:2 to 1:3 sloped toe stone, measures to facilitate movement of wildlife if necessary, etc.).

New York District Only Permit-specific Regional Conditions:

b. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. Justification must be submitted as part of the required PCN if a variance of this seasonal work window is requested.

c. Within EFH, if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

d. Within EFH, as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service (NMFS).

46. Discharges in Ditches.

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

47. [Reserved]

48. Commercial Shellfish Mariculture Activities.

Buffalo District Only Permit-specific Regional Conditions: None

Note: This NWP does not apply to the portion of New York State within Buffalo District, as there are no marine or estuarine waters within its area of review.

New York District Only Permit-specific Regional Conditions:

a. The applicant shall submit a location map showing 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 mariculture activities.

b. Any interaction between a sea turtle or any other federally threatened or endangered species (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the gear/equipment or vessels associated with the aquaculture project must be reported to the National Marine Fisheries Service (NMFS) as follows. If the animal appears alive and uninjured, the permittee or its agent/employee must report the incident to the NMFS Northeast Regional Office, (978) 281-9300 or fax (978) 281-9394, within 24 hours of returning from the trip on which they made the discovery. If the animal appears to be injured or dead, the permittee or its agent/employee must immediately call the NMFS Northeast Region Stranding and Entanglement Hotline at (978) 281-9351 so the appropriate rehabilitation or stranding network representative can be contacted. The attached reporting form (Enclosure 4) must be filled out when interactions are discovered, and the form must be sent to the NMFS Northeast Regional Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930 or faxed to (978) 281-9394. Finally, the applicant shall also copy the U.S. Army Corps of Engineers on all correspondence with the NMFS

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

within two calendar days. If portions of the reporting protocol or form are unclear, please contact the NMFS Northeast Regional Office at (978) 281-9300.

c. Activities are not authorized within submerged aquatic vegetation (SAV) areas within Essential Fish Habitat (EFH), as discussed in Section G-E.8.

d. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the Pre-Construction Notification (PCN) for USACE coordination with NMFS.

e. All structures associated with the aquaculture activity must be removed from waters of the United States if/when the activity is abandoned within Essential Fish Habitat (EFH) waters.

f. Use of unsuitable materials for shellfish seeding (i.e. asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass and garbage) is prohibited.

g. Predator control devices (i.e. mesh fences, mesh nets and mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear are prohibited.

h. For those activities requiring mechanized harvesting of shellfish in winter flounder egg/larvae EFH within estuarine waters, a PCN is required for USACE coordination with the National Marine Fisheries Service.

49. Coal Remining Activities.

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

50. Underground Coal Mining Activities. None.

51. Land-Based Renewable Energy Generation Facilities. None.

NWP 52. Water-Based Renewable Energy Generation Pilot Projects.

a. This NWP may not be used in New York State for work or discharges associated with wind or solar energy generation projects.

New York District Only Permit-specific Regional Conditions:

b. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, the applicant shall include anadromous fish information in the required Pre-Construction Notification (PCN) for USACE coordination with the National Marine Fisheries Service.

Note: For further clarification of danger zones and restricted areas, please refer to 33 CFR Part 334

53. Removal of Low-Head Dams.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, the applicant shall include anadromous fish

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

information in the required Pre-Construction Notification (PCN) for USACE coordination with the National Marine Fisheries Service.

54. Living Shorelines.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, the applicant shall include anadromous fish information in the required Pre-Construction Notification (PCN) for USACE coordination with the National Marine Fisheries Service.

55. Seaweed Mariculture Activities.

Buffalo District Only Permit-specific Regional Conditions: None

Note: This NWP does not apply to the portion of New York State within the Buffalo District as there are no marine or estuarine waters within its area of review.

New York District Only Permit-specific Regional Conditions:

a. The applicant shall submit a Pre-Construction Notification (PCN) to USACE including planned chartlets and siting information (water depth, equipment type, annual installation duration, etc.) coordination with the U.S. Coast Guard (USCG) and National Marine Fisheries Service (NMFS). The PCN submitted to USACE shall also include a description of the quantity and dimensions of all proposed structure(s), including: culture gear (lines, cages, pens, etc.), anchors, and site markers; a map showing the project location(s), including the longitude and latitude of site boundaries; and a schematic or drawing showing how the gear will be deployed on the site (a formally engineered schematic is not required).

b. Structures in navigable waters of the United States shall be clearly marked with marine grade beacons and retroreflective material (where not otherwise lighted) identifiable to mariners within at least 100 yards.

Note 1: The USCG may request that the permittee conduct a formal navigation safety risk assessment (NSRA). The USCG would review the NSRA and provide its recommendations concerning the level of risk and mitigation measures that the assessment identifies. The USCG will need specific project details, including but not limited to, available water depth over submerged activities, project location in relation to existing codified Shipping Safety Fairways, Traffic Separation Schemes, Limited Access Areas and Special Local Regulations, proposed Shipping Safety Fairways, and historic vessel traffic patterns.

Note 2: Private Aids to Navigation (ATON) Permits are required from the First Coast Guard District Waterways Management Office for: mariculture buoys that are planned to be lighted, danger buoys (white with orange bands) used to denote surface/subsurface navigation hazards, or buoys specifically designed with radar return capability. Proximity to a Federal, State or customary channel, water depth and frequency of general navigation are all factors in granting, denying, or waiving a Private ATON permit. Floats, markers, highflyers, mooring balls, and pot markers are not considered ATON, and therefore don't require a permit from the USCG.

However, owners must still follow all State and Local regulations for mariculture site marking.

Note 3: As outlined in this NWP, item (a) does not authorize the cultivation of a non-indigenous species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Please refer to the NY State Department of Environmental Conservation website for more information on non-indigenous ("non-native" or "invasive") species for New York State:

<https://www.dec.ny.gov/animals/99141.html>

56. [Reserved]

57. Electric Utility Line and Telecommunications Activities.

a. For Aerial Transmission Lines Across Navigable Waters:

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

1. All aerial crossings must comply with the elevation clearances specified in 33 CFR 322.5(i)(2) and 33 CFR 322.5(i)(3), as referenced in NWP 57 Note 3. The following table pertains to aerial transmission lines across navigable waters, is located at 33 CFR 322.5(i)(2) and is included here for easy reference:

<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

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 U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

2. 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 applicable 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 Submerged Cables and Conduits Across Navigable Waters and Federal Navigation Channels:

1. This nationwide permit is not applicable to activities on the following waterways across deep-draft Federal Navigation Channels: (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 proposed submerged cables and conduits buried within navigable waterways, excluding waters listed in 57.b.1. above:

i. The top of the cable or conduit crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.

ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.

iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
 - v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents and details as to any anchoring systems.
 - vi. 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. For proposed submerged cables and conduits placed on the waterway bottom within navigable waters, excluding waters listed in 12.b.1. above and Federal project channels, fleeting or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.
 - 4. This nationwide permit is not applicable for single and complete linear projects in navigable waters that would exceed 500 linear feet and the utility line is located in but would not cross the waterway, unless a variance is issued by the District Engineer.
 - 5. 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 conduit crossing (e.g., "WARNING – CABLE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the utility line remains in place.
 - 6. 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 utility line 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.
- New York District Only Permit-specific Regional Conditions:
- d. For those waterways not already disqualified by Condition 57.b.1. above, and located within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.
 - e. For those waterways not already disqualified by Condition 57.b.1. above, and located within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
 - f. Within Essential Fish Habitat (EFH), this NWP does not authorize the discharge into waters of the United States of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frack out".

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

g. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service.

58. Utility Line Activities for Water and Other Substances.

a. For Utility Lines Across Navigable Waters and Federal Navigation Channels:

1. This nationwide permit is not applicable to activities on the following waterways across deep-draft Federal Navigation Channels: (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 proposed buried pipelines within navigable waterways, excluding waters listed in 58.a.1 above:

i. The top of the pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.

ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.

iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.

iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.

v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents and details as to any anchoring systems.

vi. 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. For proposed submerged pipelines placed on the waterway bottom within navigable waters, excluding waters listed in 58.a.1. above, and Federal project channels, fleeting or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

4. With the exception of water intake lines, this nationwide permit is not applicable for single and complete linear projects in navigable waters that would exceed 500 linear feet and the utility line is located in but would not cross the waterway, unless a variance is issued by the District Engineer.

5. 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 pipeline crossing (e.g., "WARNING –PIPELINE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the pipeline remains in place.

6. 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

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

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.
New York District Only Permit-specific Regional Conditions:

b. For those waterways not already disqualified by Condition 58.a.1. above, and located within Essential Fish Habitat (EFH) or within areas supporting anadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.

c. For those waterways not already disqualified by Condition 58.a.1. above, and located within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

d. Within Essential Fish Habitat (EFH), this NWP does not authorize the discharge into waters of the United States of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.

e. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service (NMFS).

59. Water Reclamation and Reuse Facilities

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

Proposed NWP “A”. Activities to Improve Passage of Fish and Other Aquatic Organisms

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

C. Nationwide Permit General Conditions)

D. District Engineer’s Decision

E. Further Information

F. Definitions

G. Buffalo and New York District General Regional Conditions

These conditions apply to ALL Nationwide Permits.

G-A. Construction Best Management Practices (BMP’s): Unless specifically approved otherwise through issuance of a variance by the District Engineer, 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 and stormwater management practices must be designed, installed and maintained throughout the entire construction project in accordance with the latest version of the *New York Standards and Specifications for Erosion and Sediment Control* and the *New York State Stormwater Management Design Manual*. These documents are available at: <http://www.dec.ny.gov/chemical/29066.html> and <http://www.dec.ny.gov/chemical/29072.html>, respectively. Prior to the discharge of any dredged or fill material into waters of the United States, including wetlands, authorized by NWP, the permittee must install and maintain erosion and sedimentation controls in and/or adjacent to wetlands or other waters of the United States.

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

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 this upland option requirement 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, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.
6. Construction access and staging areas shall be by means that avoid or minimize impacts to aquatic sites (e.g. use of upland areas for access & staging, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas 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, including cover type. All vegetation utilized in the restoration activity shall consist of native species.
7. All return flow from dredged 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. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.
9. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. 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).
10. Stone aprons and scour protection placed in streams shall not extend higher than the stream bed in order to create a uniform grade and shall be filled with native stream bed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the stream bed.

G-B. CULVERTS

1. **ALL NEW OR REPLACEMENT CULVERTS IN STREAMS**, to the extent they are regulated, shall be constructed/installed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 – Management of Water Flows:

Public Notice Enclosure 2

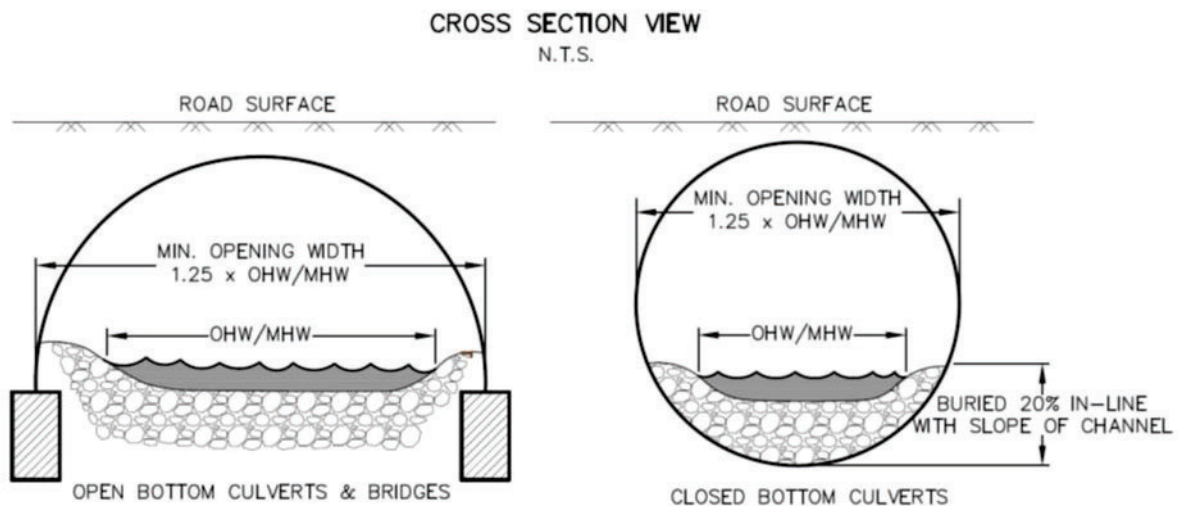
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within a single culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. A bottomless culvert or bridge must be used to span the stream channel where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, which is generally equivalent to the width of the channel during the 2-year design storm.
- b. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert, including end sections, must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the stream bed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)
- c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- d. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.

Note 1: Use of the requirements alone will not satisfy the need for proper engineering and design. In particular, appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments, both upstream and downstream). It is the permittee's responsibility to ensure the structure is appropriately designed.

Note 2: This condition does not apply to temporary culverts used for construction access that are in place for less than one construction season. However, compliance with General Conditions #2 and #9 still applies.

Note 3: For further guidance on identification of the Ordinary High Water mark, please see Regulatory Guidance Letter 05-05 available at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Guidance-Letters/>



Preconstruction Notification (PCN) Requirements:

A PCN is required for projects that do not meet all of the above requirements. In addition to the PCN requirements

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

of General Condition #32, the PCN must include the following information:

- i. A statement indicating which of the above requirements will not be met by the proposed project;
- ii. Information as to why the use of such structures or measures would not be practicable;
- iii. A brief description of the stream discussing:
 - Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
 - Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
 - Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)
- iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:
 - Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the stream bed and the average width at ordinary high water.
 - For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
 - For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used. Note: sections should not be taken in the immediate vicinity of the structure as the channel width may be affected by the structure and not provide an accurate representation of the natural channel.
 - This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
 - If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.
- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and
- vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #2 & #9 and would result in a less environmentally damaging practicable alternative (e.g. If compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system then an alternate design should be proposed and a variance request submitted which outlines how compliance with the general conditions will be met.).

2. ALL CULVERT REHABILITATION PROJECTS IN STREAMS, to the extent they are regulated, not including culvert replacement projects (See 1 above), shall be constructed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 – Management of Water Flows:

- a. An evaluation of the existing culvert shall be conducted prior to the proposed culvert rehabilitation to determine if the existing culvert is in compliance with NWP GC #2 and #9. Specifically, the culvert shall

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

be evaluated regarding its effect upon aquatic life movements and low/ high water flow. If the above requirements in General Regional Condition B. 1 (a)-(e) are met, then the culvert is considered in compliance with NWP General Conditions #2 & # 9. (Potential evaluation methods to consider include: North Atlantic Aquatic Connectivity Collaborative (NAACC) (Note: Projects should not result in a reduction of the NAACC passability score by reducing passage or creating a barrier), US Forest Service Aquatic Organism Passage FishXing, etc.)

- b. A PCN is not required for projects that utilize cured-in-place pipe lining or other repair activities that do not raise the existing invert elevation such that it causes an impediment to the passage of either aquatic life movement or water flow, unless there is an existing impediment which will not be corrected by the proposed repair.
- c. A PCN is required for any culvert rehabilitation project that includes a culvert which is not in compliance with GC #2 and/or #9 (i.e. impedes aquatic life movement or water flow) and which will not be corrected by the proposed repair.
- d. A PCN is required for culvert rehabilitation projects which will involve pipe slip lining or other activities, including concrete invert paving and concrete lining that raise the existing invert elevation such that it causes an impediment to the passage of low flow or aquatic life movement. Slip lining is defined as the insertion of a smaller diameter pipe into an existing pipe by pulling pushing, or spiral winding.

Preconstruction Notification (PCN) Requirements:

In addition to the PCN requirements of General Condition #32, the PCN must include the following information:

- i. A summary of the evaluation required in Item a. above including average ordinary high water channel width and a discussion of the impediment(s) to aquatic life movement and/or water flow.
- ii. Information as to how the proposal will mitigate for the impediment. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

G-C. 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 classification:

Reschke, C. March 2014. *Ecological Communities of New York State. Second Edition.* New York Natural Heritage Program. New York State Department of Environmental Conservation. Latham, N.Y. This document is available at the following location: <https://www.dec.ny.gov/animals/29384.html>.

G-D. 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 #16, 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 or the Upper Delaware River, unless NPS has previously indicated the project will not adversely affect the waterway. (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: <https://www.rivers.gov/new-york.php>

G-E. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 32, the applicant shall also include: (Note: the application will not be considered complete until all of the applicable information is received).

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

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.

(Buffalo District: <http://www.lrb.usace.army.mil/Missions/Regulatory/Application-Forms/>)

New York District: <https://www.nan.usace.army.mil/Missions/Regulatory/Obtaining-a-Permit/>)

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 8.5" x 11" 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 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). The Vicinity Map shall provide the location of the entire project site. 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. For linear projects, the PCN shall include a map of the entire project including a delineation of all waters of the U.S. within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.)

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 (See General Conditions 23 & 32(b)(6)): The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10th of an acre of wetlands and/or 3/100th of an acre of stream. Mitigation conceptual plans submitted with the PCN must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project.

Note 1: All mitigation projects must comply with the Federal Regulations on compensatory mitigation (33 CFR 332) entitled "Compensatory Mitigation for Losses of Aquatic Resources: Final Rule", dated April 10, 2008, which is available at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/ and any applicable District Guidelines.

Note 2: Although a conceptual mitigation plan may be sufficient for the purposes of a PCN submission, a detailed mitigation plan must be approved by the Corps before any jurisdictional work may occur on the project site.

Note 3: If more than 0.10 acres of designated EFH habitat (as discussed in Section G-E.8. below) would be impacted such that habitat would be lost, compensatory mitigation at a minimum ratio of 1:1 is required. A ratio of more than 1:1 may be required depending upon the ecological value of the habitat to be lost or degraded and the form of compensatory mitigation proposed to be provided.

Note 4: For additional information regarding natural stream channel design, please refer to <https://www.epa.gov/cwa-404/natural-stream-channel-design-techniques-and-review> for the Natural Stream Channel Design Techniques and Review Checklist as developed by U.S. EPA and U.S. Fish and Wildlife Service.

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. [NRI river segments](#) are potential candidates for inclusion in the National Wild and Scenic River System (See General

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Condition #16). 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 non-federal 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 (NR). Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include:

- a) A written statement indicating if any such properties may be affected by the proposed project.
- b) A copy of any completed archaeology or building/structure survey reports. If a survey has not been performed, the statement shall include a list of resources checked in the determination.
- c) 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.
- d) Copies of any available correspondence from federally recognized Indian Nations regarding historic properties that may be affected by the project.
- e) Projects with ground disturbance may have the potential to cause effects to buried historic properties, regardless of occurring outside SHPO designated archaeological sensitive areas. Therefore, the PCN shall indicate if the ground disturbance will occur in any areas of previously undisturbed soil. For areas with prior disturbance, the PCN shall include a brief narrative describing the disturbance and its limit (i.e. type of disturbance, size of area with current undisturbed soil, size of area with existing disturbed soils, when the disturbance occurred, an estimate on how deep the soil disturbance extends, etc.) as well as photos of the existing ground disturbance.
- f) Above ground buildings/structures that are over 50 years old and potentially affected by the project will need to be assessed to determine if they are eligible for the NR. The PCN shall: identify any structures present in the project area, which have not already been subject to SHPO review, include photos of the structures, and describe how the project would/would not affect them.

* - see NWP definition section for further clarification

Note 1: Information regarding historic properties may be found at: <https://cris.parks.ny.gov>. 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.

Note 2: as stated in General Condition 20, if any listed, eligible or potentially eligible properties are present, the applicant shall not begin the activity until notified by the district engineer in writing either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

8. Endangered Species and Essential Fish Habitat (EFH): In accordance with General Condition #18, non-federal applicants must submit a PCN if any listed species or designated critical habitat might be affected or is in the vicinity of the activity (See Note 2 below), or if the activity is located in designated critical habitat. Please refer to General Condition #18 for submission requirements. In addition, all PCNs must include:

- a) a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened or Endangered (T&E) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project (See Note 2 below).
- b) an official T&E species list printed within 90 days of the PCN submission, and a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries), regarding the potential presence of T&E species on the project site. An applicant should use the USFWS Information for

Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Planning and Consultation (IPAC) website (<https://ecos.fws.gov/ipac>) as the primary resource to determine if there may be listed Threatened or Endangered species. Information on NOAA-Fisheries (NMFS) species (both T&E and EFH) can be found at: <https://www.greateratlantic.fisheries.noaa.gov/>. Region-specific information on NMFS species (both T&E and EFH) can be found at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/essential-fish-habitat-consultations-greater-atlantic-region>. Region-specific ESA information can be found at: <https://www.fisheries.noaa.gov/topic/consultations#endangered-species-act-consultations>.

For projects where T&E species are listed, a discussion of potential T&E species habitat within the project site (See USFWS T&E website for species habitat information).
<https://www.fws.gov/northeast/nyfo/es/section7.htm>

- c) If there is potential habitat for any T&E species within the project site the following, as applicable, shall be submitted:
 - i. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS and/or NOAA-Fisheries (NMFS) prior to initiation.
 - ii. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).
 - iii. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils) and a description of surrounding land use (residential, agricultural, or commercial).
 - iv. A description of the area to be impacted by the proposed project (including the species, typical sizes (d.b.h.) and number or acres of trees to be removed, substrate of stream, etc.).
 - v. 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.
 - vi. A description of conservation measures to avoid, minimize and/or mitigate impacts to listed species.

Note 1: There are no known T&E species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of T&E species should be directed to the USFWS. In addition, no EFH review is necessary within the following New York District counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Otsego, Schenectady, Schoharie and Warren.

Note 2: Please refer to the following websites for further guidance and information relating to regulatory permits & T&E species in New York, including protocols for defining 'vicinity' for the Indiana and Northern long-eared bats:

Buffalo District: <http://www.lrb.usace.army.mil/Missions/Regulatory/Endangered-Species/Endangered-Species-New-York/>

New York District: <https://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

Note 3: General Condition #18 is emphasized, ... "For activities where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. **If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.**"

Public Notice Enclosure 2
NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

Note 4: Where a PCN is required for Essential Fish Habitat consultation, refer to the following links for the Essential Fish Habitat Assessment Worksheet and Mapper utilized to inform the preparation of the worksheet:

- EFH Assessment Worksheet: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/essential-fish-habitat-assessment-consultations>
- EFH Mapper: <https://www.habitat.noaa.gov/protection/efh/efhmapper/>

Note 5: Where information is required for submerged aquatic vegetation (SAV) in the permit area or within 50 feet of the proposed work, please utilize the following map data:

- NYS Department of State SAV data: <http://opdgig.dos.ny.gov/#/search/SAV>
- NYS GIS Clearinghouse (for SAV data in the Hudson River):
<http://gis.ny.gov/gisdata/inventories/details.cfm?DSID=1209>
and <http://gis.ny.gov/gisdata/inventories/details.cfm?DSID=1350>

9. PCNs should be submitted electronically, if possible, in accordance with the instructions provided on the Districts websites. When submitted by hard copy, without an electronic submission, then multiple copies of the PCN must be provided as follows:

- a) One (1) additional copy of the PCN package shall be provided to USACE for coordination with Department of Defense Siting Clearinghouse (See NWP # 39, 51, 52 & 57 Notes) for:
 - i. overhead utility lines proposed under NWP #57 and
 - ii. any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission lines proposed under NWP #39, 51 or 52
- b) Two (2) additional copies of the PCN package shall be provided to USACE when the project is located within the New York City Watershed, for coordination with the New York City Department of Environmental Protection.
- c) Five (5) additional copies of the PCN package shall be submitted to USACE for agency coordination in accordance with General Condition # 32(d)(2) for:
 - i. All NWP activities that result in the loss of greater than 1/2-acre of waters of the United States,
 - ii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites;
 - iii. NWP 54 activities in excess of 500 linear feet or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

G-F. CRITICAL RESOURCE WATERS

In accordance with NWP General Condition (GC) #22, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #22 for a list of the NWP activities that are either excluded or require a PCN).

Critical Resource Waters in New York State include the following:

1. **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 2.
2. **Hudson River National Estuarine Research Reserves (NERR):** The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

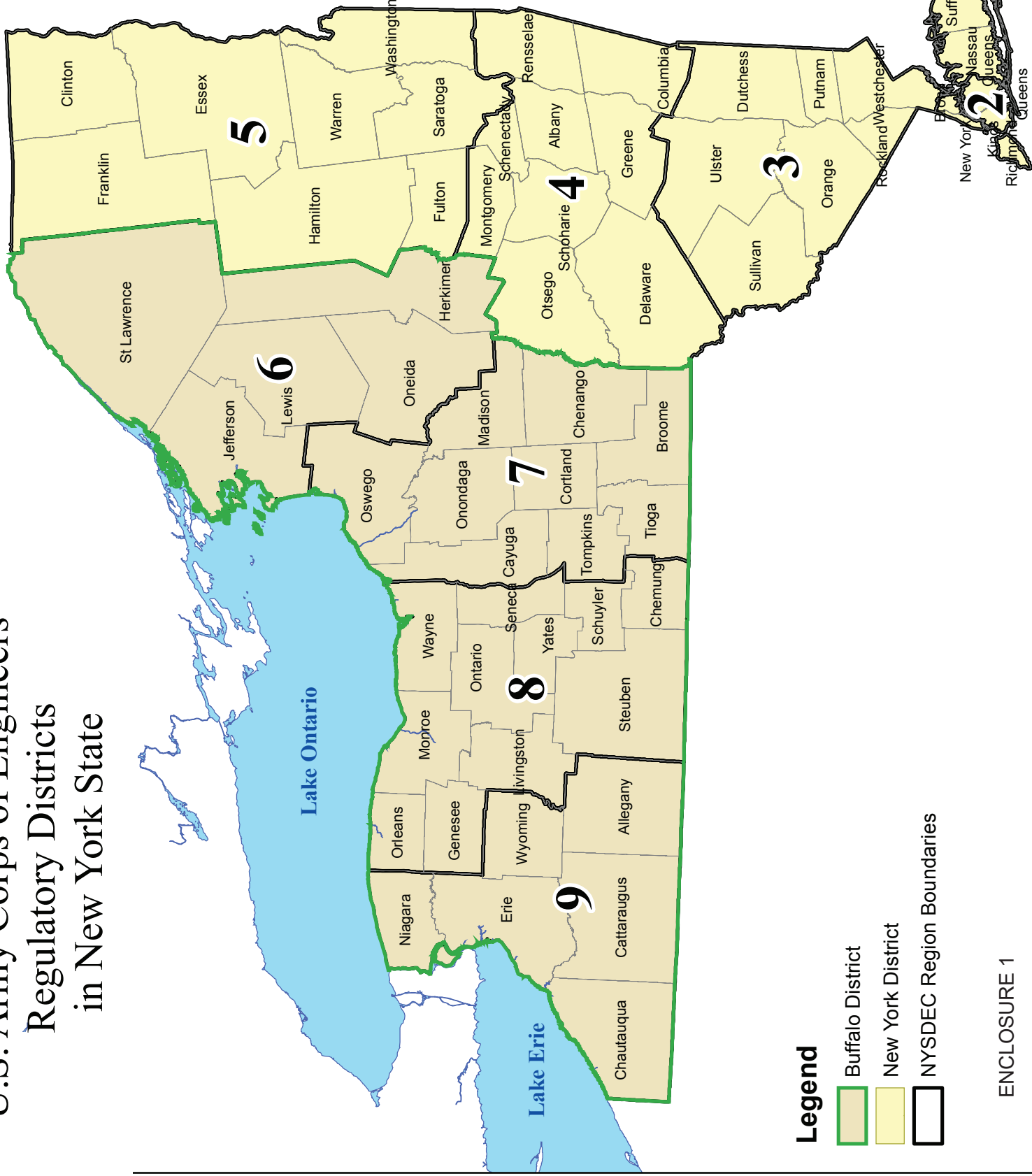
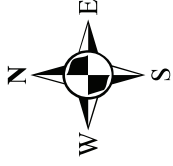
Public Notice Enclosure 2

NAN & LRB Proposed 2026 NWP Regional Conditions for NY State

3. Lake Ontario National Marine Sanctuary (LONMS): (<https://sanctuaries.noaa.gov/lake-ontario/>)

The area encompasses 1,300 square nautical miles (1,722 square miles) of eastern Lake Ontario waters and bottomlands adjacent to Jefferson, Oswego, Cayuga, and Wayne counties in the state of New York. The shoreline sanctuary boundary is set at the Low Water Datum (LWD) as defined by the International Great Lakes Datum (IGLD). Currently LWD is 243.3 feet IGLD. LONMS excludes the ports and harbors of Oswego, Pultneyville, Little Sodus Bay, Sodus Bay, and Port Ontario from the sanctuary as well as the Federal navigation channel approaches to these harbors and Federal anchorage areas. LONMS also excludes privately owned bottomlands from the sanctuary. The boundary of LONMS cuts across the mouths of rivers, streams, creeks, and ponds as it continues along the coastline of the sanctuary, which excludes those water bodies from the sanctuary. This is the case for East Bay, Port Bay, Blind Sodus Bay, North Pond, South Colwell Pond, Goose Pond, Floodwood Pond, and Black Pond. LONMS includes Sackets Harbor.

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



Buffalo District

Regulatory Branch, District Office
1776 Niagara Street
Buffalo, New York 14207
(716) 879-4330

Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
(315) 255-8090

New York District

Regulatory Branch, District Office
26 Federal Plaza
New York, New York 10278-0090
(917) 790-8411

Regulatory Branch, Upstate Field Office
1 Buffington Street
Watervliet, New York 12189-4000
(518) 266-6350

Legend

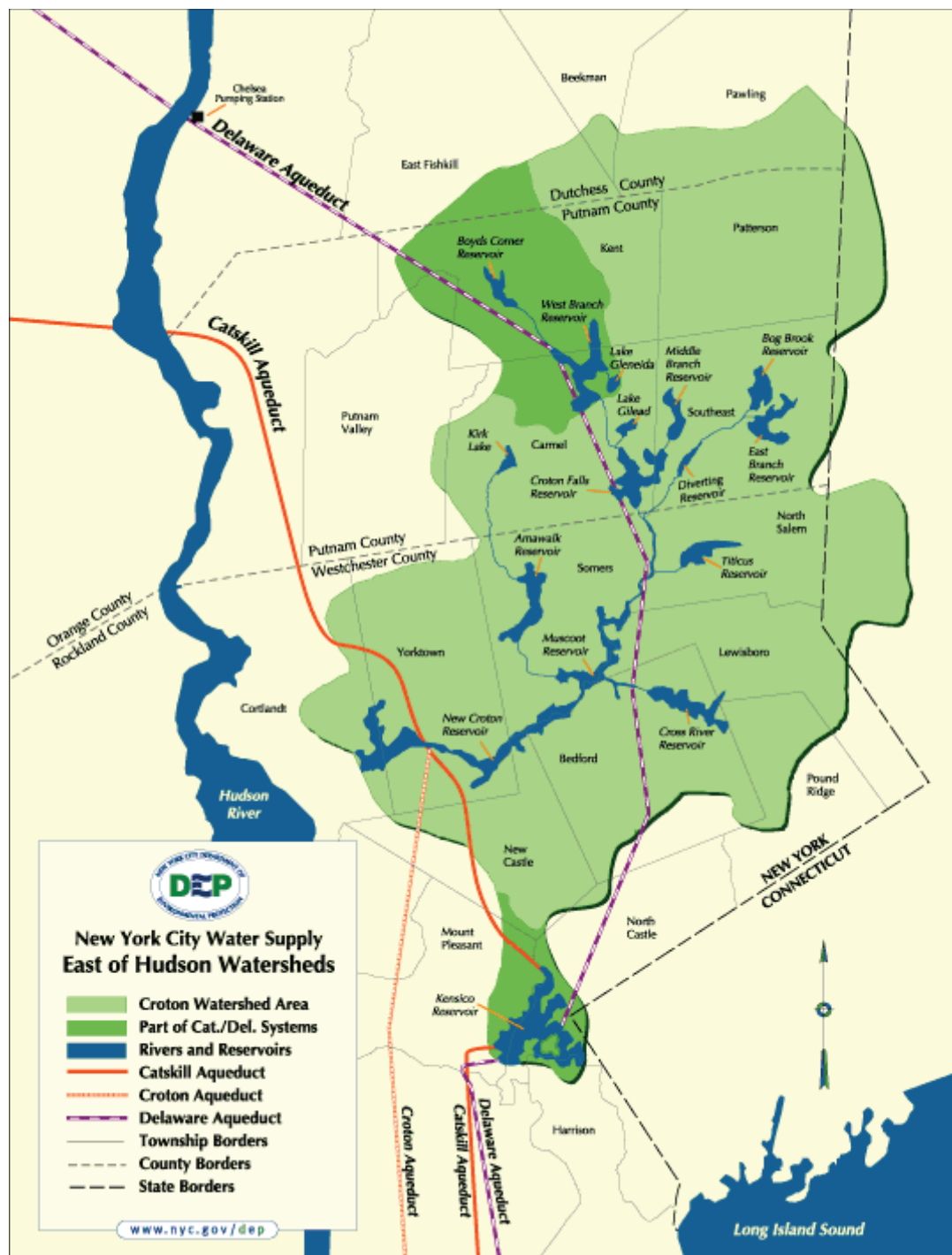
Buffalo District

New York District

NYSDEC Region Boundaries



U.S. Army
Corps of Engineers



ENCLOSURE 2



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

ENCLOSURE 3

REGULATORY BRANCH

Attn: _____

Commercial Mooring Buoy Application Additional Information

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

MOORING BUOY DATA:

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

Chain size (in.): _____ Scope (yds.): _____

Pennant length (yds.): _____ Circ. /dia. (in.): _____ Type: _____

VESSEL/BARGE DATA:

Max size (LxBxD): _____ x _____ x _____ Max No. of barges: _____

Configuration (# abreast x # astern): _____ x _____ Watch circle** (yds.): _____

Swing Radius (yards): _____

* 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

** Watch Circle = $\sqrt{(length\ of\ scope)^2 - (water\ depth)^2}$

Swing Radius = (Watch circle) + (Barge(s) length astern) + (Pendant length(s)) + (10% of swing radius). You must maintain an additional 10% of your Swing Radius from any adjacent mooring buoy Swing Radius for safety and maneuvering.

ENCLOSURE 4