



# PUBLIC NOTICE

US Army Corps  
of Engineers

New York District  
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New York, N.Y. 10278-0090  
ATTN: Regulatory Branch

Buffalo District  
1776 Niagara Street  
Buffalo, N.Y. 14207  
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**Nationwide Permit Regional Condition  
Announcement for State of New York**

Issue Date: March 8, 2021

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## **FINAL REGIONAL CONDITIONS, WATER QUALITY CERTIFICATION AND COASTAL ZONE CONCURRENCE FOR 2021 NATIONWIDE PERMITS IN THE STATE OF NEW YORK**

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on **March 15, 2021**, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The 12 existing NWP published in the January 13, 2021 final rule replaces the 2017 versions of these NWP. The 2017 versions of NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52 expire on March 14, 2021. The January 13, 2021, *Federal Register* notice is available for viewing at

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.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 the 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.

With the publication of the January 13, 2021 Federal Register notice, Corps districts and divisions began finalizing regional conditions for these 16 NWP. Regional conditions provide additional protection for the aquatic environment and will help ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects. Regional conditions help ensure protection of high value waters within the State of New York within the Buffalo and New York Districts. Corps divisions and districts also began determining which conditions for water quality certifications (WQC) issued by states, tribes, and US Environmental Protection Agency (USEPA) would become conditions of these NWPs. In addition, they began determining which conditions for Coastal Zone Management Act (CZM) consistency concurrences issued by the state would become conditions of these NWPs. The approved regional conditions, including WQC & CZM, for the State of New York are discussed below.

In addition, there are 40 existing NWPs that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWPs were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and those NWPs, including associated WQC and CZM conditions, remain in effect until the Corps issues a final rule reissuing those NWPs or March 18, 2022, whichever comes first. The 2017 NWPs that remain in effect are:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering

- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

**Regional Conditions for State of New York for the 16 NWPs that will go into effect on March 15, 2021:**

The New York State Regional Conditions were approved by the North Atlantic Division for New York Districts’ area of responsibility (AOR) on February 11, 2021 and Great Lakes and Ohio River Division for Buffalo Districts’ AOR on February 15, 2021.

**1. District Regional Conditions:**

These include general conditions that apply to all NWPs as well as permit-specific conditions. The Regional Conditions have been incorporated into the attached NWP document (see specific NWP listing in Section B and general conditions in Section G).

**2. CZM:**

On December 10, 2020, the New York State Department of State (NYS DOS) provided the Districts its Coastal Zone Management determination (F-2020-0754) for the reissuance of the existing 54 NWPs and the five (5) new NWPs, as requested by the Districts on September 29, 2020, indicating the proposed reissuance and modification of the NWPs, pursuant to 33 CFR Part 330 is and will be conducted in a manner consistent to the maximum extent practicable with the New York State Coastal Management Program (CMP).

Regarding the 16 NWPs that will go into effect on March 15, 2021 and pursuant to 15 CFR 930.41 and 930.43, NYSDOS objected with the Corps’ consistency determination for these 16 NWPs anywhere in the New York coastal area. To ensure that the Corps’ NWPs and activities authorized by them would be consistent with the CMP and approved Local Waterfront Revitalization Programs, the following condition applies to these NWPs: “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.”

The NYSDOS determination has been incorporated into the attached NWP document (see specific NWP listing in Section B). For projects where NYSDOS has objected to the Corps consistency determination, the use of an NWP to authorize an activity within New York State’s coastal zone is contingent upon obtaining an individual CZM consistency determination or case-specific presumption of CZM concurrence from NYSDOS. Note that, for projects requiring an individual review by NYSDOS, a joint permit application package, including a completed NYS Federal Consistency Assessment Form (FCAF) and all information and data necessary to assess the effects of the proposed activity and its consistency with the coastal management program, shall be sent by the applicant to NYSDOS simultaneous with the submission of the pre-construction notification application package to the Corps, if required, and NYSDEC. For additional information regarding the NYSDOS CZM and their application forms and requirements, please contact NYSDOS (see Sections I and K).

**3. WQC:** In New York State the WQC certifying agency role is split amongst several entities. Their determinations regarding the 16 NWP that will go into effect on March 15, 2021 are discussed below. Note that NWP 55 and 56 do not authorize Section 404 activities and therefore WQC determinations are not required for these two NWPs.

A. On December 14, 2020, the Districts received the following WQC determinations:

- i. New York State Department of Public Services (NYS DPS) denied WQCs for all Section 404 NWPs that may apply to activities undertaken pursuant to New York State Public Service Law (PSL) Article VII for activities that relate to the construction and operation of major natural gas or electric transmission facilities.
- ii. The New York State Office of Renewable Energy Siting (NYSORES) denied WQCs for all Section 404 NWPs that may apply to activities undertaken pursuant to New York State Executive Law Article 6, Section 94-C for activities that relate to the construction and operation of major renewable electric generating facilities.
- iii. The New York State Board on Electric Generation Siting and the Environment (Siting Board) denied the request for WQC for all Section 404 NWPs that may apply to activities undertaken pursuant to PSL Article 10 for new and repowered or modified major electric generating facilities of 25 megawatts or more.
- iv. The 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) denied WQC for all Section 404 NWPs occurring on these tribal lands.

B. On December 23, 2020, the Saint Regis Mohawk Tribe denied WQC for all applicable NWPs occurring on Saint Regis Mohawk Tribal land.

C. On December 18, 2020, the Districts received the WQC determination from the New York State Department of Environmental Conservation (NYSDEC) for NWP activities not covered by the above determinations:

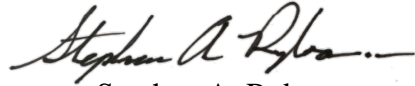
- i. NYSDEC has denied WQC for NWPs: 12, 21, 44, 50 & 52.
- ii. NYSDEC issued blanket WQC, subject to conditions, for NWPs: 29, 39, 40, 42, 43, 48, 51, 57 & 58.

The WQC determinations and conditions have been incorporated into the attached NWP document (see specific NWP listing in Section B and Section H). For projects where the WQC has been denied or that do not meet the general or special WQC conditions, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining an individual WQC or case-specific waiver from the respective agency or tribe (see attached agency contact information in Section K).

\*Please note that on September 11, 2020, the WQC process changed which requires additional steps prior to submission of an individual WQC request. Information regarding the WQC changes can be found on the Districts' websites or by contacting the appropriate WQC certifying authority.

Additional information concerning the Nationwide Permits and regional conditions in the State of New York can be obtained by reviewing the Districts' Internet Regulatory Home Pages:

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



Stephan A. Ryba  
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New York District

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**B. Nationwide Permits**

**12. Oil or Natural Gas Pipeline Activities.** Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in 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 of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for above-ground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other

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activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline 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: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

**Note 2:** For oil or natural gas pipeline activities 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. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

**Note 3:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.



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**Note 4:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States, are considered to be bridges and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

**Note 5:** This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

**Note 6:** For NWP 12 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).

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

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

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

2. For proposed submerged pipelines buried within navigable waterways, excluding waters listed in 12.a.1. above:

- i. The top of the pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.
- ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.
- iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.
- vi. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

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3. For proposed submerged pipelines placed on the waterway bottom within navigable waters, excluding waters listed in 12.a.1. above and Federal project channels, fleeting or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

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

5. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a pipeline crossing (e.g., "WARNING PIPELINE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the pipeline remains in place.

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

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

**New York District Only Permit-specific Regional Conditions:**

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

d. For those waterways not already disqualified by Condition 12.a.1. above, and located within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

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

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

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**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.
- 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 (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.

**21. Surface Coal Mining Activities.** Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

- (a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;
- (b) The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into tidal waters or non-tidal wetlands adjacent to tidal waters; and

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(c) The discharge is not associated with the construction of valley fills. A “valley fill” is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

**Notification:** The permittee must submit a pre-construction notification to the district engineer. (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 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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**29. Residential Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

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

**Subdivisions:** For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

**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):**

- a. The proposed impacts to waters of the United States shall include those direct impacts associated with construction of the proposed project, as well as any indirect impacts which may occur as a result of the project (e.g., filling waters of the United States to increase size of usable yard space, impacts to existing hydrologic regimes, etc.).
- b. This NWP may not be used in New York State for the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.
- c. Whenever a multiple-lot subdivision is submitted to the Corps of Engineers for review, it must be designed, to the maximum extent practicable, such that wetlands are not located on the resulting individual lots. If the applicant cannot design the subdivision in accordance with this requirement, the Pre-Construction Notification (PCN) must include a discussion as to why this requirement cannot be accomplished, along with a detailed description as to how the wetland areas on each individual lot will be adequately protected.
  - i. All areas within the multiple-lot subdivision that are components of compensatory mitigation, including waters of the United States and associated upland buffers, must be covered by a conservation easement or other legal protective covenant.
  - ii. For all other waters of the United States, following completion of work authorized by this nationwide permit, a copy of this permit and regional conditions, along with permit drawings showing the locations of waters of the United States, must be provided with the deed to all individual lots that will contain waters of the United States.

**New York District Only Permit-specific Regional Conditions:**

- d. This NWP is not applicable for activities located in the following areas:
  1. The Great Swamp in Putnam and Dutchess Counties
  2. Mianus River and adjacent wetlands
  3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: [https://www.dec.ny.gov/docs/wildlife\\_pdf/bcahherons.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/bcahherons.pdf) or contact the Trust for Public Land at the following address:

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

e. Within Essential Fish Habitat (EFH) or within areas supporting a nademous 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.

**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 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 #29 Special Condition:

- a) This certification does not authorize the construction of new residential development projects in wetlands located within a FEMA designated 100-year floodplain.

Any party 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

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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.

**39. Commercial and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

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

**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:** For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

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

- a. This NWP may not be used in New York State for the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.
- b. Whenever a multiple-lot subdivision is submitted to the Corps of Engineers for review, it must be designed, to the maximum extent practicable, such that wetlands are not located on the resulting individual lots. If the applicant cannot design the subdivision in accordance with this requirement, the preconstruction notification (PCN) must include a discussion as to why this requirement cannot be accomplished, along with a detailed description as to how the wetland areas on each individual lot will be adequately protected.
  - i. All areas within the multiple-lot subdivision that are components of compensatory mitigation, including waters of the United States and associated upland buffers, must be covered by a conservation easement or other legal protective covenant.
  - ii. For all other waters of the United States, following completion of work authorized by this nationwide permit, a copy of this permit and regional conditions, along with permit drawings showing the locations of waters of the United States, must be provided with the deed to all individual lots that will contain waters of the United States.

**New York District Only Permit-specific Regional Conditions:**

- c. This NWP is not applicable for activities located in the following areas:
  1. The Great Swamp in Putnam and Dutchess Counties
  2. Mianus River and adjacent wetlands

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3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: [https://www.dec.ny.gov/docs/wildlife\\_pdf/bcahherons.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/bcahherons.pdf) or contact the Trust for Public Land at the following address:

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

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

**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 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 #39 Special Condition:

- a) This certification does not authorize the construction of new commercial and institutional developments in wetlands located within a FEMA designated 100-year floodplain.

Any party 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.

**40. Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.

This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds.

This NWP also authorizes discharges of dredged or fill material into non-tidal jurisdictional waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.

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

**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)

**Note:** Some discharges of dredged or fill material into waters of the United States for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

**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.

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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 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 #40 Special Conditions:

- a) This certification does not authorize any discharge of dredged or fill material into streams. Alteration of natural stream courses is not authorized by this certification.
- b) This certification authorizes only buildings necessary for the agricultural productivity of farmland.
- c) This certification does not authorize non-agricultural buildings on farms such as roadside stands.
- d) This certification does not authorize construction of ponds in wetlands.

Any party 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's 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.

**42. Recreational Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

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

**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 Condition (Buffalo and New York Districts):**

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

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**New York District Only Permit-specific Regional Condition:**

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

1. The Great Swamp in Putnam and Dutchess Counties
2. Mianus River and adjacent wetlands
3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: [https://www.dec.ny.gov/docs/wildlife\\_pdf/bcaherons.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/bcaherons.pdf) 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 (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.

Any party 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 a 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

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certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

**43. Stormwater Management Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters, such as features needed to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. The maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features that are not waters of the United States does not require a section 404 permit.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal 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 does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

**Notification:** For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or pollutant reduction green infrastructure features, or the expansion of existing stormwater management facilities or pollutant reduction green infrastructure features, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature. (Authority: Section 404)

**Buffalo District Only Permit-specific Regional Conditions:** None

**New York District Only Permit-specific Regional Condition:**

- a. This NWP is not applicable for activities located in the following areas:
1. The Great Swamp in Putnam and Dutchess Counties
  2. Mianus River and adjacent wetlands
  3. Harbor Herons System in Staten Island, New York. For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation website at: [https://www.dec.ny.gov/docs/wildlife\\_pdf/bcahherons.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/bcahherons.pdf) 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:

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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 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 #43 Special Conditions:

- a.) This certification does not authorize the construction of new stormwater management facilities located within waters of the United States, except for outfall structures and emergency spillways.
- b.) This certification authorizes the maintenance of existing storm water management facilities.

Any party 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.

**44. Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

- (a) For mining activities involving discharges of dredged or fill material into non-tidal jurisdictional wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal jurisdictional wetlands;
- (b) For mining activities involving discharges of dredged or fill material in non-tidal jurisdictional open waters (e.g., rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (i.e., section 10 waters),

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the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and

(c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

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

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

**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.

Any party 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 a 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

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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.

**48. Commercial Shellfish Mariculture Activities.** Structures or work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops) in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

**Notification:** The permittee must submit a pre-construction notification to the district engineer if the activity directly affects more than 1/2-acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** The permittee should notify the applicable U.S. Coast Guard office regarding the project.

**Note 2:** To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

**Note 3:** The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

**Buffalo District Only Permit-specific Regional Conditions:** None

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

**New York District Only Permit-specific Regional Conditions:**

- a. The applicant shall submit a location map showing latitude and longitude or UTM coordinates to the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data

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Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, for charting purposes prior to initiation of the mariculture activities.

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

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

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

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

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

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

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

**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 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 #48 Special Condition:

- This certification does not authorize the expansion of aquaculture activities into new areas of a project.

Any party 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's 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.

**50. Underground Coal Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal 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 does not authorize coal preparation and processing activities outside of the mine site.

**Notification:** The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (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 (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.

Any party 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 a 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.

**51. Land-Based Renewable Energy Generation Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

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

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Electric utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

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**Note 2:** If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

**Note 3:** For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**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.

Any party 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's 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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**52. Water-Based Renewable Energy Generation Pilot Projects.** 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, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term “pilot project” means an experimental project where the water-based renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre limit.

For each single and complete project, no more than 10 generation units (e.g., wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2-acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

**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 1:** Electric utility lines constructed to transfer the energy from the land-based collection facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

**Note 2:** An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

**Note 3:** If the pilot project generation units, including any transmission lines, are placed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

**Note 4:** Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

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**Note 5:** For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

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

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

**New York District Only Permit-specific Regional Conditions:**

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

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

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

Any party 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 a 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's 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

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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.

**55. Seaweed Mariculture Activities.** Structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for seaweed mariculture activities. This NWP also authorizes structures for bivalve shellfish mariculture if shellfish production is a component of an integrated multi-trophic mariculture system (e.g., the production of seaweed and bivalve shellfish on the same structure or a nearby mariculture structure that is part of the single and complete project).

This NWP authorizes the installation of buoys, long-lines, floats, anchors, rafts, racks, and other similar structures into navigable waters of the United States. Rafts, racks, and other floating structures must be securely anchored and clearly marked. To the maximum extent practicable, the permittee must remove these structures from navigable waters of the United States if they will no longer be used for seaweed mariculture activities or multi-trophic mariculture activities.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

This NWP does not authorize:

(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

**Notification:** The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the preconstruction notification must also include the following information: (1) a map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per structure or group of structures should be submitted for the seaweed mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)

**Note 1:** The permittee should notify the applicable U.S. Coast Guard office regarding the project.

**Note 2:** To prevent introduction of an aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

**Note 3:** The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

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**Buffalo District Only Permit-specific Regional Conditions:** None

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

**New York District Only Permit-specific Regional Conditions:**

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

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

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

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

Note 3: As outlined in this NWP, item (a) does not authorize the cultivation of a non-indigenous species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Please refer to the NY State Department of Environmental Conservation website for more information on non-indigenous ("non-native" or "invasive") species for New York State: <https://www.dec.ny.gov/animals/99141.html>

**Section 401 Water Quality Certification:**

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's 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

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certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63. See Section I below for further information.

**56. Finfish Mariculture Activities.** Structures in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for finfish mariculture activities. This NWP also authorizes structures for bivalve shellfish mariculture and/or seaweed mariculture if the structures for bivalve shellfish and/or seaweed production are a component of an integrated multi-trophic mariculture structure (e.g., the production of bivalve shellfish or seaweed on the structure used for finfish mariculture, or a nearby mariculture structure that is part of the single and complete project).

This NWP authorizes the installation of cages, net pens, anchors, floats, buoys, and other similar structures into navigable waters of the United States. Net pens, cages, and other floating structures must be securely anchored and clearly marked. To the maximum extent practicable, the permittee must remove these structures from navigable waters of the United States if they will no longer be used for finfish mariculture activities or multi-trophic mariculture activities.

This NWP does not authorize the construction of land-based fish hatcheries or other attendant features.

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

This NWP does not authorize:

(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

**Notification:** The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) a map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per structure or group of structures should be submitted for the finfish mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)

**Note 1:** The permittee should notify the applicable U.S. Coast Guard office regarding the finfish mariculture activity.

**Note 2:** To prevent introduction of an aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

**Note 3:** The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines “aquatic nuisance species” as “a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters.”



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**Buffalo District Only Permit-specific Regional Conditions:** None

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

**New York District Only Permit-specific Regional Conditions:**

a. The applicant shall submit a Pre-Construction Notification (PCN) to USACE including planned chartlets and siting information (water depth, equipment type, annual installation duration, etc.) coordination with the U.S. Coast Guard (USCG) and National Marine Fisheries Service. The PCN submitted to USACE shall also include a description of the quantity and dimensions of all proposed structure(s), including: culture gear (lines, cages pens, etc.), anchors, and site markers; a map showing the project location(s), including the longitude and latitude of site boundaries; and a schematic or drawing showing how the gear will be deployed on the site (a formally engineered schematic is not required); and address concerns about wastes from cage cultures, escapees and invasives, genetic pollution, disease and parasite transfer, and habitat modification. The PCN shall include a siting analysis and a discussion regarding impacts to competing user groups in the area of the proposed activities.

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

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

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

Note 3: As outlined in this NWP, item (a) does not authorize the cultivation of a non-indigenous species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. Please refer to the NY State Department of Environmental Conservation website for more information on non-indigenous ("non-native or invasive") species for New York State: <https://www.dec.ny.gov/animals/99141.html>

**Section 401 Water Quality Certification:**

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

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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.

**57. Electric Utility Line and Telecommunications Activities.** Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in pre-construction contours of waters of the United States. An "electric utility line and telecommunication line" is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and streambanks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in 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 of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines, including overhead lines and substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or

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telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line 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: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

**Note 2:** For electric utility line or telecommunications activities 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. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

**Note 3:** Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

**Note 4:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

**Note 5:** This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

**Note 6:** For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**Note 7:** For 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

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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).

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

a. For Aerial Transmission Lines Across Navigable Waters:

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

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

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

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

b. For Submerged Cables and Conduits Across Navigable Waters and Federal Navigation Channels:

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

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2. For proposed submerged cables and conduits buried within navigable waterways, excluding waters listed in 57.b.1. a above:

- i. The top of the cable or conduit crossing any Federal project channel, fleet or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.
- ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.
- iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- iv. In areas outside of Federal project channels, fleet or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
- v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents and details as to any anchoring systems.
- vi. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

3. For proposed submerged cables and conduits placed on the waterway bottom within navigable waters, excluding waters listed in 12.b.1. a above and Federal project channels, fleet or anchorage areas: the Pre-Construction Notification (PCN) shall include justification for the need to place the utility line on the waterway bottom, a discussion on potential effects of the proposed exposed utility line to public safety associated with public use of the waterway (i.e. fishing, anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents, and details as to any anchoring systems.

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

5. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a cable or conduit crossing (e.g., "WARNING – CABLE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the utility line remains in place.

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

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

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**New York District Only Permit-specific Regional Conditions:**

- d. For those waterways not already disqualified by Condition 57.b.1. above, and located within Essential Fish Habitat (EFH) or within areas supporting a nadromous fish migration and spawning, as discussed in Section G-E.8. below, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.
- e. For those waterways not already disqualified by Condition 57.b.1. above, and located within Essential Fish Habitat (EFH), if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- f. Within Essential Fish Habitat (EFH), this NWP does not authorize the discharge into waters of the United States of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.
- g. Within Essential Fish Habitat (EFH), as discussed in Section G-E.8. below, if any work is proposed within 50 feet of SAV, a map generated from the SAV data tools in Note 5 or a current SAV survey of the area shall be submitted with the PCN for USACE coordination with National Marine Fisheries Service (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 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.

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NYSDEC WQC NWP #57 Special Conditions:

- a) Materials resulting from Utility Line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.
- b) Utility Line 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 Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
- c) Buried utility lines that cross under streams must be placed at a depth to prevent future exposure of the line. A site-specific vertical adjustment potential (VAP) analysis, or similar engineering analysis, must be conducted by a licensed engineer to determine the proper depth for all lines except water lines.

Any party 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’s 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.

**58. Utility Line Activities for Water and Other Substances.** Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, storm water, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States

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(e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

**Utility line substations:** This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in 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 of the United States to construct, maintain, or expand substation facilities.

**Foundations for a above-ground utility lines:** This NWP authorizes the construction or maintenance of foundations for a above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

**Access roads:** This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line 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: (1) a section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where the utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.



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**Note 2:** For utility line activities 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. Utility line activities must comply with 33 CFR 330.6(d).

**Note 3:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

**Note 4:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

**Note 5:** This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

**Note 6:** For 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).

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

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

1. This nationwide permit is not applicable to activities on the following waterways across deep-draft Federal Navigation Channels: (1) Arthur Kill; (2) Atlantic Ocean; (3) East River; (4) Harlem River; (5) Hudson River, downstream of the southern limit of the New York State Barge Canal at Waterford, New York; (6) Jamaica Bay/Rockaway Inlet, 20 foot deep entrance channel from the mouth of the inlet, upstream to the second channel bend at Rockaway Point; (7) Kill Van Kull; (8) Long Island Sound; (9) Lower New York Bay; (10) Newark Bay; (11) Raritan Bay; (12) Rondout Creek/Harbor, downstream of the Route 9W highway bridge; and (13) Upper New York Bay, including Bay Ridge, Red Hook and Buttermilk Channels.
2. For proposed buried pipelines within navigable waterways, excluding waters listed in 58.a.1 above:
  - i. The top of the pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.
  - ii. The burial depth is measured from the authorized project channel depth to the top of the outermost layer of the utility line.
  - iii. In cases where the channel's existing bottom is already deeper than the authorized project depth, the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
  - iv. In areas outside of Federal project channels, fleeting or anchorage areas, the top of the utility line shall be located a minimum of 7 feet below the existing bottom in sediment and 2 feet below the existing bottom in compacted rock.
  - v. The District Engineer, on a case-by-case basis, may modify these depth requirements where circumstances are deemed appropriate (i.e. water intake lines, dry hydrants, etc.). Any request to modify these depth requirements must include a discussion of potential effects of the utility line to

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public safety associated with public use of the waterway (i.e. fishing anchorage, boating, swimming, navigation, etc.), how the line will be protected from ice scour and movement by waves or currents and details as to any anchoring systems.

vi. Where trenching and backfilling are proposed, backfill material shall consist of suitable heavy materials and shall be placed no higher or lower than the adjacent river bottom elevation.

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

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

5. Within 15 days after completion of the authorized work, the permittee shall post visible signage on weatherproof placards no smaller than 4 feet by 4 feet on each shoreline at the location of the authorized crossing. The placard shall contain language informing waterway users of the presence of a pipeline crossing (e.g., "WARNING-PIPELINE CROSSING"), unless specifically authorized otherwise by the District Engineer. The sign shall be maintained in place for as long as the pipeline remains in place.

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

**New York District Only Permit-specific Regional Conditions:**

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

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

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

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

**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 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 #58 Special Condition**

- a) Materials resulting from Utility Line trench excavation that are temporarily sidecast into waters of the United States must be used to backfill the trench or removed within 30 days of deposition.
- b) Utility Line 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 Department as a single project for all crossings for the entire length of the project in New York State for the purpose of obtaining Water Quality Certification from New York State and determining the disturbance threshold of 300 linear feet or ¼ acre.
- c) Buried utility lines that cross under streams must be placed at a depth to prevent future exposure of the line. A site-specific vertical adjustment potential (VAP) analysis, or similar engineering analysis, must be conducted by a licensed engineer to determine the proper depth for all lines except water lines.

Any party 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 a 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's 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 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 NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

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**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.

**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

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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 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 NWPs.

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(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 an 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.

**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 an 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

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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 a 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 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.



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(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 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)

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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 NWP, 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.

(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 NWP. 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 NWP.

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(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.

(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 casespecific 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.

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**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 an 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)

**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.

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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 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

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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.

(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

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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 a 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 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**

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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 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



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an authorization under the NWP and instruct the applicant on the procedures to seek an 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 a 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 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.

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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 an 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 an 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 gauges, 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 an 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 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.

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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 NWP, 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 a 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 a aquatic resource area and functions.

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 a aquatic resource function, but does not result in a gain in a 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 a 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.

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**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 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

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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 a 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 sea grasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP, 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 and New York District General Regional Conditions**  
**These conditions apply to ALL Nationwide Permits.**

**G-A. Construction Best Management Practices (BMPs):** Unless specifically approved otherwise through issuance of a variance by the District Engineer, the following BMPs 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.
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

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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 storm water 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:

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.)

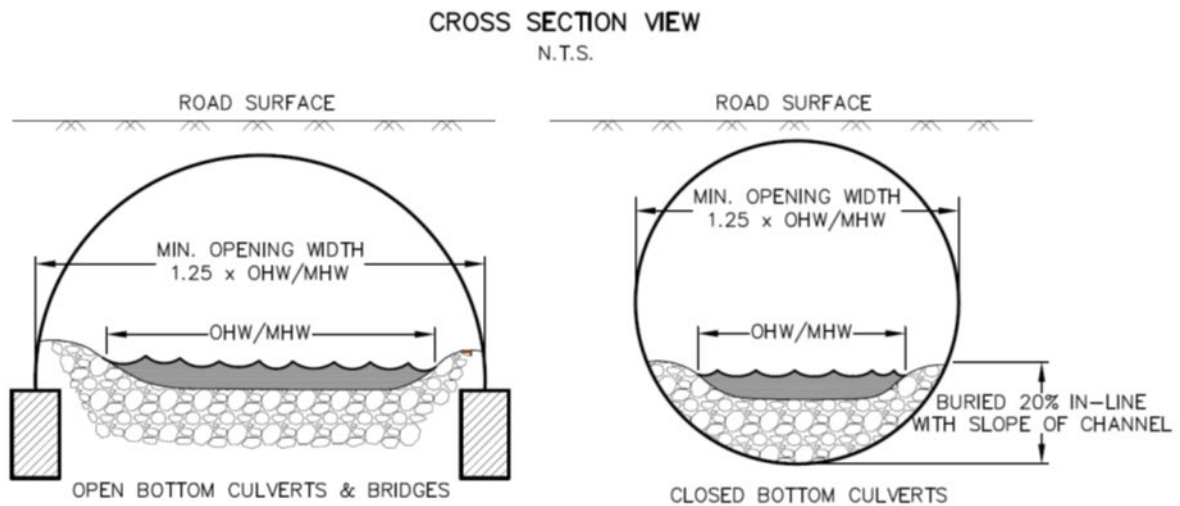
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- c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- d. The culvert bed slope shall remain consistent with the slope of 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/>.



**Pre-Construction Notification (PCN) Requirements:**

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.

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- Flow/storm event the proposed culvert is designed to pass (2-year, 50-year, etc.)
- iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:
  - Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the stream bed and the average width at ordinary high water.
    - For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
    - For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used. Note: sections should not be taken in the immediate vicinity of the structure as the channel width may be affected by the structure and not provide an accurate representation of the natural channel.
  - This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
  - If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.
- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and
- vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures

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

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

- a. An evaluation of the existing culvert shall be conducted prior to the proposed culvert rehabilitation to determine if the existing culvert is in compliance with NWP GC #2 and #9. Specifically, the culvert shall 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 Fish Xing, etc.)
- b. A PCN is not required for projects that utilize cured-in-place pipe lining or other repair activities that do not raise the existing invert elevation such that it causes an impediment to the passage of either aquatic life movement or water flow, unless there is an existing impediment which will not be corrected by the proposed repair.



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

**Preconstruction Notification (PCN) Requirements:**

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

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

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

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

**G-D. National Wild and Scenic Rivers (NWSR):** The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #16, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Therefore, a PCN is required for any NWP which would impact the designated portions of the Genesee River or the Upper Delaware River, unless NPS has previously indicated the project will not adversely affect the waterway. (Note: the applicant may not commence work under any NWP until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the PCN package.) Information regarding NWSR may be found at: <https://www.rivers.gov/new-york.php>

**G-E. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 32, the applicant should also include: (Note: inclusion of the materials will help expedite PCN review timeline.)**

**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

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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 a 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 1/10<sup>th</sup> of an acre of wetlands and/or 3/100<sup>th</sup> 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/](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/) and any applicable District Guidelines.

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

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

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

**6. Nationwide Rivers Inventory:** The PCN should 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/nrc/programs/rtca/nri/states/ny.html>.

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**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.

**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 should include:

- a) a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened, Endangered, or Candidate (TE&C) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project (See Note 2 below).
- b) an official TE&C 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 TE&C 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

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to determine if there may be listed Threatened or Endangered species. Information on NOAA-Fisheries (NMFS) species (both TE&C and EFH) can be found at:

<https://www.greateratlantic.fisheries.noaa.gov/>. Region-specific information on NMFS species (both TE&C 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>.

- c) For projects where TE&C species are listed, a discussion of potential TE&C species habitat within the project site (See USFWS T&E website for species habitat information).  
<https://www.fws.gov/northeast/nyfo/es/section7.htm>
- d) If there is potential habitat for any TE&C 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, storm water 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 TE&C species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of TE&C 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 & TE&C 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

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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 a agency coordination in accordance with General Condition # 32(d)(2) for:
  - i. All NWP activities that result in the loss of greater than 1/2-acre of waters of the United States,
  - ii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites;
  - iii. NWP 54 activities in excess of 500 linear feet or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

**G-F. CRITICAL RESOURCE WATERS**

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

Critical Resource Waters in New York State include the following:

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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 NWP 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”<sup>2</sup>.
- 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.

<sup>2</sup> Critical 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).)

3. **Discharges and Disturbances Limits** - The following discharge and disturbance limits apply to this certification:

- For NWPs 5, 7, 13, 14, 15, 18, 19, 23, 25, 29, 31, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, 57, and non-maintenance activities under NWP 43 the following discharge limits apply:
  - a) Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the United States must not exceed ¼ acre;
  - b) Temporary or permanent impacts (i.e., loss) to stream beds, lake shorelines, and ocean shorelines must not exceed 300 linear feet; and
  - c) 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.
- For NWPs 3, 4, 6, 20, 22, 27, 30, 33, 41 and maintenance activities under NWP 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.

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- 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 DEC website at <https://www.dec.ny.gov/animals/38801.html>.

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 DEC 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.

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water classification values can be found on the DEC's Environmental Resource Mapper available on the Department's website at <https://gisservices.dec.ny.gov/gis/erm/>. Work windows may be altered by the Regional Natural Resources Supervisor or their designee.

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

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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. Wild, Scenic and Recreational Rivers** - This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors.  
<https://www.dec.ny.gov/permits/6033.html>

**14. 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 DEC is required for all projects regulated by FERC.

**15. 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.

**16. 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.

**I. New York State Department of State (NYS DOS) Coastal Zone Management Consistency Determination Additional Information (applicable to all NWP's 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, NWP's 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.



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**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.

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](mailto:Houtan.moaveni@dps.ny.gov)  
[www.dps.ny.gov/SitingBoard](http://www.dps.ny.gov/SitingBoard)

**NYS Department of Environmental Conservation**  
[www.dec.ny.gov](http://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](mailto:Houtan.moaveni@dps.ny.gov)  
[www.dps.ny.gov](http://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](mailto: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  
[www.ores.ny.gov](http://www.ores.ny.gov)  
518-949-0798  
Email: [houtan.moaveni@ores.ny.gov](mailto:houtan.moaveni@ores.ny.gov)

**Saint Regis Mohawk Tribe**

Water Resources Program  
449 Frogtown Road  
Akwesasne, NY 13655  
[www.srmt-nsn.gov](http://www.srmt-nsn.gov)

**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](mailto: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](mailto:cenan.rfo@usace.army.mil)

NAN Electronic Application Email:  
[CENAN-R-Permit-App@usace.army.mil](mailto:CENAN-R-Permit-App@usace.army.mil)  
NAN website: <http://www.nan.usace.army.mil>

(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](mailto:LRB.NewYork.RegActions@usace.army.mil)  
website: [www.lrb.usace.army.mil/Missions/Regulatory/](http://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](mailto:Region2_CWA404@epa.gov)

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



### *Buffalo District*

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

Regulatory Branch, Auburn Field Office  
7413 County House Road  
Auburn, New York 13021  
(315) 266-8090

### *New York District*

Regulatory Branch, District Office  
28 Federal Plaza  
New York, New York 10278-0090  
(917) 760-8411

Regulatory Branch, Upstate Field Office  
1 Buffington Street  
Watervliet, New York 12189-4000  
(518) 266-6360

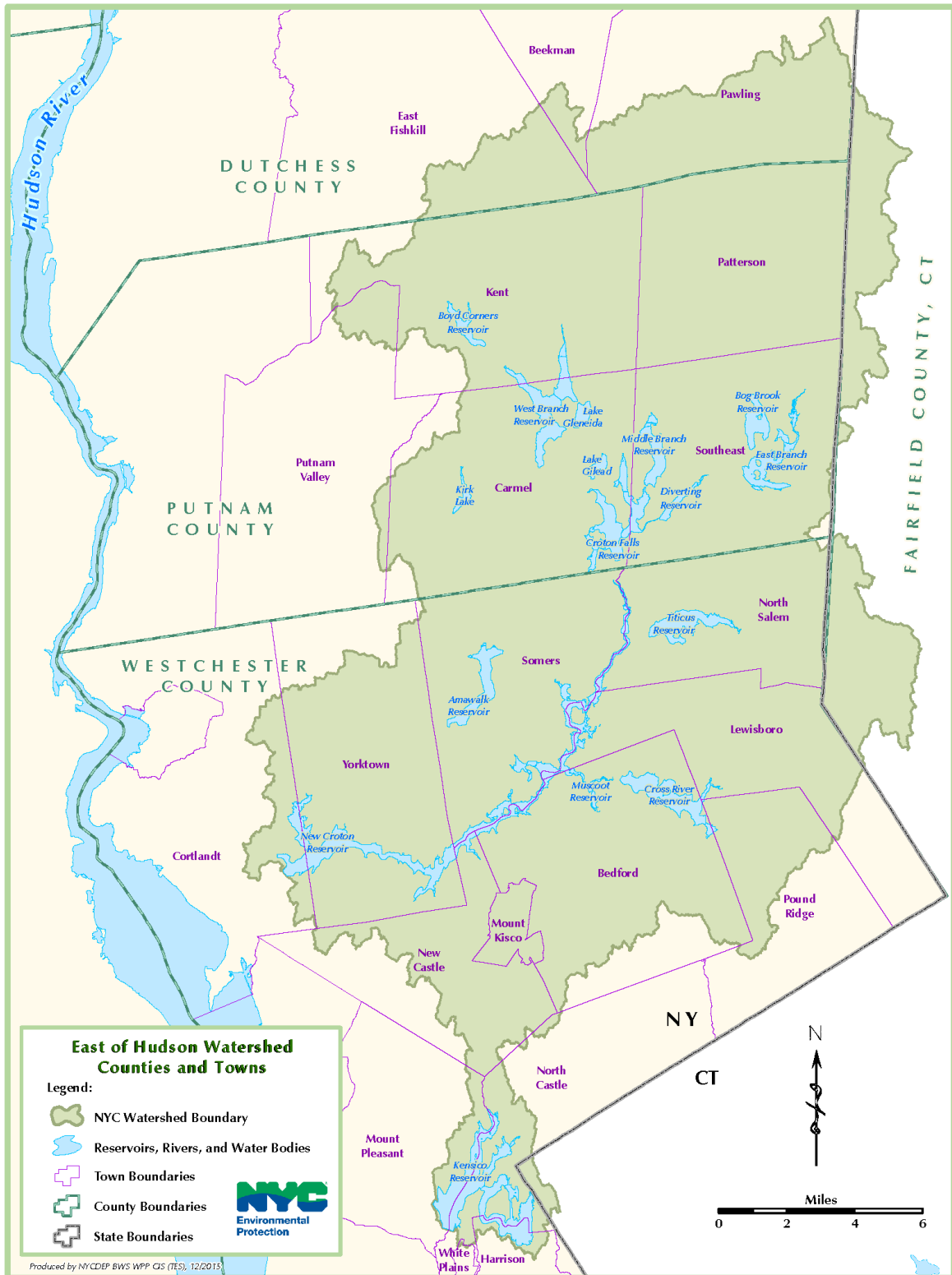


U.S. Army  
Corps of Engineers

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 =  $\sqrt{(length\ of\ scope)^2 - (water\ depth)^2}$   
 Swing Radius = (Watch circle) + (Barge(s) length astern) + (Pendant length(s)) + (10% of swing radius). You must maintain an additional 10% of your Swing Radius from any adjacent mooring buoy Swing Radius for safety and maneuvering.

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

**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 # \_\_\_\_\_  
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