



PUBLIC NOTICE

US Army Corps
of Engineers

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

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

**New York State Nationwide
Permit Regional Conditions**
Issue Date: June 16, 2016
Expiration Date: August 1, 2016

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWPs.

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

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2015-0017 at www.regulations.gov, or by email to NWP2017@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the June 1, 2016 Federal Register notice. Comments on the proposed NWPs are due by August 1, 2016.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWPs are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 2) lists the proposed regional conditions currently under consideration by the New York District and the Buffalo District for their portions of New York State, as shown in Enclosure 3. The New York District and the Buffalo District are seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse

environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the entire state of New York. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to Brian Orzel, USACE, New York District, 26 Federal Plaza, Room 1937, New York, New York 10278. Comments relating to regional conditions are due by August 1, 2016. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP. The final NWP will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWP, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP, are available for viewing at www.regulations.gov, docket number COE-2015-0017. Final decision documents will be prepared for the NWP that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions (Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at www.regulations.gov in docket number COE-2015-0017, or at the Federal Register at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-01/pdf/2016-12083.pdf>.



Stephan A. Ryba
Chief, Regulatory Branch
New York District

ENCLOSURE 1

Index of Proposed Nationwide Permits, Conditions, and Definitions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
- A. Removal of Low-Head Dams
- B. Living Shorelines

ENCLOSURE 1

Nationwide Permit General Conditions

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

District Engineer's Decision

Further Information

Definitions

Best management practices (BMPs)	Practicable
Compensatory mitigation	Pre-construction notification
Currently serviceable	Preservation
Direct effects	Re-establishment
Discharge	Rehabilitation
Enhancement	Restoration
Ephemeral stream	Riffle and pool complex
Establishment (creation)	Riparian areas
High Tide Line	Shellfish seeding
Historic property	Single and complete linear project
Independent utility	Single and complete non-linear project
Indirect effects	Stormwater management
Intermittent stream	Stormwater management facilities
Loss of waters of the United States	Stream bed
Non-tidal wetland	Stream channelization
Open water	Structure
Ordinary high water mark	Tidal wetland
Perennial stream	Vegetated shallows
	Waterbody

ENCLOSURE 2
PROPOSED NATIONWIDE PERMIT REGIONAL CONDITIONS
AND DESIGNATED CRITICAL RESOURCE WATERS IN THE
BUFFALO AND NEW YORK DISTRICTS
(NEW YORK STATE)

I. Nationwide Permit Specific Regional Conditions:

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

* Unless otherwise noted, all proposed regional conditions listed herein are applicable for activities in the entire state of New York. See Nationwide Permit (NWP) General Conditions and NWP General Regional Conditions for additional requirements.

**** PLEASE NOTE that all proposed changes from the 2012 Regional Conditions are highlighted in yellow.**

Nationwide Permit 1 - Aids to Navigation

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

Nationwide Permit 2 - Structures in Artificial Canals

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

Nationwide Permit 3 - Maintenance

REMINDER TO APPLICANT: For projects involving culvert maintenance or replacement, please take particular note of the requirements of General Regional Conditions A.11. and A.12., below.

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

a. The Nationwide General Permit Condition No. 31 – Pre-Construction Notification (PCN) for activities proposed under NWP 3.b. involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, must include evidence of such depths. Such evidence may include but is not limited to: construction drawings of the original structure; or project drawings of past excavation activities in the vicinity. If this information is not available, the PCN must include evidence of the existing depths immediately outside the proposed work area.

b. Every effort should be made to prevent additional encroachment into the beds of New York waterbodies. All repair or rehabilitation activities should focus on using the area immediately landward of the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, a PCN shall be required for any encroachment proposed within tidal waters of the U.S. or any extensions, **excluding the placement of toe stone**, that exceed 18 inches waterward of the existing bulkhead within non-tidal waters. The PCN must include justification for a waterward extension of the bulkhead (e.g. geologic conditions, engineering requirements, etc.).

New York District Only Permit-specific Regional Condition:

c. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

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

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

Nationwide Permit 5 - Scientific Measurement Devices

Buffalo District Only Permit-specific Regional Conditions: None

~~a. A pre-construction notification is required for any meteorological stations proposed within open waters.~~

New York District Only Permit-specific Regional Conditions:

- b. Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes.
- c. The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

Nationwide Permit 6 - Survey Activities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Work cannot preclude the passage of anadromous fishes.
- b. The use of in-water explosives is prohibited.

Nationwide Permit 7 - Outfall Structures and Associated Intake Structures

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. Any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meet or exceed the “wedge wire” design technology.
- b. The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

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

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

Nationwide Permit 9 - Structures in Fleeting and Anchorage Areas

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

- a. A PCN is required for all activities and shall require submission of a completed copy of Enclosure 5 entitled “**Commercial Mooring Buoy Application Additional Information**” with the application.

Nationwide Permit 10 - Mooring Buoys

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

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

Buffalo District Only Permit-specific Regional Condition: Note: Regional Permit (RP) #87-000-1 (<http://www.lrb.usace.army.mil/Missions/Regulatory/NYRegionalPermits.aspx>) Special Condition #12 authorizes up to four commercial and non-commercial mooring buoys per property. The RP includes activities authorized by NWP 10 to simplify permitting when other structures (i.e. docks, hoists, etc.) are also proposed. Both the NWP 10 and RP have similar conditions relating to mooring buoys, therefore either permit may be used for non-commercial mooring buoys.

b. All mooring buoys must be approved by the Ninth Coast Guard District prior to installation. Information concerning the approval process may be obtained by calling (216)-902-6073 or by writing to: Commander (DPW), Ninth Coast Guard District, ATTN: Private Aids to Navigation, 1240 East Ninth Street, Cleveland, Ohio 44199-2060. All requests for approval must be submitted on a CG-2554 form (Private Aids to Navigation Application). The document is available at: http://www.uscg.mil/D11/dp/PATON/Blank_CG-2554.pdf

New York District Only Permit-specific Regional Conditions:

c. Water depths in the mooring area must be sufficient such that any moored vessels float at all stages of the tide.

d. Mooring buoys are prohibited in areas with submerged aquatic vegetation (SAV).

Nationwide Permit 11 - Temporary Recreational Structures

Buffalo District Only Permit-specific Regional Conditions:

a. This NWP does not authorize the placement of seasonal structures that are not associated with a specific event. Seasonal structures may be authorized by Regional Permit #87-000-1. (<http://www.lrb.usace.army.mil/Missions/Regulatory/NYRegionalPermits.aspx>)

New York District Only Permit-specific Regional Conditions:

b. All temporary structures must be located with sufficient water depths such that the structures float at all stages of the tide.

c. This NWP does not authorize the placement of any temporary structures in areas with submerged aquatic vegetation (SAV).

d. Within tidal waters, this NWP authorizes only the placement of seasonal structures that are associated with a specific event.

Nationwide Permit 12 - Utility Line Activities

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). The following table pertains to aerial transmission lines across navigable waters, is located at 33 CFR 322.5(i)(2) and is included here for easy reference:
~~The following minimum clearances are required for aerial transmission lines across navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges or the clearances which would be required by the United States~~

Coast Guard for new fixed bridges in the vicinity of the proposed aerial transmission line. These clearances are to be measured at the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

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

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

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 mean 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 Pipelines Across Navigable Waters and Federal Navigation Channels:

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

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

- i. The top of the cable or pipeline crossing any Federal project channel, fleeting or anchorage area, shall be located a minimum of 12 feet below the authorized project channel depth.
- 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 4 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 4 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 pipelines placed on the waterway bottom within navigable waters, excluding waters listed in 12.b.1. above and Federal project channels, fleeting or anchorage areas:

the 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 in situations where the utility line would be located in a waterway but would not cross the waterway, unless waived 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 pipeline crossing (e.g., “WARNING – CABLE [or 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.

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

New York District Only Permit-specific Regional Conditions:

d. For those waterways not already disqualified by Condition 12.b.1. above, to the maximum extent practicable, no discharge of fill material within waters of the United States shall occur between March 1 and June 30.

e. 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. If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts taken to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, the efforts shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV area.

Nationwide Permit 13 - Bank Stabilization

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

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

New York District Only Permit-specific Regional Condition:

b. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 14 - Linear Transportation Projects

REMINDER TO APPLICANT: For projects involving culverts, please take particular note of the requirements of General Regional Conditions A.11. and A.12., below.

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

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

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

Nationwide Permit 16 - Return Water From Upland Contained Disposal Areas

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

Nationwide Permit 17 - Hydropower Projects

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

Nationwide Permit 18 - Minor Discharges

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 19 - Minor Dredging

Buffalo District Only Permit-specific Regional Conditions: This NWP does not authorize minor dredging to improve recreational use as those activities may be authorized by Regional Permit 81-000-1. (<http://www.lrb.usace.army.mil/Missions/Regulatory/NYRegionalPermits.aspx>)

New York District Only Permit-specific Regional Condition:

- a. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 20 - Oil Spill Cleanup

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

Nationwide Permit 21 - Surface Coal Mining Activities

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

Nationwide Permit 22 - Removal of Vessels

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

Nationwide Permit 23 - Approved Categorical Exclusions

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

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

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

Nationwide Permit 25 - Structural Discharges

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

Nationwide Permit 26 – Reserved

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

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

- a. Within Essential Fish Habitat waters as defined in Section II.D.8. below, any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.

Nationwide Permit 28 - Modifications of Existing Marinas

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

- a. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 29 - Residential Developments

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

- a. The proposed impacts to waters of the United States shall include those direct impacts associated with construction of the proposed project, as well as any indirect 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 does not authorize 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 such that preserved, restored or established wetlands are not located on the resulting individual lots.

New York District Only Permit-specific Regional Condition:

- 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 web site at: <http://www.dec.ny.gov/animals/27238.html> or contact the Trust for Public Land at the following address:

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

Nationwide Permit 30 - Moist Soil Management for Wildlife

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

Nationwide Permit 31 - Maintenance of Existing Flood Control Facilities

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

Nationwide Permit 32 - Completed Enforcement Activities

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

Nationwide Permit 33 - Temporary Construction, Access and Dewatering

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

- a. NWP 33 activities require a PCN if any forested wetlands would be cleared. Restoration plans for the cleared area must include plantings of native replacement trees.

New York District Only Permit-specific Regional Condition:

- b. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 34 - Cranberry Production Activities

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

Nationwide Permit 35 - Maintenance Dredging of Existing Basins

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

- a. In addition to the PCN requirements of General Condition #31, all PCN submittals must include:
 - 1. Documentation that the dredging depths were previously authorized or details on what establishes the controlling depths;
 - 2. An assessment of impacts that the proposed work will have on endangered species and essential fish habitat including the direct, indirect and cumulative impacts of the proposed dredging.
 - 3. A location map, address and color photographs of the proposed dredged material disposal site, and any other pertinent information (i.e. delineation report, soil survey, etc.) which clearly demonstrate that the proposed disposal site does not include any waters of the U.S.

Buffalo District Only Permit-specific Regional Conditions: None

b. NWP 35 activities that propose disposal areas not previously approved by USACE require a PCN.

New York District Only Permit-specific Regional Condition:

c. All NWP 35 activities located within New York District require a PCN.

d. Within Essential Fish Habitat waters as defined in Section II.D.8. below, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded by the applicant, directly to the National Marine Fisheries Service (NMFS) Habitat Conservation Division, 74 Magruder Road, Highlands, New Jersey 07732. The applicant must provide evidence to the Corps that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the NMFS pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Nationwide Permit 36 - Boat Ramps

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Condition:

a. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 37 - Emergency Watershed Protection and Rehabilitation

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

Nationwide Permit 38 - Cleanup of Hazardous and Toxic Waste

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

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

b. For those activities that would impact more than 0.5 acres of waters of the United States, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded by the applicant, directly to the National Marine Fisheries Service (NMFS) Habitat Conservation Division, 74 Magruder Road, Highlands, New Jersey 07732. The applicant must provide evidence to the Corps that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the NMFS pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Nationwide Permit 39 - Commercial and Institutional Developments

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

a. This NWP does not authorize 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 such that preserved, restored or established wetlands are not located on the resulting individual lots.

New York District Only Permit-specific Regional Conditions:

c. This NWP is not applicable for activities located in the following waterbodies:

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

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

Nationwide Permit 40 - Agricultural Activities

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

Nationwide Permit 41 - Reshaping Existing Drainage Ditches

Buffalo District Only Permit-specific Regional Conditions: None

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

~~a. When a PCN is required, it must include documentation demonstrating the proposed project will not increase the ditch capacity beyond the original construction or drain additional wetlands or other waters of the US.~~

New York District Only Permit-specific Regional Conditions:

a. This NWP is not available for activities located in the following waterbodies:

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

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

Nationwide Permit 42 - Recreational Facilities

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

- a. This NWP does not authorize the discharge of dredged or fill material into open water areas of lakes or rivers which converts the area to dry land.

New York District Only Permit-specific Regional Conditions:

- b. This NWP is not available for activities located in the following waterbodies:
 1. The Great Swamp in Putnam and Dutchess Counties
 2. Mianus River and adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York . For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation web site at: <http://www.dec.ny.gov/animals/27238.html> or contact the Trust for Public Land at the following address:

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

Nationwide Permit 43 - Stormwater Management Facilities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

- a. This NWP is not applicable for activities located in the following waterbodies:
 1. The Great Swamp in Putnam and Dutchess Counties
 2. Mianus River and adjacent wetlands.
 3. Harbor Herons System in Staten Island, New York. . For additional information on the Harbor Herons System, please see the New York State Department of Environmental Conservation web site at: <http://www.dec.ny.gov/animals/27238.html> or contact the Trust for Public Land at the following address:

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

Nationwide Permit 44 - Mining Activities:

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

- a. This NWP does not authorize the discharge of dredged or fill material associated with mining of accumulated sediments (i.e. gravel and point bars) within stream channels. This NWP also does not authorize peat mining.

Nationwide Permit 45 – Repair of Uplands Damaged by Discrete Events

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

- a. Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of vegetative stabilization measures and/or rip-rap stone material, in lieu of vertical structures (i.e. wood, concrete, stacked rectangular rock or sheet pile bulkheads/retaining walls). In addition to notification requirements outlined in the NWP, a PCN will be required for any proposed vertical structures placed below the applicable high water line and shall include written justification as to why other natural methods (i.e. vegetation, bioengineering, etc.) are not

practicable and any proposed mitigation measures to compensate for adverse impacts (i.e. 1:2 to 1:3 sloped toe stone, measures to facilitate movement of wildlife if necessary, etc.).

New York District Only Permit-specific Regional Condition:

b. For those activities that require a PCN to the Corps of Engineers, and are located within Essential Fish Habitat waters as defined in Section II.D.8. below, to the maximum extent practicable, no in-water work shall occur between March 1 and June 30.

Nationwide Permit 46 – Discharges in Ditches

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

Nationwide Permit 47– Reserved

Nationwide Permit 48 – Existing Commercial Shellfish Aquaculture Activities

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. The applicant shall submit a location map showing latitude and longitude or UTM coordinates to the National Oceanic and Atmospheric Administration, National Ocean Service, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West Highway, Silver Springs, MD 20910-3282, for charting purposes prior to initiation of the aquaculture 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 6) 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. For those activities that are located within Essential Fish Habitat waters as defined in Section II.D.8. below, activities are not authorized within submerged aquatic vegetation (SAV) areas.

d. For those activities that are located within Essential Fish Habitat waters as defined in Section II.D.8. below, **prior to submitting a PCN**, the applicant must obtain a permit from the New York State Department of Environmental Conservation (NYSDEC).

e. For those activities that are located within Essential Fish Habitat waters as defined in Section II.D.8. below, all structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

Nationwide Permit 49 – Coal Remining Activities

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

Nationwide Permit 50 – Underground Coal Mining Activities

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

Nationwide Permit 51 – Land-Based Renewable Energy Generation Facilities

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

Nationwide Permit 52 – Water-Based Renewable Energy Generation Pilot Projects

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

a. This NWP does not authorize work or discharges associated with wind or solar energy generation projects.

New York District Only Permit-specific Regional Condition:

b. Within Essential Fish Habitat waters as defined in Section G-D.8. below, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded by the applicant, directly to the National Marine Fisheries Service (NMFS) Habitat Conservation Division, 74 Magruder Road, Highlands, New Jersey 07732. The applicant must provide evidence to the Corps that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the NMFS pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Nationwide Permit A – Removal of Low-Head Dams

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

Nationwide Permit B – Living Shorelines

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

II. General Regional Conditions:

These conditions apply to ALL Nationwide Permits.

A. Construction Best Management Practices (BMP's): Unless specifically approved otherwise through issuance of a waiver by the District Engineer, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control and stormwater management practices must be designed, installed and maintained throughout the entire construction of the 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.

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.
2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.

3. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.
4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
5. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.
6. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations and wetland conditions.
7. All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)
8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.
9. New stormwater management facilities shall be located outside of waters of the U.S. A waiver of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters. 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).

NOTE: The Districts propose to modify this condition to provide clarity and are requesting comments on specific components that need clarification:

11. In order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 Management of Water Flows, all new or replacement culverts shall be constructed/installed in accordance with the following:

General Information:

- a. Use of the following requirements and recommendations 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).
- b. Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) should be assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
- c. Before replacing a culvert or other crossing structure with a larger structure it is essential that the replacement be evaluated for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
- d. Measures should be included in all culvert designs that will promote the safe passage of fish and other indigenous aquatic organisms.
- e. The dimension, pattern, and profile of the stream above and below the stream crossing should not be permanently modified by changing the width or depth of the stream channel.

Preconstruction Notification (PCN)/Waiver Requirements:

- A. A PCN is not required for projects that are designed to meet Requirements B and C, below, unless a PCN is otherwise required by the NWP regulations.
- B. In order to comply with General Condition #2 Aquatic Life Movement, either a bottomless culvert or bridge must be used where practicable. If the stream cannot be spanned, the culvert must be installed with its bottom buried (embedded) below the grade of the stream bed where practicable. (Note: When not practicable to do so due to small culvert size, it is suitable to allow natural deposition to cover the interior of the culvert bed.)
 - i. A minimum of three 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. This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
 - ii. To ensure low flow and aquatic life movement is maintained, an embedment depth of a minimum of 20 percent of the culvert vertical rise throughout the length of the culvert is recommended. Additionally, it is recommended that the culvert bed slope remain consistent with the slope of the adjacent stream channel.
- C. In order to comply with General Condition #9 Management of Water Flows, bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within the 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.
 - i. An average of three measurements (project location and straight sections of the stream upstream and downstream) shall be used to determine appropriate opening width. If the project is a replacement of an existing structure then only upstream and downstream locations shall be used to compute the average.
 - ii. To ensure bank-full flow is accommodated by the culvert, it is recommended that minimum culvert widths include a minimum of 1.25 times width of the stream channel at the ordinary high water or a 2 year design storm.
- D. In summary, a PCN is required, requesting a waiver of the above requirements for projects where:
 - i. both spanning the waterway and embedding are found to be not practicable;
 - ii. embedding is practicable but the recommendations for embedment depth cannot be met;
 - iii. bank-full flow will not be accommodated within the culvert;
 - iv. less than the recommended minimum culvert width is proposed
- E. In addition to the PCN requirements of General Condition #31, the PCN must include the following information:
 - i. a note 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 the items outlined in the above General Information section;
 - iv. the cross sections of the stream used to calculate the stream bed low point and bank-full width;
 - 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.

A waiver of the requirement(s) will be issued if it can be demonstrated that the proposal would result in the least environmentally damaging practicable alternative (e.g. compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system).

NOTE: The Districts propose to modify this condition to provide clarity and are requesting comments on specific components that need clarification:

12. Culvert Rehabilitation Projects, not including culvert replacement projects:
 - a. 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. A PCN is not required for projects that utilize cured-in-place pipe lining. Slip lining is defined as the insertion of a smaller diameter pipe into an existing pipe by pulling pushing, or spiral winding.
 - b. Culvert rehabilitation projects shall assess the existing culvert, prior to the proposed repair, for compliance with Nationwide Permit General Conditions (GC) #2 (Aquatic Life Movements) and #9 (Management of Water Flows). If an impediment is found to exist, a PCN is required for any rehabilitation project.
 - c. For all projects requiring PCN, the applicant must provide an evaluation of the existing culvert and proposed rehabilitation project and their effects upon aquatic life movements and low/ high flow conditions in order to show compliance with GC #2 & #9. For those culverts that will impede the movement of aquatic life and water flows, the applicant must provide information as to how they will mitigate for those deficiencies. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

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

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

C. National Wild and Scenic Rivers (NWSR): The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #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: <http://www.rivers.gov/wildriverslist.html>

D. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 31, the applicant shall also include: (Note: the application will not be considered complete until all of the applicable information is received).

1. **New York State/USACE Joint Application Form:** The application form shall be completed and signed and shall clearly indicate that the submission is a PCN.
2. **Drawings:** The PCN must include legible, black and white project drawings on 8.5" x 11" paper. Full size drawings may be submitted in addition to the 8.5" x 11" plans to aid in the application review. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross section). The Vicinity Map shall provide the location of the entire project site. In addition, each illustration should be identified with a figure or attachment number. The location

map shall include the Latitude and Longitude or UTM coordinates of the project. For linear projects, the PCN shall include a map of the entire project including a delineation of all waters of the U.S. within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.)

3. **Color photographs:** The photos should be sufficient to accurately portray the project site, keyed to a location map and not taken when snow cover is present.

4. **Avoidance and Minimization:** The PCN must include a written narrative explaining how avoidance and minimization of temporary impacts and permanent losses of waters of the U.S. were achieved on the project site (i.e. site redesign, reduction in scope, alternate methods, etc.). It should include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonably foreseeable direct and indirect effects to waters of the U.S. from the proposed construction practices.

5. **Mitigation**(See General Conditions 23 & 31(b)(5)):The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10th of an acre of waters of the United States; or for which a waiver of the 300 linear foot limit on intermittent and ephemeral streams is being requested. 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: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title33/33cfr332_main_02.tpl, 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.

6. **Nationwide Rivers Inventory:** The PCN shall indicate if a river segment listed within the National Park Service Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the PCN shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at: <http://www.nps.gov/nrcr/programs/rtca/nri/states/ny.html>.

NOTE: The Districts request that SHPO review this condition for proposed updates:

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. Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include a written statement indicating if any such properties may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed, the statement shall include a list of resources checked in the determination. Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties shall be provided with the PCN. Information regarding cultural resources may be found at: <http://nysparks.state.ny.us/shpo/>. In addition, assistance regarding the determination of the presence of historic or cultural resources at or near the project site should be directed to SHPO. NOTE: 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.

NOTE: The Districts request that USFWS and NMFS review this condition for proposed updates:

8. **Endangered Species** (See General Condition 18) **and Essential Fish Habitat:** The PCN must include a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed Threatened and Endangered (T&E) species or designated critical habitat that might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. The PCN must include a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries) formerly National Marine Fisheries Service (NMFS), regarding the presence of T&E species or evidence that the applicant has utilized the USFWS T&E website: <http://www.fws.gov/northeast/nyfo/es/section7.htm>. Information on NOAA-Fisheries (NMFS) species (both T&E and EFH) can be found at: <http://www.nero.noaa.gov/nero>. Website evidence shall include a County list of T&E species. For projects located in counties containing T&E species, the PCN shall also include a discussion of potential T&E habitat within the project site. If there is potential habitat for any Federally listed species within the project site the following should be submitted:

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

Please note that there are no known threatened or endangered (T&E) species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of T&E species should be directed to the USFWS.

General Condition #18 is emphasized, ...”In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed work will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.”

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

10. **Submission of Multiple Copies of PCN:**

- a) One (1) additional copy of the **PCN package application drawings** shall be provided to USACE for coordination with National Oceanic and Atmospheric Administration (NOAA) for utility lines to be constructed or installed in navigable waters of the U.S. proposed under NWP #12, (See Note 1 of NWP #12)
- b) One (1) additional copy of the PCN package shall be provided to USACE for coordination with Department of Defense Siting Clearinghouse (See NWP #12, 39, 51 & 52 Notes) for:
 - i. overhead utility lines proposed under NWP #12 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
- c) 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.

- d) Five (5) additional copies of the PCN package shall be submitted to USACE for agency coordination in accordance with General Condition # 31(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 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed,
 - iii. All NWP 48 activities requiring pre-construction notification.
 - iv. 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;
 - v. Proposed NWP B activities in excess of 500 linear feet that extend into the waterbody more than 30 feet from the mean high water line or ordinary high water mark, or involve discharges into special aquatic sites.

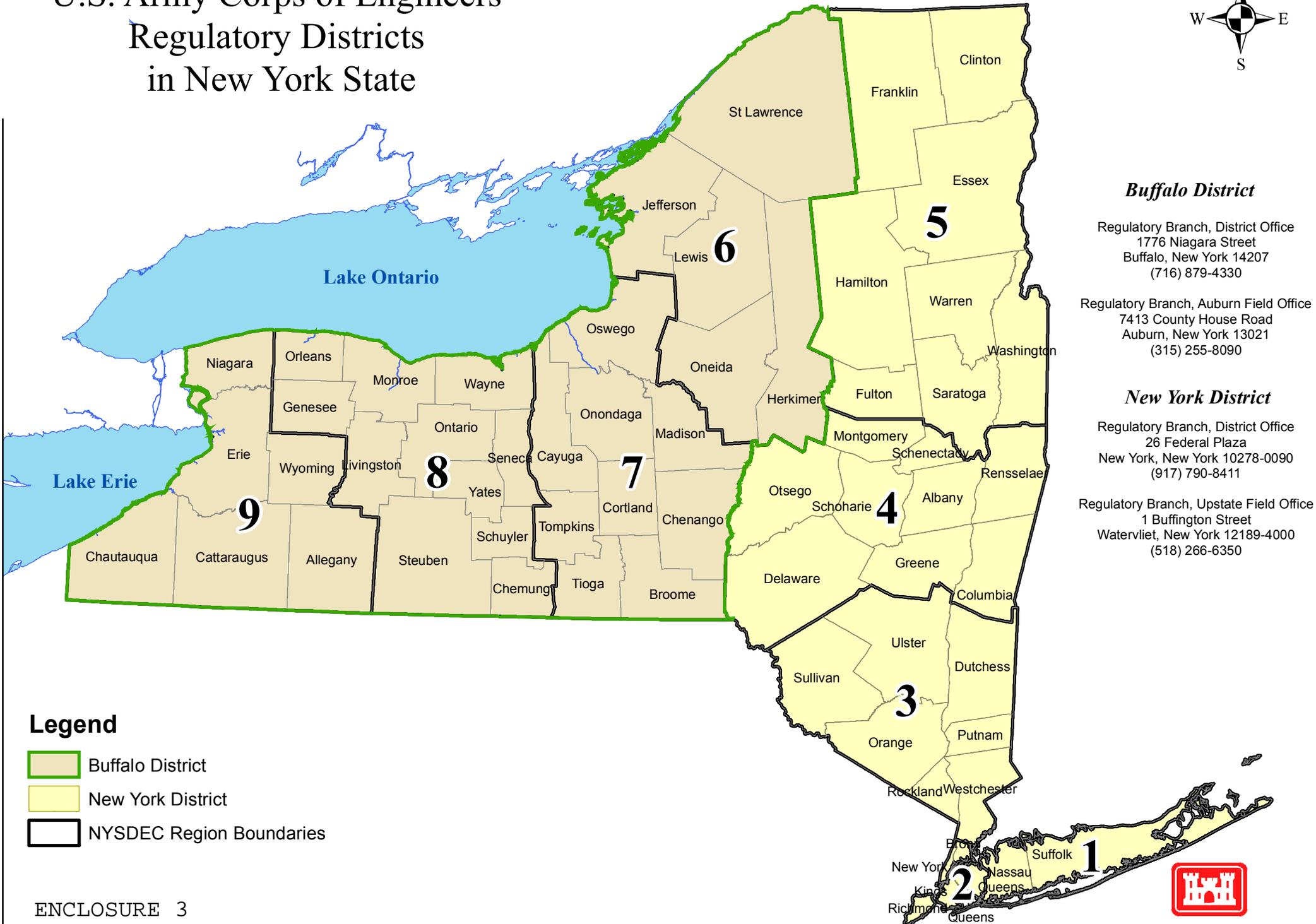
III. CRITICAL RESOURCE WATERS

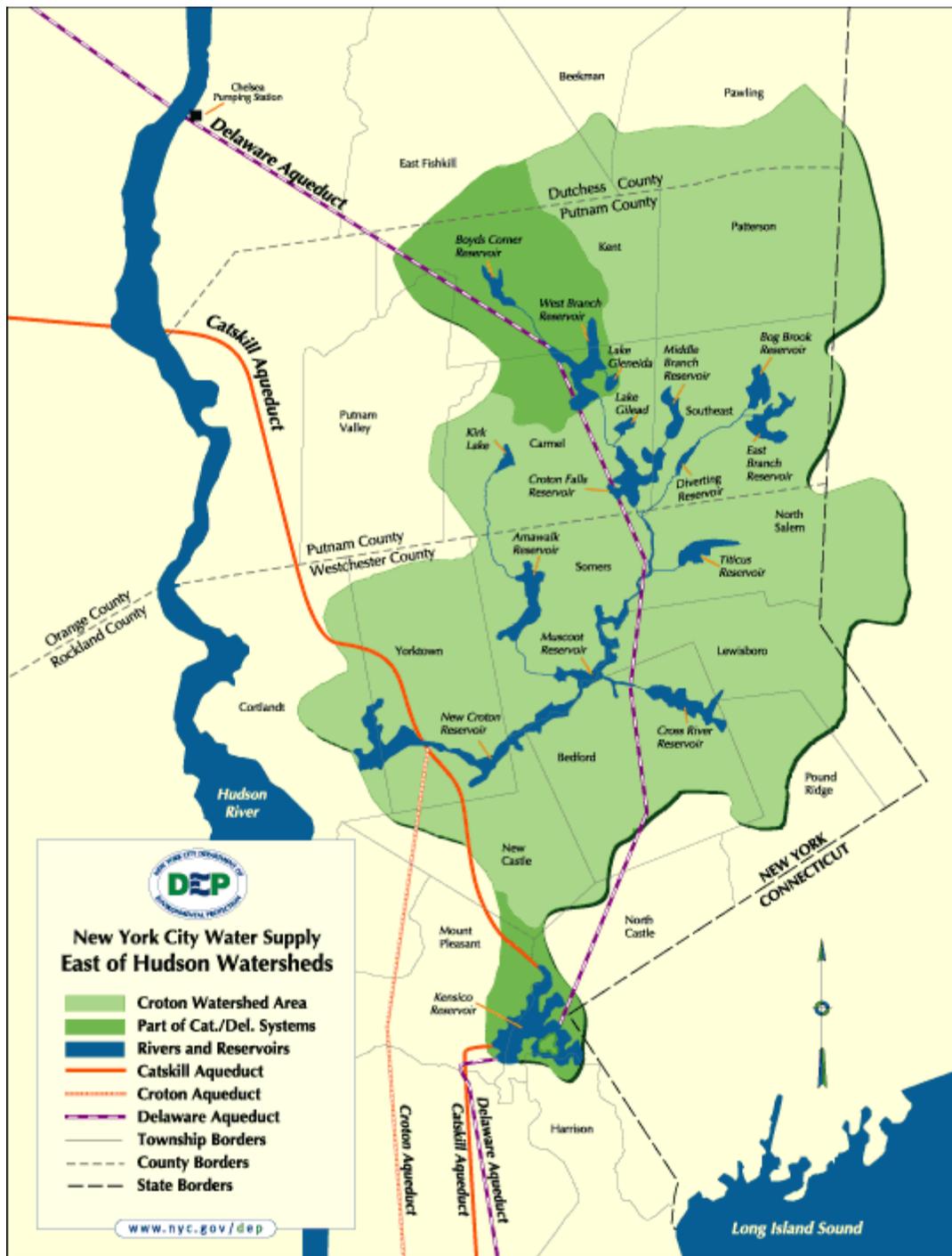
In accordance with NWP General Condition (GC) #22, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #22 for a list of the NWP activities that are either excluded or require a PCN).

Critical Resource Waters in New York State include the following:

1. **East-of-Hudson portion of the New York City Water Supply:** This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 4.
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.

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





ENCLOSURE 4



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

REPLY TO
ATTENTION OF:

Regulatory Branch

Commercial Mooring Buoy Application Additional Information

SUBJECT: Permit Application Number NAN-____ - ____

Company Name: _____ Phone: _____
Attn: _____ Address: _____

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

Purpose: _____

LOCATION OF MOORING:

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

Position: _____ N _____ W

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

MOORING BUOY DATA:

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

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

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

VESSEL/BARGE DATA:

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

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

Swing Radius (yards): _____

Watch Circle = the square root of:(length of scope² minus water depth²); $\sqrt{(\text{scope}^2 - \text{water depth}^2)}$
Swing Radius = Watch Circle + Barge(s) Length Astern + Pendant Length(s). Add 10% of the Swing Radius for safety. You must maintain an additional 10% of your Swing Radius from any adjacent mooring buoy Swing Radius for safety and maneuvering.

ENCLOSURE 5

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

Date _____ Time (specimen found) _____

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

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

Condition of specimen/description of animal

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

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

Fate of animal _____

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

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

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

Weather conditions _____

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

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

Observer's Name _____ Permit # _____

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

ENCLOSURE 6