

**Buffalo & New York Districts Final Regional Conditions, Water Quality Certification and Coastal
Zone Concurrence for the 2021 Nationwide Permits for New York State
Effective February 25, 2022 - Expiration March 14, 2026**

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B. NATIONWIDE PERMITS

1. Aids to Navigation. The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66). (Authority: Section 10 of the Rivers and Harbors Act of 1899 (Section 10))

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

2. Structures in Artificial Canals. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Authority: Section 10)

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

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP where all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

3. Maintenance. (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3,

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provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for 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.

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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 EFH, as discussed in Section G-E.8. below, if any work is proposed within 50 feet of submerged aquatic vegetation (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 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 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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.

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iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41 and 930.43, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP with which all general and all Buffalo and New York District regional conditions are complied and with the additional condition(s), as follows:

- The NYSDOS concurs with the USACE' consistency determination for projects outside of Marine and Coastal District Waters (all tidal waters south of the Governor Mario M. Cuomo Bridge) within or affecting the NYS Coastal Area where the activities to be authorized primarily involve the repair/replacement in-place or landward of a lawful structure or fill, with no waterward expansion or increase in footprint;
- The NYSDOS concurs with the USACE' consistency determination for projects authorized by New York State Department of Environmental Conservation (DEC) [under General Permit GP-0-20-004 Great Lakes Erosion Control General Permit](#);
- The NYSDOS concurs with the USACE' consistency determination for projects proposed solely within the artificial canals identified by NYSDOS at: <https://www.dos.ny.gov/opd/atlas/>.

For activities that do not comply with the above conditions, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency determination from NYSDOS is required for this NWP to be valid in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

Buffalo District Only Permit-specific Regional Conditions: None

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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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge of dredged or fill material is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

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- 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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYS DOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

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6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge of dredged or fill material does not exceed 1/10-acre in waters of the U.S. Discharges of dredged or fill material and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an

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individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41 and 930.43, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP with which all general and all Buffalo and New York District regional conditions are complied and with the additional condition(s), as follows:

- The NYSDOS concurs with the USACE' consistency determination where the activities to be authorized would be limited to sample plots or transects for wetland delineations and historic resource surveys.

For activities that do not comply with the above condition, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency determination from NYSDOS is required for this NWP to be valid in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

7. Outfall Structures and Associated Intake Structures. Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP unless they are directly associated with an authorized outfall structure.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- 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 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 EFH, as discussed in Section G-E.8. below, if any work is proposed within 50 feet of submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

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- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:
Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYS DOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

8. Oil and Gas Structures on the Outer Continental Shelf. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps-designated dredged material disposal areas.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 10)

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

Section 401 Water Quality Certification (WQC):

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Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYS DOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

9. Structures in Fleeting and Anchorage Areas. Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. See Section I below for further information. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

10. Mooring Buoys. Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

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

- a. Mooring buoys must be tagged with the name and the address of the owner. The placement of

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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 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).

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

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

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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 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 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).

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41 and 930.43, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP with which all general and all Buffalo and New York District regional conditions are complied and with the additional condition(s), as follows:

- The NYSDOS concurs with the USACE' consistency determination where the activities to be authorized are for structures that are in place for no more than 30 days in a given calendar year and are for non-residential purposes.

For activities that do not comply with the above condition, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency determination from NYSDOS is required for this NWP to be valid in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

13. Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

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- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges of dredged or fill material into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of dredged or fill material of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

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

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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 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 EFH, as discussed in Section G-E.8. below, if any work is proposed within 50 feet of submerged aquatic vegetation (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).

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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.

iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an

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individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41 and 930.43, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP with which all general and all Buffalo and New York District regional conditions are complied and with the additional condition(s), as follows:

- The NYSDOS concurs with the USACE' consistency determination where the activities would be authorized under [General Permit GP-0-20-004 Great Lakes Erosion Control Permit](#) or would occur within the canals identified by NYSDOS at: <https://www.dos.ny.gov/opd/atlas/>.

For activities that do not comply with the above condition, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency determination from NYSDOS is required for this NWP to be valid in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

14. Linear Transportation Projects. Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge of dredged or fill material cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Linear transportation projects must comply with 33 CFR 330.6(d).

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Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

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 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 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 submerged aquatic vegetation (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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

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- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with all the Special Conditions listed below and General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #14 Special Conditions:

- a. Linear transportation activities that cross multiple waterbodies or cross the same waterbody at multiple locations, while viewed as multiple “single and complete” projects for the purposes of the Nationwide Permit program, will be considered by the NYSDEC as a single project for all crossings for the entire length of the project in New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
- b. This certification does not authorize the construction of new linear transportation facilities (such as new roads or crossings structures in wetlands) located within a FEMA designated 100-year floodplain.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above NWP-specific conditions, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE’ consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant’s consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant’s consistency certification within six (6) months of commencement of NYSDOS’ review of an applicant’s consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under Section 9 of the Rivers and Harbors Act of 1899 or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Clean Water Act Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

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- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:
Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

16. Return Water From Upland Contained Disposal Areas. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act Section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):
The WQC has been denied for this NWP by all certifying authorities as follows:

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- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.
- vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:
Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by all certifying authorities as follows:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

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- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.
- vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge of dredged or fill material will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge of dredged or fill material is not placed for the purpose of a stream diversion.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

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.

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b. 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.

c. 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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.

iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (i.e., section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

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Buffalo District Only Permit-specific Regional Conditions:

- 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 Condition:

- 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 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, a Pre-Construction Notification (PCN) is required if any work is proposed within 50 feet of submerged aquatic vegetation (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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with all the Special Conditions listed below and General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #19 Special Condition:

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- a. This certification does not authorize any activities conducted under NWP 19 in tidal wetland, as defined in Article 25 of New York State Environmental Conservation Law (<https://www.dec.ny.gov/lands/4940.html>), or in the marine and coastal district as described in Article 13 of New York State Environmental Conservation Law (ECL § 13-0103).

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above special condition, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

20. Response Operations for Oil or Hazardous Substances. Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians,

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Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If the vessel is listed or eligible for listing in the National Register of Historic Places, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Authorities: Sections 10 and 404)

Note 1: Intentional ocean disposal of vessels at sea requires a permit from the U.S. EPA under the Marine Protection, Research and Sanctuaries Act, which specifies that ocean disposal should only be pursued when land-based alternatives are not available. If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 18, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

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 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 EFH, as discussed in Section G-E.8. below, a Pre-Construction Notification (PCN) is required

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if any work is proposed within 50 feet of submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

- (a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and
- (b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

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Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s). (Authorities: Sections 10 and 404)

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

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New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYS DOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

24. Indian Tribe or State Administered Section 404 Program. Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(l) is permitted pursuant to Section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)

Note 1: As of the date of the promulgation of this NWP, only Florida, New Jersey and Michigan administer their own Clean Water Act Section 404 permit programs.

Note 2: Those activities that do not involve an Indian Tribe or State Clean Water Act Section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

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

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

25. Structural Discharges. Discharges of dredged or fill material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

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 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.

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c. Within EFH, as discussed in Section G-E.8. below, a PCN is required if any work is proposed within 50 feet of submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #25 Special Conditions:

- a. This certification does not authorize structural discharges for any pile-supported structure with a surface area greater than 4,000 square feet.
- b. This certification does not authorize any structural support member with an area footprint greater than 64 square feet.
- c. This certification does not authorize piles or structural support members with spacing that has the effect of fill or that causes the buildup of bottom sediments due to wave action or shoreline drift.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above NWP-specific conditions, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

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26. Reserved.

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of one or more intact aquatic habitats or riparian areas of the same type that exist in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation activities; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and

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establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities:

- (1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Activities conducted in accordance with the terms and conditions of a binding coral restoration or relocation agreement between the project proponent and the NMFS or any of its designated state cooperating agencies;
- (3) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
- (4) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404)

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Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

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 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 (NMFS).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #27 Special Conditions:

- a. This certification authorizes only restoration projects conducted with oversight by a federal or state natural resource agency, or a County Soil and Water Conservation District.
- b. This certification does not authorize stream restoration projects over 300 feet in length.
- c. This certification does not authorize filling done for shellfish restoration which results in an alteration of existing substrate and benthic habitat.
- d. This certification does not authorize the conversion of one wetland type to another or the conversion of lotic (flowing water) communities to wetland or lentic (standing water) communities.

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Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above NWP-specific conditions, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

28. Modifications of Existing Marinas. Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

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 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 EFH, as discussed in Section G-E.8. below, a PCN is required if any work is proposed within 50 feet of submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. See Section I below for further information. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

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30. Moist Soil Management for Wildlife. Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site-specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

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31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

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Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The pre-construction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The pre-construction notification must include a description of the maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect, the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

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New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

32. Completed Enforcement Actions. Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of Section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

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- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

33. Temporary Construction, Access and Dewatering. Temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

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- 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 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 EFH, as discussed in Section G-E.8. below, a PCN is required if any work is proposed within 50 feet of submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #33 Special Condition:

- a. This certification authorizes activities that exist on-site for no more than 180 days from the date of installation.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above NWP-specific condition, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

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Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYS DOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.

Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

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Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

35. Maintenance Dredging of Existing Basins. The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

Permit-specific Regional Conditions (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.

Section 401 Water Quality Certification (WQC):

Water Quality Certification, pursuant to Section 401 of the Clean Water Act, is not required because this Nationwide Permit only authorizes activities that are regulated under Section 10 of the Rivers and Harbors Act.

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New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYS DOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. See Section I below for further information. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

36. Boat Ramps. Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

(a) The discharge of dredged or fill material into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of pre-cast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

(c) The base material is crushed stone, gravel or other suitable material;

(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,

(e) No material is placed in special aquatic sites, including wetlands.

The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge of dredged or fill material into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

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- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. See Section I below for further information. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

- (a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
- (b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
- (c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

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(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or

(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).

In general, the permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). (Authorities: Sections 10 and 404)

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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

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- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination: Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

38. Cleanup of Hazardous and Toxic Waste. Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

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

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- 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 NMFS.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by all certifying authorities as follows:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.
- vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

For activities that are proposed within the New York City Waterfront Revitalization Program, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid. See Section I below for further information. Such activities shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

41. Reshaping Existing Drainage Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage and irrigation ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage or irrigation ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the drainage ditch as originally constructed (i.e., the capacity of the drainage ditch must be the same as originally constructed and it cannot

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drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage or irrigation ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

- 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:

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

NYSDEC WQC NWP #41 Special Conditions:

- a. Sidecast organic soils may not be stacked deeper than 18 inches or in such a way as to interfere with surface water flow.

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- b. This certification does not authorize side-casting or non-organic soils into wetlands.
- c. This certification does not authorize in-stream channel re-shaping of Waters classified as “AA”, “A”, “B”, or “C” under Article 15 of New York State Environmental Conservation Law.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions, including the above NWP-specific conditions, must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE’ consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a Clean Water Act Section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

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. 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.).

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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 submerged aquatic vegetation (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).

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.

ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.

iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of

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commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

46. Discharges in Ditches. Discharges of dredged or fill material into non-tidal ditches that are (1) constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge of dredged or fill material must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize discharges of dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

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47. Reserved.

49. Coal Remining Activities. Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by all certifying authorities as follows:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.
- vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal

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area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

53. Removal of Low-Head Dams. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term "low-head dam" is generally defined as a dam or weir built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been built for a range of purposes (e.g., check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by all certifying authorities as follows:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.

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- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.
- vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:
Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE' consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

54. Living Shorelines. Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural "soft" elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. The following conditions must be met:

- (a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot 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, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
- (c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;
- (d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity and elevation, must be used if the site is planted by the permittee;
- (e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

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(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;

(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and

(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions.

This NWP does not authorize beach nourishment or land reclamation activities.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities: Sections 10 and 404)

Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

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.

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by all certifying authorities as follows:

- i. New York State Department of Public Services (NYS DPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.
- iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.
- v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

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vi. New York State Department of Environmental Conservation (NYSDEC) for those activities not covered above in i. through v. in New York State.

Any party conducting proposing to conduct the activities authorized by this NWP must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

59. Water Reclamation and Reuse Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality.

The discharge of dredged or fill material must not cause the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

This NWP also authorizes temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Section 401 Water Quality Certification (WQC):

The WQC has been denied for this NWP by the following certifying authorities:

- i. New York State Department of Public Services (NYSDPS) for activities that relate to the construction and operation of major natural gas or electric transmission facilities undertaken pursuant to New York State Public Service Law (PSL) Article VII.
- ii. New York State Office of Renewable Energy Siting (NYSORES) for activities that relate to the construction and operation of major renewable electric generating facilities undertaken pursuant to New York State Executive Law Article 6, Section 94-C.
- iii. New York State Board on Electric Generation Siting and the Environment (Siting Board) for activities that relate to new and repowered or modified major electric generating facilities of 25 megawatts or more undertaken pursuant to PSL Article 10.

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iv. U.S. Environmental Protection Agency (USEPA), as the certifying agency for the seven federally recognized Indian Nations in New York (Cayuga Nation, Onondaga Nation, Oneida Nation of Indians, Seneca Nation of Indians, Shinnecock Indian Nation, Tonawanda Seneca Nation, and Tuscarora Nation) for all activities occurring on these tribal lands.

v. Saint Regis Mohawk Tribe for all activities occurring on Saint Regis Mohawk Tribal land.

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket WQC, for those activities not outlined above, provided that the project complies with **all** the General Conditions listed below in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail.

Any party conducting proposing to conduct the activities authorized by this NWP where the WQC has been denied or that cannot comply with all of the NYSDEC WQC conditions must apply for and obtain an individual WQC or waiver thereof from the appropriate certifying authority. Refer to Section K below for agency contact information.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Parts 930.41 and 930.43, the New York State Department of State (NYSDOS) objected to the USACE' consistency determination for this NWP anywhere in the New York coastal area. Activities authorized pursuant to this Nationwide Permit shall be submitted to NYSDOS for review by the applicant. NYSDOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. NYSDOS concurrence with an applicant's consistency certification shall not be presumed unless NYSDOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of NYSDOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

C. NATIONWIDE PERMIT GENERAL CONDITIONS

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate

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through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Structures and Fills. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

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14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat

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proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) 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 species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference 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.

(d) As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.

(e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

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20. Historic Properties. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is 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.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This

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documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement

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may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

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(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

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(c) The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

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30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification.

(a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the

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activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed activity;
- (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
- (4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
- (5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
- (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination:

(1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and 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; and (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.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity’s compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will

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provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. DISTRICT ENGINEER'S DECISION

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more

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than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. FURTHER INFORMATION

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of

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offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term “discharge” means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream

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bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has surface water flowing continuously year-round during a typical year.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

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Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to

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the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP's, a waterbody is a "water of the United States." If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

G. BUFFALO & 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.

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.

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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. New stormwater management facilities shall be located outside of waters of the U.S. A variance of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions 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).
11. 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:

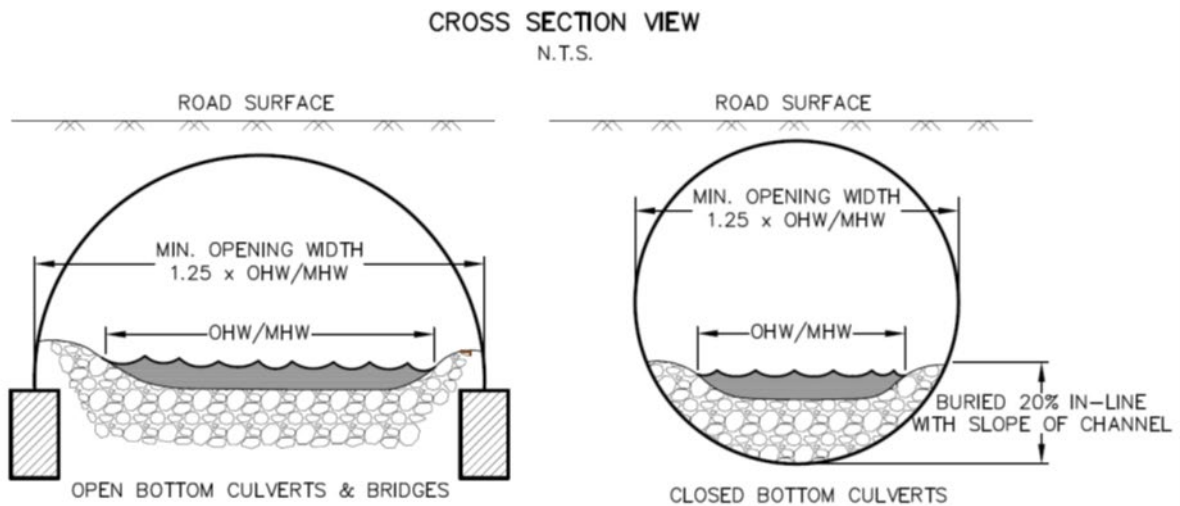
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- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within a single culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins 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:

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

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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:

- b. 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 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.)
- c. 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.
- d. 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.
- e. 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:

Edinger, G. J., D. J. Evans, S. Gebauer, T. G. Howard, D. M. Hunt, and A. M. Olivero (editors). 2014. *Ecological Communities of New York State*. Second Edition. A revised and expanded edition of Carol Reschke's *Ecological Communities of New York State*. New York Natural Heritage Program, New York State Department of Environmental Conservation, Albany, NY. This document is available at the following location: <https://www.nynhp.org/ecological-communities/>

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

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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).

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 should 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 should 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

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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 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 should 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.

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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:

1. 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).
2. 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 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>.
3. 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>
4. 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-

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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.**"

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:

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- 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.

H. NYSDEC GENERAL WATER QUALITY CERTIFICATION (WQC) CONDITIONS APPLICABLE TO ALL NWPS FOR WHICH WQC HAS BEEN PROVIDED ARE AS FOLLOWS:

1. **Non-contamination of Waters** - All necessary precautions shall be taken to preclude contamination of any waters of the United States by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds (“frac-outs”) or any other environmentally deleterious materials associated with the project.
2. **Installation and Replacement of Culverts** - To be covered under this blanket Water Quality Certification, all the following criteria must be met for culvert installations and replacements:
 - a. Culverts shall be designed to pass a storm event with an annual chance of 2% or less (i.e., 50-year storm event or greater) such that the water surface remains below the top of the inlet opening.
 - b. All culverts with closed bottoms and culvert pipes must be appropriately embedded. Round culverts must be installed so that at least 20% of the culvert’s vertical height is embedded below the existing stream bed at the outlet end of the culvert.
 - c. Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean High-Water Channel.
 - d. The slope of the stream bed within or under the culvert shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
 - e. This culvert must not be located under a roadway that provide sole access to “Critical Facilities”².
 - f. This certification does not authorize culvert rehabilitation projects that involve slip lining, invert paving, or similar treatments.
 - g. This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.

²Critical Facilities are defined as facilities designed for bulk storage of chemicals, petrochemicals, hazardous or toxic substances or floatable materials; hospitals, rest homes, correctional facilities, dormitories, patient care facilities; major power generation, transmission or substation facilities, except for hydroelectric facilities; major communications centers, such as civil defense centers; or major emergency service facilities, such as central fire and police stations. (See 6 NYCRR Part 502.4(a)(17).)

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3. **Discharges and Disturbances Limits** - The following discharge and disturbance limits apply to this certification:
 - a. For NWPs 5, 7, 13, 14, 15, 18, 19, 23, 25, 32, 34, 36, 37, 45, and 46, the following discharge limits apply:
 - i. Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the United States must not exceed ¼ acre;
 - ii. Temporary or permanent impacts (i.e., loss) to stream beds, lake shorelines, and ocean shorelines must not exceed 300 linear feet; and
 - iii. The discharge area limit under paragraph (a) plus the equivalent stream, lake, or ocean impact area limit under paragraph (b) must not exceed ¼ acre total.
 - b. For NWPs 3, 4, 6, 20, 22, 27, 30, 31, 33, and 41, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.
 - c. If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.
4. **Bulkheads** - Activities involving bulkheads are restricted as follows:
 - a. This certification does not authorize the construction of new bulkheads or vertical walls.
 - b. This certification does not authorize the waterward extension of existing bulkheads, except where minimally necessary to reface the bulkhead when in-place replacement is not feasible.
 - c. New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.
5. **Maintenance of Water Levels** - This certification does not authorize any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, except for activities authorized by NWP 27.
6. **Dewatering** - Dewatering activities must be conducted in the following manner:
 - a. Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
 - b. Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.
 - c. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
 - d. All dewatering structures must be permanently removed, and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.
7. **Horizontal and Directional Drilling** - For projects that involve horizontal or directional drilling, the permittee must prepare and implement a plan that addresses prevention, containment and cleanup of inadvertent drilling fluid returns or “frac-outs”.
8. **Endangered or Threatened Species** - This certification does not authorize discharges likely to result in the take or taking of any species listed as endangered or threatened in 6 NYCRR Part 182.5 (a) or (b) or discharges likely to destroy or adversely modify the habitat of such listed species. To be eligible for coverage under this certification, applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the NYS Department of Conservation Regional Office that the proposed activity is not likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the NYSDEC website at <https://www.dec.ny.gov/animals/38801.html>.

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9. **Rare Mollusks** - This certification does not authorize disturbances or discharges to waters of the United States that support mollusks listed as S-1 or S-2 on the New York State Natural Heritage database, unless NYSDEC staff have determined that the project location does not contain mussels listed as S-1 or S-2 on the Natural Heritage database.
10. **Prohibition Period for In-water Work** - In-water work is prohibited in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

Water classification values can be found on the NYSDEC's Environmental Resource Mapper available on the Department's website at <https://gisservices.dec.ny.gov/gis/erm/>. Applicants may also contact the Regional Fisheries Manager in the appropriate New York State Department of Environmental Conservation regional office to determine the classification of the water body and whether the prohibition period applies.

11. **Significant Coastal Fish and Wildlife Habitats** - This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602 (NYCRR, Title 19, Chapter XIII, Waterfront Revitalization of Coastal Areas and Inland Waterways). <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>
12. **Coastal Erosion Hazard Areas** - This certification does not authorize projects that disturb greater than ¼ acre or 300 linear feet of waters of the United States within mapped Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505. <https://www.dec.ny.gov/lands/86541.html>
13. **Federal Energy Regulatory Commission** - This certification does not authorize activities regulated by the United States Federal Energy Regulatory Commission (FERC). An individual Section 401 Water Quality Certification from NYSDEC is required for all projects regulated by FERC.
14. **Preventing the Spread of Aquatic Invasive Species** - To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation, and other debris before entering any approved construction areas within waters of the United States. When using construction equipment, projects authorized under this Certification shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.
15. **Utility Projects** - The following restrictions and conditions apply to activities involving utility projects:
 - a. This certification does not authorize maintenance or other activities associated with hydroelectric power generation projects.
 - b. This certification does not authorize the construction of substation facilities or permanent access roads in wetlands or within the Federal Emergency Management Agency mapped 100-year floodplain.
 - c. Excess materials resulting from trench excavation must be permanently removed from the waters of the United States and contained so that they do not re-enter any waters of the United States.
16. **NYSDEC Emergency Authorizations** – This certification also applies to any regulated discharges to Waters of the U.S. covered under an NWP where NYSDEC makes a finding of emergency pursuant to New York States Uniform Procedures Act regulations at 6 NYCRR § 621.12. Such a finding may also, but is not required to, include NYSDEC emergency authorizations under ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands) or Article 34 (Coastal Erosion Management). Where such certification is granted, only NYSDEC General WQC Conditions 1, 4, 5, and 6 shall apply.
17. **NYSDEC General Permits** – This certification also applies to any regulated discharges to Waters of the U.S. covered under an NWP where NYSDEC issues project authorization under a general permit

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pursuant to ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, all other NYSDEC General WQC Conditions shall not apply.

18. **NYSDEC Individual Permits** – This certification also applies to any regulated discharges to Waters of the U.S. covered under an NWP where NYSDEC issues individual project authorization pursuant to ECL Article 15, Title 5 (Protection of Waters), Article 15, Title 27 (Wild, Scenic, and Recreational Rivers), Article 24 (Freshwater Wetlands), Article 25 (Tidal Wetlands), or Article 34 (Coastal Erosion Management). Where such certification is granted, all other NYSDEC General WQC Conditions shall not apply.

I. NEW YORK STATE DEPARTMENT OF STATE (NYSDOS) COASTAL ZONE MANAGEMENT CONSISTENCY DETERMINATION ADDITIONAL INFORMATION (APPLICABLE TO ALL NWPS LOCATED WITHIN OR AFFECTING THE NYS COASTAL ZONE):

Where NYSDOS has objected to the USACE consistency determination, as outlined in the specific NWP listing in Section B above, the applicant must submit a request for an individual consistency determination to NYSDOS.

Further Information:

- Unless NYSDOS issues consistency concurrence or USACE has determined that NYSDOS concurrence is presumed, NWPs are not valid within the Coastal Zone.
- All consistency concurrence determination requests must be submitted directly to NYSDOS with a copy provided to USACE with any required Preconstruction Notification submissions.
- Limits of the coastal zone and details regarding NYSDOS submission requirements, including application forms can be obtained at:
<https://www.dos.ny.gov/opd/programs/consistency/index.html>.
- For additional information regarding the NYSDOS Coastal Zone Management program, their application forms, and requirements, please contact NYSDOS. See Section K for NYSDOS contact information.

J. INFORMATION ON NATIONWIDE PERMIT VERIFICATION

Verification of the applicability of these Nationwide Permits is valid until March 14, 2026, unless the Nationwide Permit is modified, suspended, revoked, or the activity complies with any subsequent permit modification.

It is the applicant's responsibility to remain informed of changes to the Nationwide Permit program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>.

Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

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Possession of this permit does not obviate you of the need to contact all appropriate state and/or local governmental officials to ensure that the project complies with their requirements.

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K. AGENCY CONTACT INFORMATION

**NYS Board on Electric Generation Siting and the
Environment (Siting Board)**

Three Empire State Plaza
Albany, NY 12223-1350
(518) 949-0798
Email: Houtan.Moaveni@dps.ny.gov
www.dps.ny.gov/SitingBoard

NYS Department of Environmental Conservation
www.dec.ny.gov

NYS DEC REGION 1

Regional Permit Administrator
SUNY @ Stony Brook
50 Circle Road
Stony Brook, NY 11790-3409
(631) 444-0365

NYS DEC REGION 2

Regional Permit Administrator
1 Hunter's Point Plaza
47-40 21st Street
Long Island City, NY 11101-5407
(718) 482-4997

NYS DEC REGION 3

Regional Permit Administrator
21 South Putt Corners Road
New Paltz, NY 12561-1620
(845) 256-3054

NYS DEC REGION 4

Regional Permit Administrator
1130 North Westcott Road
Schenectady, NY 12306-2014
(518) 357-2069

NYS DEC REGION 4 Sub-Office

Deputy Regional Permit Administrator
65561 State Hwy 10
Stamford, NY 12167-9503
(607) 652-7741

NYS DEC REGION 5

Regional Permit Administrator
PO Box 296
1115 Route 86
Ray Brook, NY 12977-0296
(518) 897-1234

NYS DEC REGION 5 Sub-Office

Deputy Regional Permit Administrator
PO Box 220
232 Golf Course Rd
Warrensburg, NY 12885-0220
(518) 623-1281

NYS DEC REGION 6

Regional Permit Administrator
317 Washington Street
Watertown, NY 13601-3787
(315) 785-2245

NYS DEC REGION 6 Sub-Office

Deputy Regional Permit Administrator
207 Genesee Street, Room 1404
Utica, NY 13501-2885
(315) 793-2555

NYS DEC REGION 7

Regional Permit Administrator
615 Erie Blvd. West, Room 206
Syracuse, NY 13204-2400
(315)426-7438

NYS DEC REGION 8

Regional Permit Administrator
6274 E. Avon - Lima Road
Avon, NY 14414-9519
(585) 226-5400

NYS DEC REGION 9

Regional Permit Administrator
270 Michigan Avenue
Buffalo, NY 14203-2915
(716) 851-7165

NYS DEC REGION 9 Sub-Office

Deputy Regional Permit Administrator
182 East Union Street, Suite 3
Allegany, NY 14706-1328
(716) 372-0645

NYS Department of Public Service (NYS DPS)

Three Empire State Plaza
Albany, NY 12223-1350
(518) 949-0798
Email: Houtan.Moaveni@dps.ny.gov
www.dps.ny.gov

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NYS Department of State (NYSDOS)

Office of Planning, Development
And Community Infrastructure
Consistency Review Unit
One Commerce Plaza
99 Washington Avenue, Suite 1010
Albany, NY 12231-00001
(518) 474-6000
Email: cr@dos.ny.gov
<https://www.dos.ny.gov/opd/programs/consistency/index.html>

NYS Office of Renewable Energy Siting (ORES)

Empire State Plaza
240 State Street
P-1 South, J Dock
Albany, NY 12242
(518) 949-0798
Email: Houtan.Moaveni@ores.ny.gov
www.ores.ny.gov

Saint Regis Mohawk Tribe

Water Resources Program
449 Frogtown Road
Akwesasne, NY 13655
www.srmt-nsn.gov

Seneca Nation

Environmental Protection Department
84 Iroquois Drive
Irving, NY 14081
(716) 532-2546

US Army Corps of Engineers

(For DEC Regions 1, 2 and 3)

US Army Corps of Engineers, NY District (NAN)

ATTN: Regulatory Branch, Room 16-406
26 Federal Plaza
New York, NY 10278-0090
For DEC Regions 1 & 2 - (917) 790-8511
For DEC Region 3 - (917) 790-8411
Email: CENAN-PublicNotice@usace.army.mil

(For DEC Regions 4, 5)

**US Army Corps of Engineers, NY District (NAN)
Upstate Regulatory Field Office**

ATTN: CENAN-OP-RU, Bldg. 10, 3rd Floor North
1 Buffington Street, Watervliet Arsenal
Watervliet, NY 12189-4000
(518) 266-6350 - Permits Processing Team
(518) 266-6360 - Compliance & Enforcement Team
Email: cenan.rfo@usace.army.mil

NAN Electronic Application Email:
CENAN-R-Permit-App@usace.army.mil

NAN website:
<http://www.nan.usace.army.mil/Missions/Regulatory/>

(For DEC Regions 6, 7, 8, 9)
**US Army Corps of Engineers,
Buffalo District (LRB)**

ATTN: Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207-3199
(716) 879-4330

LRB Electronic Application Email:
LRB.NewYork.RegActions@usace.army.mil

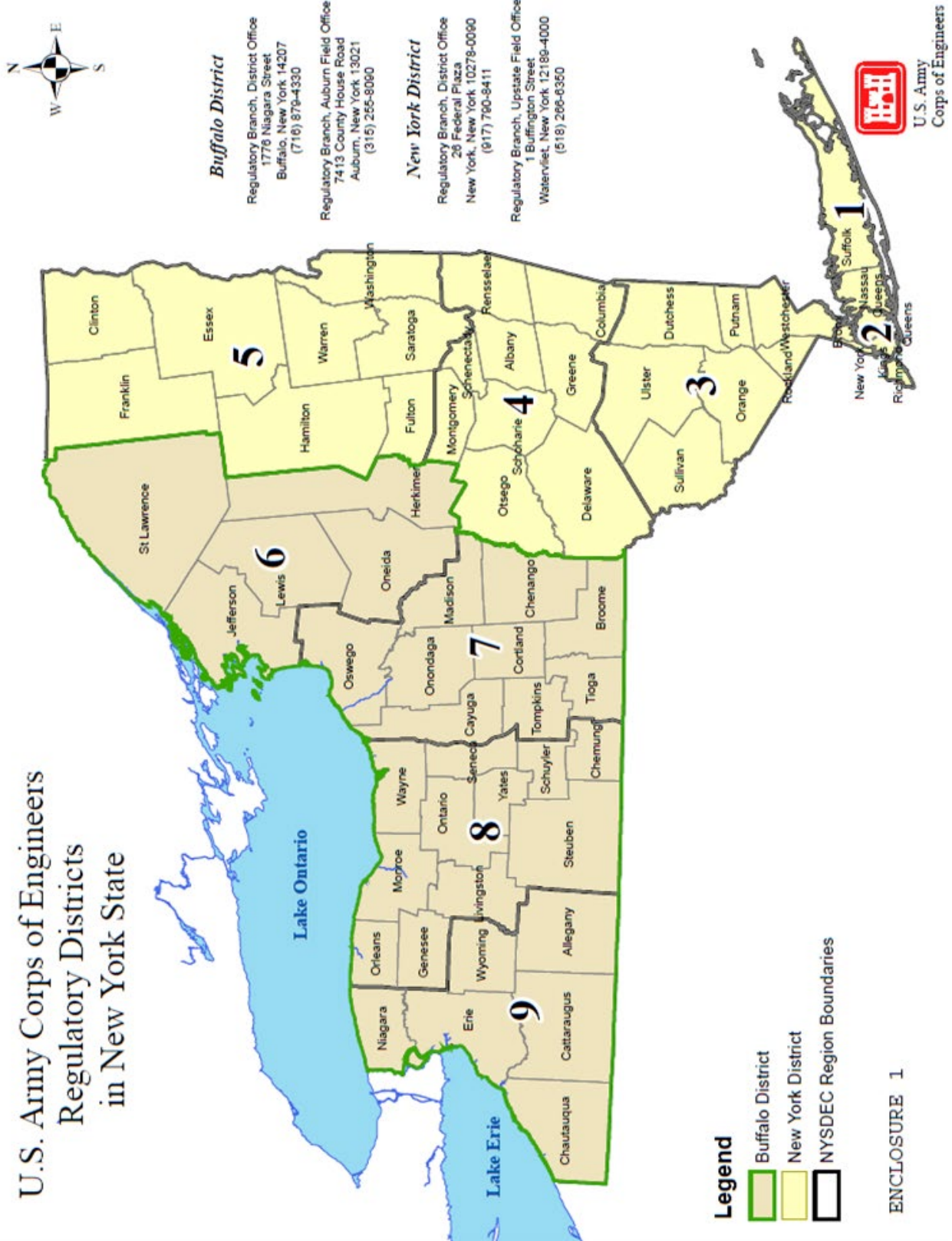
LRB website:
www.lrb.usace.army.mil/Missions/Regulatory/

US Environmental Protection Agency Region 2

Wetlands Protection Section
290 Broadway, 24th Floor
New York, NY 10007
212-637-3838
Email: Region2_CWA404@epa.gov

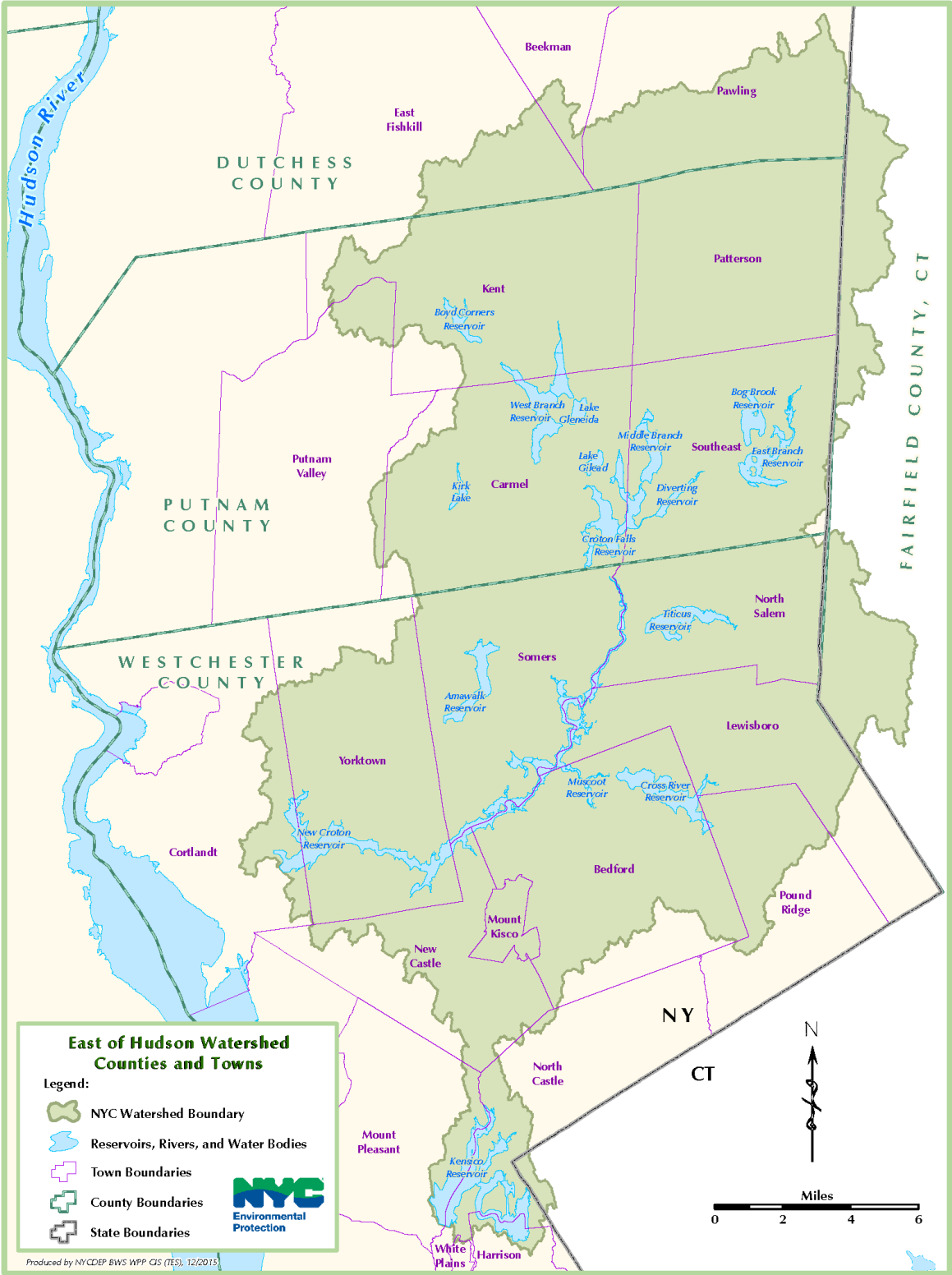
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ENCLOSURE 1



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ENCLOSURE 2



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ENCLOSURE 3



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

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 = $\sqrt{(\text{length of scope})^2 - (\text{water depth})^2}$
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.

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ENCLOSURE 4

**Incident Report of Sea Turtle Take
U.S. Army Corps of Engineers, New York District**

Date _____ Time (specimen found) _____

Species Taken: Loggerhead Kemp's ridley Leatherback
 Green Unknown turtle Other
(please circle and describe how specimen was identified in Comments)

Animal: Alive / Dead *(please circle)*
Specimen Decomposition: FRESH SLIGHTLY MODERATELY SEVERELY
Approximate length _____ Approximate width _____
(please designate cm/m or inches)

Condition of specimen/description of animal

Animal tagged: YES / NO *(please circle and record all tag numbers)*
Tag # _____

Photograph attached: YES / NO *(please circle)*
(please label species, date, geographic site and name on photo back)

Fate of animal _____

Geographic Site _____
Location: Lat/Long _____
Approx. depth of gear _____

Location where animal found *(leader, anchor line, buoy line, etc.)*

Thickness and type of line *(if applicable)* _____
Mesh size and type of net *(if applicable)* _____
Debris in gear? _____

Weather conditions _____

Water temp: Surface _____ Below midwater *(if known)* _____
Tide state (Ebb or Flood) _____
Entanglement on downcurrent or upcurrent side of net? _____

Comments/other *(include justification on how species was identified)*

Observer's Name _____ Permit # _____
Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number.