US Army Corps of Engineers®
Portland District

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# User's Guide

## For 2017 Nationwide Permits In the State of Oregon

**Includes:**
**National General Conditions**
**Portland District Regional Conditions**
**401 Water Quality Certification Conditions**
**Standard OCMP Coastal Zone Conditions**

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## INTRODUCTION

Pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers (Corps), is responsible for administering a Regulatory Program that requires permits for certain activities in waters of the United States (U.S.), including wetlands. Under Section 404, the Corps regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. Under Section 10, the Corps regulates structures and/or work in or affecting the course, condition, or capacity of navigable waters of the U.S.

Activities requiring Corps authorization that are similar in nature and have minimal individual and cumulative environmental impacts may qualify for authorization by a general permit, such as a nationwide permit. On January 6, 2017, the Corps reissued 50 existing nationwide permits (the "2017 NWPs"), and issued two new NWPs and one new general condition. On March 17, 2017, the Portland District issued regional conditions for the 2017 NWPs, which apply in the state of Oregon. This User's Guide lists general and regional conditions as well as Coastal Zone Management (CZM) Consistency conditions from the Oregon Department of Land Conservation and Development's Oregon Coastal Management Program (OCMP) and Section 401 Water Quality Certification decisions from the Oregon Department of Environmental Quality (DEQ), and Region 10 of the U.S. Environmental Protection Agency (EPA).

The information in this User's Guide forms the basis by which the NWP program will be implemented in the state of Oregon until the 2017 NWPs are revised, rescinded, or revoked. The 2017 NWPs are scheduled to expire on March 18, 2022.

## PRE-CONSTRUCTION NOTIFICATION

Many NWP activities, including general and regional conditions, require the applicant to submit a Pre-Construction Notification (PCN) to the Corps, prior to commencing any work. For example, NWP General Conditions 18 and 20, require non-federal permittees to submit a PCN and receive written approval from the Corps before work commences where NWP activities may affect or are in the vicinity of a threatened or endangered species or where they have the potential to cause effects to historic properties. In the Portland District, a PCN can be submitted by using the Corps' standard individual permit application form (ENG 4345), the Corps/DSL Joint Permit Application (JPA) form, or by letter as long as the selected method clearly indicates it is a NWP PCN and it contains all information required by NWP General Condition 32. The 2017 Nationwide Permit Specific Terms and Conditions section provides further details on when a PCN must be submitted for individual NWP actions.

The forms can be obtained as follows:

ENG 4345 can be found at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/.

The JPA can be found at http://www.oregon.gov/dsl/WW/Pages/WWforms.aspx.

## SECTION 401 WATER QUALITY CERTIFICATION

Under Section 401 of the CWA, an activity involving a discharge into waters of the U.S. authorized by a federal permit must receive water quality certification (WQC). The issuance of a WQC means that the activity will comply with the water quality standards and any established effluent limitations of the certifying authority. In the state of Oregon, two agencies (DEQ and EPA) and two tribes (Confederated Tribes of Umatilla Indian Reservation and Confederated Tribes of Warm Springs) currently have 401 WQC authority. The Corps NWP verification letter will discuss any 401 WQC requirements and provide appropriate contact information to the permittee. It is the permittee's responsibility to ensure they have the appropriate 401 WQC prior to starting work.

The EPA has 401 certification authority in Indian Country. Indian County includes lands within Reservation boundaries, lands held in trust by the Federal Government outside of Reservation boundaries, and "In-Lieu" sites (e.g., in-lieu fishing sites along the Columbia River). EPA also has WQC authority on lands with exclusive Federal jurisdiction; currently the only such land within the state of Oregon is the dam at Willamette Falls. EPA provided certification for the 2017 NWPs by letter dated August 16, 2017; the certification can be viewed at Appendix C.

To date, the Confederated Tribes of Umatilla Indian Reservation and Confederated Tribes of Warm Springs, are the only tribes in Oregon with 401 certification authority over activities on their respective tribal lands. Neither Tribe responded to the Portland District's request for certification for the 2017 NWPs; therefore, certification is considered waived for the NWPs that will result in a discharge within lands in which their WQC authority applies.

DEQ is authorized to make 401 certification decisions for activities on all other federal, public, and private lands in Oregon. DEQ did not issue a programmatic certification to the USACE for the 2017 Nationwide Permits. In order to comply with the fee schedule in OAR 340-048-0055, DEQ will instead evaluate projects that the Portland District determines qualifies for a Nationwide Permit, and will issue an Individual Nationwide 401 WQC to each applicant following review and payment of the fee. If an application or pre-construction notification is not required to be submitted to the Corps (i.e., "non-notifying"), WQC will generally not be required unless the applicant desires one. If the submittal of a PCN is required, regardless of the reason and there is a 404 discharge, a WQC will normally be required. DEQ has the discretion to require a WQC for work in waters of the U.S. where no 404 discharge is occurring (i.e., Section 10 only) if the state determines that the activity is likely to result in a discharge during construction or operation. Section 10 projects in Portland Harbor will always require a certification if any in-water work is proposed.

Details of the DEQ 401 WQC for the 2017 NWPs can be found at http://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Nationwide.aspx. DEQ's WQC certification template is also provided in Appendix B for reference.

## COASTAL ZONE MANAGEMENT ACT: FEDERAL CONSISTENCY

The federal consistency provision of the Coastal Zone Management Act (CZMA) requires that any federal action occurring in **or** outside of a state's coastal zone, which has a reasonably foreseeable effect on land uses, water uses, or natural resources of the coastal zone, must be consistent with enforceable policies contained in the state's federally-approved coastal management plan. Federal consistency fosters cooperation and coordination between coastal states and the federal government, and assures coastal states a voice in federal decision-making that may affect coastal uses or resources.

In Oregon, DLCD is the agency responsible for federal consistency review of federally issued permits and licenses in Oregon's 7 coastal counties: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry. To determine if a specific action is located within Oregon's Coastal Zone, a 'Coastal Zone Finder' tool can be found on the DLCD website at http://www.oregon.gov/LCD/OCMP/Pages/Federal_Consistency_Resources.aspx.

OCMP has conditionally granted advance concurrence to activities authorized by the 2017 NWPs, **except** for the following six categories:

1) Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.

2) Activities authorized by NWP 29 (Residential Developments) or NWP 39 (Commercial and Institutional Developments) that require a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

3) Activities within or directly impacting the following aquatic habitats of special concern: native eel grass beds, mature forested wetland, wetlands in dunal systems, estuarine wetlands (in natural or conservation management units only), state special management areas (including marine gardens, marine reserves, research reserves, state habitat refuges, marine protected areas, and shellfish preserves), kelp beds, rocky substrate in tidal waters (interpreted as all marine subtidal rock substrate and reefs and rocky intertidal shores), and native oyster beds, except for projects permitted under NWP 20, 22, 27, 32, and 38. (Note: The OCMP has developed a Habitat Screening Tool to help determine whether the proposed project is located in one of the aquatic habitats of special concern).

4) All activities authorized by NWP 48 (Commercial Shellfish Aquaculture Activities).

5) Activities authorized by NWP 53 (Removal of Low-Head Dams) unless a determination has already been provided in writing by the Oregon Department of Fish and Wildlife that native migratory fish (as defined in OAR 635-412-0005) were not historically (prior to 1859) nor currently present in the waters where the dam is to be removed or a fish passage approval/waiver has already been obtained in writing from the Oregon Department of Fish and Wildlife.

6) Activities authorized by NWP 54 (Living Shorelines) unless the project consists solely of wood, vegetation, or other living natural 'soft' elements.

Where work is being conducted under one of these activity categories, OCMP will require an individual consistency review, which can take up to six months. Therefore, permittees are advised to coordinate with DLCD early in the project planning phase.

Further details on the OCMP federal consistency review, concurrence decisions, and conditions can be found at http://www.oregon.gov/LCD/OCMP/Pages/Federal_Consistency_Home.aspx. The Standard OCMP Coastal Zone Conditions are also found at Appendix D for reference.

## ENDANGERED SPECIES ACT

The National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) (collectively, the Services) have listed or proposed many species of plants, fish, birds, and other animals in waters of the U.S. in Oregon as endangered or threatened under the ESA. In addition, the habitat for some of these species has been designated as critical for their conservation.

In accordance with Section 7 of the ESA, the Corps consults with the Services on any work proposed in an application for a Department of the Army permit – including nationwide permits – that may affect an ESA-listed species or its designated critical habitat. To expedite the consultation process and comply with this law, the Corps may request that applicants prepare a biological evaluation (BE) or biological assessment (BA) of the work they propose. A BE/BA is an assessment of the impacts a proposed project will have on listed and/or proposed-for-listing ESA species and designated and/or proposed critical habitat.

The ESA procedures discussed above are required for all work affecting or potentially affecting ESA-listed species or designated critical habitat. These procedures apply regardless of the nature, scope, or environmental impact of the work. Please refer to NWP General Condition 18 (Endangered Species) and General Condition 32 (Pre-Construction Notification) for additional requirements and procedures. Applicants should be aware that Section 7 coordination and/or consultation may add substantial time to the permit application review process.

## OTHER RELATED FEDERAL LAWS AND REQUIREMENTS

### National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to determine how a proposed project may affect recorded or undiscovered cultural resources and/or historic properties within the permit area. Section 106 directs federal agencies with jurisdiction over a proposed federal undertaking (i.e., federal permit) to take into account the effect of the undertaking on any historic property listed, or eligible for listing, in the National Register of Historic Places. Compliance with Section 106 is a requirement of all NWP verifications pursuant to NWP General Condition 20 (Historic Properties) and Portland District Regional Condition 3 (Cultural Resources and Human Burials – Inadvertent Discovery Plan).

A cultural resource/historic property survey, conducted by a professional archaeologist, may be necessary before a NWP verification can be completed. Applicants should be aware that Section 106 coordination and/or consultation may add substantial time to the permit application review process.

**Tribal Rights**

In the geographic limits of the Portland District there are 9 federally-recognized Tribes. As required by NWP General Condition 17 (Tribal Rights), the Portland District must determine if treaty fishing access sites, usual and accustomed areas, traditional cultural properties, or other resources important to the Tribes might be affected by a proposed project. If a project may affect any of these Tribal resources, these concerns must be addressed before a permit can be issued. Please be aware that this can add significant time to the processing of your application.

**Magnuson-Stevens Act**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) govern marine fisheries management in the U.S. The MSA mandates the identification of Essential Fish Habitat (EFH) for federally managed species as well as the development of measures to conserve and enhance the habitat necessary for fish to carry out their life cycles. The MSA requires federal agencies to consult with NMFS before authorizing, funding, or conducting an activity that may adversely affect EFH. When consulted, NMFS provides guidance, in the form of conservation recommendations, to help federal agencies minimize the impact of their actions on EFH. Portland District Regional Condition 5 (Essential Fish Habitat) requires the submittal of a PCN if essential fish habitat may be affected, or is in the vicinity of, a proposed activity. The permittee may not begin work until notified by the District Engineer that the provisions of the MSA have been satisfied and the activity is authorized.

**Fish and Wildlife Coordination Act**

The Fish and Wildlife Coordination Act authorizes the Secretary of the Interior, through the U.S. Fish and Wildlife Service, to assist and cooperate with federal, state, and public or private agencies and organizations in the conservation and rehabilitation of wildlife whenever the waters of a stream or other waterbody would be impounded, diverted, deepened, or otherwise controlled or modified. The Act requires proponents to also consult with the state wildlife resources agency and, when appropriate, NMFS. This coordination helps conserve our wildlife resources by preventing or reducing the loss of those resources and, whenever possible, improving those resources.

**Wild and Scenic Rivers**

The National Wild and Scenic Rivers System was created by Congress in 1968 to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and development. If you are working in a designated wild and scenic river, additional coordination with the U.S. Forest Service and/or the National Park Service is required. Of Oregon's approximately 110,994 river miles, 1,916.7 miles are designated as wild and scenic – almost 2 percent of the state's river miles. A list of the designated wild and scenic rivers in Oregon, as well as detailed information about each river system, can be found at https://www.rivers.gov/oregon.php.

NWP General Condition 16 (Wild and Scenic Rivers) requires submittal of a PCN 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 is not authorized to begin the NWP activity until notified by the district engineer.

## RELATED STATE LAWS AND REQUIREMENTS

### Removal-Fill Permit

Oregon's Removal-Fill Law (ORS 196.795-990) requires people who plan to remove or fill material in wetlands or waterways to obtain a permit from the Department of State Lands (DSL). This permit is broadly referred to as the "Removal-Fill Permit." The law applies to all landowners, whether private individuals or public agencies. The purpose of the law, enacted in 1967, is to ensure protection and the best use of Oregon's water resources for home, commercial, wildlife habitat, public navigation, fishing and recreational uses. In most cases, a permit is required if an activity will involve filling or removing 50 cubic yards or more of material in a wetland or waterway. For activities in state-designated Essential Salmonid Habitat, State Scenic Waterways and compensatory mitigation sites, a permit is required for any amount of removal or fill. Information can be found in DSL's Removal-Fill brochure.

### Activities On State-Owned Aquatic Lands

The people of Oregon are the owners of the submerged and submersible land ("beds and banks") underlying all navigable and tidally influenced waterways. In most cases, this ownership extends to the line of ordinary high water or high tide, but ownership can be mixed, even along the same waterway. DSL is responsible for management of publicly owned submerged and submersible land. The public has rights to use the beds and banks of navigable waterways for any legal activity, such as boating, fishing and swimming, including pulling your canoe or kayak onto the bank. The use of state-owned aquatic land may require authorization from DSL including leases, licenses, easements, registrations and short-term access agreements. Further information is available at http://www.oregon.gov/dsl/WW/Pages/Waterways.aspx.

### Fish Passage Laws

As of August 2001, the owner or operator of an artificial obstruction located in waters in which native migratory fish are currently or were historically present must address fish passage requirements prior to certain trigger events. Laws regarding fish passage may be found in ORS 509.580 through 910 and in OAR 635, Division 412. Trigger events include installation, major replacement, a fundamental change in permit status (e.g., new water right, renewed hydroelectric license), or abandonment of the artificial obstruction. Further details concerning triggers can be requested from the Oregon Department of Fish and Wildlife (ODFW). Information on state fish passage laws can be found at http://www.dfw.state.or.us/fish/passage/index.asp.

## OTHER IMPORTANT INFORMATION

### Wetland Delineations

Wetland delineations are an important component of any jurisdictional determination involving wetlands and must be included as part of the PCN (see General Condition 32). Wetland delineations must be conducted in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and all applicable regional supplements and guidance, including the Arid West Regional Supplement Version 2.0 dated September 2008 and the Western Mountains, Valleys, and Coast Regional Supplement Version 2.0 dated May 2010, or the most recent approved version. Further information about wetland delineations can be found on our webpage at http://www.nwp.usace.army.mil/Missions/Regulatory/Jurisdiction.aspx.

## Mitigation

Mitigation is a sequential process that requires applicants to first avoid and minimize impacts to waters of the U.S, prior to providing compensatory mitigation. Compensatory mitigation is used to offset losses that cannot be otherwise avoided or minimized. A compensatory mitigation plan is used to compensate for the unavoidable loss of waters of the U.S. (wetlands, streams, rivers, etc) and to ensure that those losses minimize adverse effects to the aquatic environment. Mitigation plans must be prepared in accordance with the Federal Compensatory Mitigation for Losses of Aquatic Resources Final Rule (33 CFR Parts 325 and 332, April 10, 2008). NWP General Condition 23 (Mitigation) describes the factors that will be considered in determining appropriate and practicable mitigation necessary to ensure that individual and cumulative adverse environmental effects are no more than minimal.

## Sediment Evaluation Framework

The Portland District's Sediment Evaluation Framework is consulted for all proposed activities involving excavation or dredging of a water of the U.S. For these types of projects, you may have to provide additional information regarding the chemical and biological content of the proposed excavated or dredged material as part of your permit application. Further information can be found at http://www.nwp.usace.army.mil/Missions/Environmental-Stewardship/DMM.aspx.

## Navigable Waters of the United States

Section 10 of the Rivers and Harbors Act requires Corps authorization for most structures and/or work in or affecting navigable waters of the U.S. Here is a list of navigable waters in Oregon: http://www.nwp.usace.army.mil/Portals/24/docs/regulatory/jurisdiction/Navigable_US_Waters_Oregon_1993.pdf.

## PORTLAND DISTRICT REGIONAL CONDITIONS

Permittees must comply with all applicable Portland District regional conditions in order for their NWP authorization to be valid. The following list of regional conditions apply to all NWP activities. NWP-specific regional conditions are provided in the section describing the 2017 NWP specific terms and conditions.

1. **Notification:** For permittees that received written NWP approval, upon starting the authorized activities, you shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include: Corps project number and the project location by county.

2. **Aquatic resources of special concern:** Pre-construction notification to the District Engineer is required for all activities proposed in waters of the U.S. within an aquatic resource of special concern. Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological function. For the purpose of this regional condition, aquatic resources of special concern are native eel grass (*Zostera marina)* beds, mature forested wetlands, bogs, fens, vernal pools, alkali wetlands, wetlands in dunal systems along the Oregon coast, estuarine wetlands, Willamette Valley wet prairie wetlands, marine gardens, marine reserves, kelp beds, and rocky substrate in tidal waters.

In addition to the content requirements of NWP General Condition (GC) 32, the pre-construction notification must include a statement explaining why the effects of the proposed activity are no more than minimal. Written approval from the District Engineer must be obtained prior to commencing work.

Note: If the District Engineer determines that the adverse effects of the proposed activity are more than minimal, then the District Engineer will notify the applicant that either:

(a) the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;
(b) the activity is authorized under the NWP subject to submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or
(c) the activity is authorized under the NWP with specific modifications or conditions.

**Agency Coordination:** As part of the permit evaluation process, the Corps will coordinate with certain state and federal agencies for all activities being processed as a NWP and proposed to occur in an Aquatic Resource of Special Concern. This agency coordination process is outlined in General Condition 32(d)(3). Definitions for aquatic resources of special concern are provided in this User's Guide following the Portland District Regional Conditions.

3. **Cultural Resources and Human Burials-Inadvertent Discovery Plan:** In addition to the requirements in NWP GCs 20 and 21, the permittee shall immediately notify the District Engineer if, at any time during the course of the work authorized, human burials, cultural items, or historic properties, as defined by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act, are discovered. The permittee shall implement the following procedures:

a. Immediately cease all ground disturbing activities.

b. Notify the Portland District Engineer as soon as possible following discovery but in no case later than 24 hours. Notification may be sent by fax (503-808-4375) or electronically (cenwp.notify@usace.army.mil) and shall identify the Corps project number and clearly specify the purpose is to report a cultural resource discovery. The permittee shall also notify the Corps representative (by email and telephone) identified in the verification letter.

c. Notify the Oregon State Historic Preservation Office by telephone at (503) 986-0690.

Failure to stop work immediately and until such time as the District Engineer has coordinated with all appropriate agencies and Native American tribes, and complied with the provisions of 33 CFR 325 (Appendix C), the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and other pertinent regulations could result in violation of state and federal laws. Violators may be subject to civil and criminal penalties.

4. **In-water Work:** To minimize potential impacts to aquatic species and habitat, in-water work will be limited by the following timing considerations:

a. Permittee shall complete all in-water work, to the maximum extent practicable, within the preferred time period (i.e., work window) specified in Oregon Department of Fish and Wildlife's (ODFW) "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: http://www.dfw.state.or.us/lands/inwater/.

b. If work cannot be completed within the preferred timing window, despite every attempt to do so, permittee shall submit a written request to work outside of the preferred window to the District Engineer. The request can be made by means of the joint-agency In-water Work Period Variance Request for Previously Permitted Authorizations form which can be found at http://www.oregon.gov/dsl/WW/Pages/WWforms.aspx. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the District Engineer.

Note: The final specified in-water work period will be based on a project-specific evaluation and may supersede these guidelines through special conditions of the permit verification.

5. **Essential Fish Habitat:** Activities which may adversely affect essential fish habitat, as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), are not authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees must submit a pre-construction notification to the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific coast salmon, Pacific coast groundfish, and/or Coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at NOAA's website: http://www.westcoast.fisheries.noaa.gov/.

6. **Bank Stabilization:** Permittee shall include the use of bioengineering techniques and natural materials in the project design to the maximum extent practicable and shall minimize the use of rock. Bioengineering bank stabilization techniques are those that increase the strength and structure of soils with a combination of biological and mechanical elements (e.g., vegetation, root wads and woody debris, rock structures). Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

7. **Fish Screening:** To prevent injury or mortality to fish due to entrainment, the permittee shall ensure that all intake pipes include adequately sized screens.

**Note:** Fish passage and screening criteria can be obtained from the National Marine Fisheries Service (NMFS) at http://www.westcoast.fisheries.noaa.gov/fish_passage/solutions/index.html. Information regarding Oregon's fish passage laws can be obtained from ODFW at http://www.dfw.state.or.us/fish/passage/links.asp.

8. **Work Area Isolation and Dewatering:** Appropriate best management practices shall be implemented to prevent erosion and to prevent sediments from entering waters of the U.S.

a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows to the maximum extent practicable.

b. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.

c. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering waters of the U.S.

d. Upstream and downstream flows shall be maintained by routing flows around the construction site.

e. When dewatering is necessary for construction, a sediment basin, or other applicable method, shall be used to settle sediments prior to releasing the water back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion. Sediment basins shall be placed in uplands.

f. Fish and other aquatic species must be salvaged (i.e., safely captured and relocated away from the project or development site) prior to dewatering.

**Note:** The ODFW requires a Scientific Take Permit be obtained to salvage fish and wildlife. Further information from ODFW is available at http://www.dfw.state.or.us/fish/license_permits_apps/scientific_taking_permit.asp.

9. **Dredging:** For NWP-authorized activities that involve removal of sediment from waters of the U.S., the permittee shall ensure that any necessary sediment characterization regarding size, composition, and potential contaminants is conducted prior to dredging. Sediment characterization must be conducted per the Sediment Evaluation Framework for the Pacific Northwest (available at: http://www.nwp.usace.army.mil/Missions/Environmental-Stewardship/DMM.aspx).

**Note 1:** The return water from a contained disposal area is defined as a discharge of dredged material by 33 CFR Part 323.2(d) and requires separate authorization from the District Engineer (e.g., by NWP 16).

**Note 2:** The Oregon Department of Environmental Quality (DEQ) requires removed material placed in an upland site to meet the definitions of clean fill as provided in OAR 340-093-0030 or the use must be specifically allowed by DEQ by rule, permit, or other authorization.

10. **Mechanized Equipment:** In addition to the requirements in NWP GC 11, permittee shall implement the following practices to prevent or minimize impacts to the aquatic environment from mechanized equipment:

a. Use existing roads, paths, and construction pads where available. Temporary mats or pads, when required to provide access onto wetlands or tidal flats, shall be removed within 30 days of completing the authorized work.

b. Operate equipment from the top of a streambank and conduct work outside of the active stream channel, unless specifically authorized by the District Engineer.

c. Equipment shall not be staged, fueled, or maintained within waters of the U.S.

d. Spill prevention and containment materials shall be maintained and be readily accessible at vehicle staging areas. The amount of spill response materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags) maintained on-site must be appropriate for the size of the authorized activity.

11. **Stormwater Management:** Pre-construction notification to the District Engineer is required for all activities resulting in the creation of new impervious surfaces if any species or designated critical habitat listed under the Endangered Species Act (ESA) might be affected or are in the vicinity of the activity. The Corps may require a post-construction stormwater management plan (SWMP) and completion of a supplemental Stormwater Information Form to assist in the determination of the activity's affects to listed species or designated critical habitat and to be used in ESA consultation as necessary.

**Note 1:** The Corps considers impervious surfaces to include roof tops, walkways, patios, driveways, parking or storage areas, concrete or asphalt paving, gravel roads, packed earthen material, and oiled surfaces.

**Note 2:** Under the DEQ 401 Water Quality Certification Program, the DEQ evaluates post-construction stormwater pollution for any project resulting in new, an increase in, or redevelopment of impervious surfaces. DEQ may require the applicant to submit a post-construction SWMP for review and approval prior to the start of construction. DEQ provides information on preparing a SWMP at http://www.oregon.gov/deq/FilterDocs/401stormwaterGuidelines.pdf. DEQ requires applicants to first consider low impact development options. If these options can't be implemented, a narrative must be provided explaining why.

12. **Erosion Control:** During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent erosion and runoff. Temporary stockpiles of excavated or dredged material shall be stabilized to prevent erosion. Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all non-biodegradable components of installed control measures.

Note: DEQ provides information on erosion and sediment control measures at http://www.oregon.gov/deq/FilterPermitsDocs/ErosionSedimentControl.pdf. Details on best management practices are found at http://www.oregon.gov/deq/FilterPermitsDocs/BMPManual.pdf.

**13. Temporary Fills and Impacts:** To ensure no more than minimal adverse environmental effects from temporary fills and impacts to waters of the U.S:

a. Temporary fills and/or impacts to waters of the U.S. shall not exceed six months unless otherwise approved by the District Engineer.

b. No more than one-half (½) acre of waters of the U.S. may be temporarily filled or impacted unless otherwise approved by the District Engineer (temporary fills and impacts do not affect specified limits for loss of waters associated with specific nationwide permits).

c. Native soils and/or sediments removed from waters of the U.S. for project construction shall be stockpiled and used for site restoration to the maximum extent practicable.

d. Site restoration of temporarily filled or impacted areas shall include returning the area to pre-project ground surface contours. The permittee shall appropriately revegetate temporarily filled or impacted areas with native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

**Note**: The Corps will determine compensatory mitigation requirements for temporary fills and impacts on a case-by-case basis depending on the duration and nature of the temporary fill or impact and the type of aquatic resource affected.

14. **Contractor Notification of Permit Requirements:** The permittee must provide a copy of the nationwide permit verification letter, conditions, and permit drawings to all contractors and any other parties performing the authorized work, prior to the commencement of any work in waters of the U.S.

15. **Inspection of the Project Site:** The permittee shall allow representatives of the District Engineer to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative the option to be on site during the inspection.

## PORTLAND DISTRICT DEFINITIONS

a. ***Alkali Wetlands*:** Alkali wetlands occur in arid regions east of the Cascade Range and have saline or alkaline conditions where evaporation tends to concentrate salts in soils and water. Vegetation consists of plants adapted to saline or alkaline conditions.

b. ***Bogs:*** Bogs are wetlands with acidic organic soils (pH of <5.5) with no significant inflow or outflow of surface or ground water and generally receive water from direct precipitation. Bogs are characterized by vegetation able to grow in acidic conditions and are often covered by mosses, sedges, and evergreen shrubs and may also have an over story of evergreen trees.

c. ***Estuarine Wetlands***: Estuaries are areas where rivers or streams meet the ocean and freshwater and saltwater mix. Estuarine wetlands are tidal wetlands where ocean derived salts measure greater than 0.5 parts per thousand during the period of average annual flow. Estuarine wetlands are usually semi enclosed by land, but have open, partially obstructed, or sporadic access to the open ocean.

d. ***Fens***: Fens are wetlands similar to bogs that have organic soils that generally receive drainage from surrounding mineral soils and may include a surface water inlet and outlet. Soils in fens are generally less acidic (pH of >5.5) than bogs and receive waters rich in dissolved minerals. Vegetation in fens typically consists of grasses, sedges evergreen shrubs and may have an over story of evergreen trees.

e. ***Kelp beds***: Kelp beds form on rocky substrate located in shallow subtidal areas, typically in waters between 5 and 25 meters. Kelp stalks are anchored to rocks by a holdfast, which is connected by a flexible stem-like feature to the blades. Gas-filled bladders keep the blades close to the surface where the blades fan out forming a canopy cover. Kelp beds occur when the kelp covers 30% or more of the substrate.

f. ***Marine Gardens***: In Oregon, a marine garden is a specially protected area in which it is illegal to collect any marine invertebrate (except single mussels for bait). Marine Gardens are areas that are targeted for educational programs that allow visitors to enjoy and learn about intertidal resources. Marine gardens in Oregon are located at Haystack Rock, Cape Kiwanda, Otter Rock, Yaquina Head, Yachats State Park, Cape Perpetua and Harris Beach State Park and are managed by the Oregon Department of Fish and Wildlife.

g. ***Marine Reserves***: A marine reserve is an area within Oregon's Territorial Sea or adjacent rocky intertidal area that is protected from all extractive activities, including the removal or disturbance of living and non-living marine resources, except as necessary for monitoring or research to evaluate reserve condition, effectiveness, or impact of stressors. Marine reserves in Oregon are located at Cape Falcon, Cascade Head, Otter Rock, Cape Perpetua, and Redfish Rocks and are managed by the Oregon Department of Fish and Wildlife.

h. ***Mature Forested Wetlands***: Mature forested wetlands consist of trees with an aerial cover of 30% or more of the wetland where the average age of trees is 80 years or older or have an average diameter of 18 inches or greater (dbh).

i. ***Native eelgrass (Zostera marina) beds***: Zostera marina is a species of submerged aquatic vegetation that grows on substrates in intertidal and shallow subtidal marine waters. Z. marina is a rhizomatous, perennial flowering plant and exhibits both vegetative growth and reproduction by seed germination. Z. marina may form beds that are continuous, semi-continuous to patchy. A Z. marina eelgrass bed is defined as a minimum of 3 shoots per 0.25 m2 (1/4 square meter) within 1 meter of any adjacent shoots. To identify the bed boundary, proceed in a linear direction and find the last shoot that is within 1 meter of an adjacent

shoot along that transect. The bed boundary (edge) is defined as the point 0.5 meter past that last shoot, in recognition of the average length of the roots and rhizomes extending from an individual shoot (Washington Dept. of Natural Resources (WADNR) 2012).

j. ***Rocky substrate in tidal waters:*** Areas of rocky substrates consist of stones, boulders or bedrock that cover 75% or greater of an area where vegetation and/or macro algae cover less than 30% of the area. Rocky substrates may occur in both intertidal and subtidal marine waters.

k. ***Vernal Pools***: Vernal pools are seasonally inundated depressions underlain by an impermeable claypan or hardpan layer. A vernal pool is usually a closed depression without a naturally-occurring inlet or outlet that ponds water in the cool, low evaporation periods of winter and spring in regions with cool moist winters, and dries out during the hot dry summers.

l. ***Wetlands in dunal systems along the Oregon coast***: Dunes are ridges and hills of sand formed by the influence of wind and water. Dunal systems along the Oregon coast consist of a complex assembly of beaches, foredunes, hummocks, deflation plains, and transvers, oblique and parabolic dunes located between the Pacific Ocean and the foothills of the Coast Range. Wetlands in the dunal system along the Oregon coast may occur in the deflation plains, depressions, swales or low areas.

m. ***Willamette Valley wet prairie wetlands:*** Wet prairie wetlands are a type of wetland located in the Willamette Valley characterized by a seasonally high water table or perched water table on clay-rich soils. Wet prairie wetlands and dominated primarily by graminoids, including tufted hairgrass (Deschampsia caespitosa), camas (Camassia quamash), dense sedge (Carex densa), and lateral sedge (Carex unilateralis).

# 2017 NATIONWIDE PERMIT SPECIFIC TERMS AND CONDITIONS

The 2017 Nationwide Permits (NWP) are listed below. For each NWP, we include: (1) a summary of pre-construction notification (PCN) requirements, (2) Portland District's NWP-specific regional conditions, (3) DEQ and EPA 401 Certification decisions, including any NWP-specific 401 Certification conditions, and (4) the State's CZM consistency responses, including any NWP-specific CZM consistency conditions. Please note that typically only one agency will have 401 Certification authority over a given project, depending on the location of the project. Please refer to the Section 401 Water Quality Certification discussion for further information.

In addition to complying with the terms and permit-specific conditions listed below, permittees must comply with all applicable National, Regional, State, and EPA General Conditions listed in this document. The 401 WQC and CZMA conditions are provided at the end of this document for reference.

## 1. Aids to Navigation

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Certified by EPA. Not required by DEQ.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where the activity is within or directly impacting certain aquatic habitats of special concern.

## 2. Structures in Artificial Canals

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Certified by EPA. Not required by DEQ.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**3. <u>Maintenance</u>**

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

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

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain

normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

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

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

(Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404))

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification must be submitted to the Corps for work that results in any of the following:

a) activities involving the removal of accumulated sediments and debris outside immediate vicinity of existing structure (Nationwide 3 notification condition)
b) impacts to aquatic resources of special concern (Regional Condition 2)
c) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
d) an affect or potential to affect listed historic properties (National General Condition 20)
e) impacts a designated critical resource waters (National General Condition 22)

See (National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Partially denied without prejudice. An individual 401 certification is required for projects authorized under this NWP if:

1. The project or activity would occur in fish bearing waters of the U.S. and extends beyond the original project footprint, or
2. Any activity requiring excavation or dredging in open water.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**5. Scientific Measurement Devices**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cables within 30 days after the device is no longer being used for its intended purpose.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**6. <u>Survey Activities</u>**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. The use of explosives in waters of the U.S. is not authorized by this NWP.

2. Permittee shall isolate all in-stream exploratory trenching from flowing water.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Partially denied without prejudice. An individual 401 certification is required for projects authorized under this NWP if:

1. The project or activity involves oil or natural gas exploration, or
2. The project or activity requires trenching in wetlands.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**7. <u>Outfall Structures and Associated Intake Structures</u>**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or the activity has potential for more than minimal discharge). Individual 401 certification required for projects authorized under this NWP that:

1. Are not subject to an NPDES permit; or
2. That do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

All other activities require certification; WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. The project or activity has an associated outfall to a wetland, or
2. Receiving waters cannot be diverted.

**CZM Consistency Response –** Advance concurrence granted with standard conditions, except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Not required by DEQ. EPA has certified.

**CZM Consistency Response –** Advance concurrence denied. Individual consistency review is required for all activities authorized under this NWP.

**9. Structures in Fleeting and Anchorage Areas**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Not required by DEQ. EPA certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

***NOTE**: Anchorage and fleeting areas in Portland District are listed in the Coast Guard anchorage regulations, 33 CFR 110.228-230 (http://www.access.gpo.gov/nara/cfr/waisidx_05/33cfr110_05.html).*

**10. Mooring Buoys**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Not required by DEQ. Certified by EPA.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**11. Temporary Recreational Structures**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**401 Certification –** Not required by DEQ. Certified by EPA.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**12. <u>Utility Line Activities</u>**

Activities required for the construction, maintenance, repair, and removal of utility 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.

<u>Utility lines</u>: 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, 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, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. 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 (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

<u>Utility line substations</u>: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or 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 into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

<u>Foundations for overhead utility line towers, poles, and anchors</u>: This NWP authorizes the construction or maintenance of foundations for overhead utility 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.

<u>Access roads</u>: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and 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 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, 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 any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed or installed 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.

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: Utility 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 utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: 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 section 9 of the Rivers and Harbors Act of 1899. 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 6: 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 7: For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 8: 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) 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).

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) mechanized land clearing in a forested wetland for a utility line right-of-way (NWP 12 Notification Condition);
e) a Section 10 permit is required;
f) the utility line, excluding overhead lines, exceeds 500 feet in waters of the U.S.;
g) the utility line is in waters of the U.S. and runs parallel to or along a stream bed;
h) the discharge will result in the loss of greater than 1/10 acre of waters of the U.S;
i) a permanent access road is constructed above grade for a distance of more than 500 feet;
j) or permanent access roads are constructed in waters of the United States with impervious materials (d – j are required by NWP 12 Notification Conditions)

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. Manholes placed in streams or other waterways require specific approval by the District Engineer.

***NOTE**: To ensure there are no impacts to native shellfish beds, agency coordination by the Corps of Engineers is required where utility lines are proposed in estuaries.*

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification** – Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. Any excavation or dredging activities affect open water areas (e.g., trenching across streams), or
2. There are any permanent access roads, temporary structures or fill associated with the utility line activities, or
3. The entire scope of the project involves greater than 1/10 acre of impacts to aquatic resources; results in a permanent conversion of greater than 1/10$^{th}$ acre of wetland (e.g. forested wetland to emergent wetland); or involves over 300 linear feet of stream.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**13. <u>Bank Stabilization</u>**

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

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

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

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

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

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

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

**Summary of National and Regional Pre-Construction Notification Requirements:**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) Activity involves discharges into special aquatic sites, or
b) Activity is in excess of 500 feet in length, or
c) Activity will involve greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line (a-c are required by NWP 13 Notification Conditions)
d) impacts to aquatic resources of special concern (Regional General Condition 2)
e) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
f) an affect or potential to affect listed historic properties (National General Condition 20)
g) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** Pre-construction notification, when required, must include photo documentation of the existing conditions at the proposed project site.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or the activity has potential for more than minimal discharge). Individual 401 certification required for projects authorized under this NWP if:

1. Projects do not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the *only* way to protect an *existing* structure), or
2. The project proposes permanent fill in adjacent wetlands.

All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. The entire scope of the project is greater than 300 linear feet, or
2. The project does not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the only way to protect an existing transportation related structure), or
3. The project proposes permanent fill in adjacent wetlands.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**14. <u>Linear Transportation Projects</u>**

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

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

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

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

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

<u>Note 2</u>: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

<u>Note 3</u>: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) 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)

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) loss of waters of the United States is greater than 1/10 acre (NWP 14 Notification Condition)
b) the discharge is in a special aquatic site (NWP 14 Notification Condition)
c) impacts to aquatic resources of special concern (Regional Condition 2)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
e) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Partially denied without prejudice. Individual 401 certification required for projects authorized under this NWP if:

1. Any excavation or dredging activities affect open water areas (e.g., trenching across streams), or
2. There are any permanent access roads, temporary structures or fill associated with the utility line activities, or
3. The entire scope of the project involves greater than 1/10 acre of impacts to aquatic resources; results in a permanent conversion of greater than 1/10th acre of wetland (e.g. forested wetland to emergent wetland); or involves over 300 linear feet of stream.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern

**15. <u>U.S. Coast Guard Approved Bridges</u>**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**16. <u>Return Water from Upland Contained Disposal Areas</u>**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** All activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Denied. Individual 401 certification is required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**17. Hydropower Projects**

Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** Denied. Individual 401 certification is required.

**EPA 401 Certification –** Denied. Individual 401 certification is required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**18. Minor Discharges**

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

(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;

(b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and

(c) The discharge is not placed for the purpose of a stream diversion.

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) discharge or excavation volume exceeds 10 cubic yards below the plane of ordinary high water or high tide line (NWP 18 Notification Condition)
b) the discharge occurs in a special aquatic site (NWP 18 Notification Condition)
c) impacts to aquatic resources of special concern (Regional Condition 2)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional conditions** – None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**19. <u>Minor Dredging</u>**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** No 401 required.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**20. <u>Response Operations for Oil or Hazardous Substances</u>**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

Se National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** No 401 required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification

is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where the activity is within or directly impacting the Territorial Sea.

**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 as part of an integrated permit processing procedure 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal individual and cumulative adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges into tidal waters or non-tidal wetlands adjacent to tidal waters; and

(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 and receive written authorization prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for all activities.

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). Certification for all other activities is denied; individual 401 Certification is required.

**EPA 401 Certification** – Denied. Individual 401 certification required.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

## 22. Removal of Vessels

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

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

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) the vessel is listed or eligible for listing in the National Register of Historic Places
b) the activity is conducted in a special aquatic site (a and b required by NWP 22 Notification Condition)
c) impacts to aquatic resources of special concern (Regional Condition 2)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-specific conditions.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where the activity is within or directly impacting the Territorial Sea.

## 23. Approved Categorical Exclusions

Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

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

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

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at: http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl05-07.pdf. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA must be submitted to the Corps for those activities identified in RGL 05-07.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** Pre-construction notification to the District Engineer is required in all instances.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Partially denied without prejudice. An individual 401 certification is required for projects authorized under this NWP if:

1. The activity has fill impacts greater than 1/10 acre, or
2. The activity would impact greater than 300 linear feet of stream.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**24. Indian Tribe or State Administered Section 404 Programs**

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

Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.

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

***NOTE**: This NWP is not used in Oregon.*

**25. Structural Discharges**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National Condition 32 (Pre-construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** All activities require certification if notification is required by the Corps and there is a 404 discharge. WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**26. [Reserved]**

**27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities.**

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

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

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

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

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

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

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

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

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

(1) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(3) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency.

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances, except those listed in the "Notification" section above **unless** work results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC must be granted upon review and payment of fee.

**EPA 401 Certification –** Partially denied without prejudice. An individual 401 review is required for projects authorized under this NWP if the project or activities involve greater than ½ acre of fill in waters of the U.S.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where the activity is within or directly impacting the Territorial Sea.

**28. Modifications of Existing Marinas**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirement.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification –** No certification required.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**29. <u>Residential Developments</u>**

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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

<u>Subdivisions</u>: 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.

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. The loss of waters of the U.S. associated with the construction or expansion of a single residence including attendant features (e.g., utility lines, roads, yards, etc) shall not exceed one-fourth (¼) acre.
2. Pre-construction notification must identify if the project is for the construction or expansion of a single residence, a multiple unit/subdivision residential development, or a phased residential development. For projects proposed within or associated with a multiple unit/subdivision residential development or a phased residential development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit/subdivision residential development or a phased residential development.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification. WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.
3. Land use planning issues occur (see Appendix D for further information).

**30. Moist Soil Management for Wildlife**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)
d) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** All activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

## 31. Maintenance of Existing Flood Control Facilities

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

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in

maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

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

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

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

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (March 19, 2017, to March 18, 2022) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**NWP-Specific Regional Conditions –** None

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or the activity has potential for more than minimal discharge). Individual 401 certification is required for projects authorized under this NWP that are located in streams with temperature TMDLs and result in a net reduction of riparian shade.

All other activities require certification; WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**32. <u>Completed Enforcement Actions</u>**

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

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

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

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

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

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

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

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any

authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

**Summary of National and Regional Pre-Construction Notification Requirements –** Not applicable.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where the activity is within or directly impacting the Territorial Sea.

**33. Temporary Construction, Access, and Dewatering**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for all activities.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. Pre-construction notification to the District Engineer is required prior to commencing all activities conducted in waters of the U.S. (i.e. Section 10 and 404 waters). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification** – Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**34. <u>Cranberry Production Activities</u>**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** Denied. Individual 401 certification is required.

**EPA 401 Certification –** Denied. Individual 401 certification is required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**35. Maintenance Dredging of Existing Basins**

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No 401 certification required.

**EPA 401 Certification –** Certified.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**36. Boat Ramps**

Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:

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

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

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

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

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) discharges greater than 50 cubic yards (NWP 36 Notification Condition)
b) ramps wider than 20 feet (NWP 36 Notification Condition)
c) impacts to aquatic resources of special concern (Regional Condition 2)
d) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
e) an affect or potential to affect listed historic properties (National General Condition 20)
f) impacts a designated critical resource waters (National General Condition 22)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**37. <u>Emergency Watershed Protection and Rehabilitation</u>**

Work done by or funded by:

(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);

(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);

(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);

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

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances unless there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification; WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**38. <u>Cleanup of Hazardous and Toxic Waste</u>**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification. WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Certified.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where the activity is within or directly impacting the Territorial Sea.

**39. <u>Commercial and Institutional Developments</u>**

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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges 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 to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) and NWP 39 Regional Condition 1 listed below for notification requirements.

**NWP-Specific Regional Conditions –** Pre-construction notification must identify if the project is for the construction or expansion of a single commercial or institutional development, a multiple unit commercial or institutional development, or a phased commercial or institutional development. For projects proposed within or associated with a multiple unit or phased commercial or institutional development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit or phased development.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification. WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.
3. Land use planning issues occur (see Appendix D for further information).

**40. <u>Agricultural Activities</u>**

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 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges 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 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).

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification –** Denied. Individual 401 certification required.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**41. <u>Reshaping Existing Drainage Ditches</u>**

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) impacts to aquatic resources of special concern (Regional Condition 2)
b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
c) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** All activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-Specific Conditions apply.

**EPA 401 Certification –** Partially denied without prejudice. An individual 401 review is required for projects authorized under this NWP if the scope of the project is greater than 500 linear feet.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

## 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges 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)

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) and NWP 42 Regional Condition 1 listed below for notification requirements.

**NWP-Specific Regional Conditions –** Pre-construction notification must identify if the project is for the construction or expansion of a single commercial or institutional development, a multiple unit commercial or institutional development, or a phased commercial or institutional development. For projects proposed within or associated with a multiple unit or phased commercial or institutional development, the pre-construction notification must identify any known previous Department of the Army (DA) authorizations received for the multiple unit or phased development.

**State 401 Certification –** All activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-Specific Conditions apply.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**43. <u>Stormwater Management Facilities</u>**

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 to meet reduction targets established under Total Daily Maximum 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. 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 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)

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) new or expansion of existing stormwater management facilities (NWP 43 Notification Condition).
b) impacts to aquatic resources of special concern (Regional Condition 2)
c) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
d) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification).

**NWP-Specific Regional Conditions –** This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements. Unauthorized purposes include recreational lakes, reflecting pools, irrigation, etc.

**State 401 Certification** – Individual 401 certification required for projects that:
1. Propose in-stream or wetland stormwater facilities,
2. Are not subject to an NPDES permit, or
3. Do not demonstrated pollutant removal to meet water quality standards prior to discharges into waters of the state.

All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-Specific Conditions apply.

**EPA 401 Certification** – Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**44. <u>Mining Activities</u>**

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 wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (e.g., rivers, streams, lakes, and ponds) 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.

The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects.

The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

This NWP does not authorize discharges 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)

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –**

1. In-stream mining, including bar scalping, is not authorized by this NWP.
2. The use of explosives in waters of the U.S. is not authorized by this NWP.

**State 401 Certification –**Individual 401 Certification is required for projects that do not obtain an NPDES 700-PM. For all other cases, WQC will be granted upon review and payment of fee. NWP-Specific Conditions apply.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**45. <u>Repair of Uplands Damaged by Discrete Events</u>**

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

This NWP does not authorize beach restoration or nourishment.

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

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the

permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances, within 12 months of the date of the damage.

See National General Condition 32 (Pre-Construction Notification) and NWP 45 Notification Condition for notification requirements and content.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Partially denied without prejudice. Permittee must meet EPA 401 General Conditions. Individual 401 review is required for projects authorized under this NWP if:

1. The project or activity is greater than ½ acre, or
2. The project or activity requires restoration beyond the pre-event High Tide Line or Ordinary High Water Mark.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**46. <u>Discharges in Ditches</u>**

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** Denied. Individual 401 certification required.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**47. [Reserved]**

**48. Commercial Shellfish Aquaculture Activities**

Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations 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 aquaculture 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. A "new commercial shellfish aquaculture operation" is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

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;

(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; or

(d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) the activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture 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.)

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 boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new pre-construction notification does not need to be submitted. (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.”

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for work that results in any of the following:

a) work that includes a species not previously cultivated in the waterbody
b) work in a project area that has not been used for commercial shellfish aquaculture for past 100 years. (a and b are from NWP 48 Notification Condition)
c) any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project (National General Condition 18 and Regional Condition 5)
d) impacts to aquatic resources of special concern (Regional Condition 2)
e) an affect or potential to affect listed historic properties (National General Condition 20)

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

*Note: For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state-owned submerged and submersible lands, permittee is advised authorization may be required from the Oregon Department of Agriculture. For more information go to http://www.oregon.gov/oda/programs/foodsafety/pages/aboutfoodsafety.aspx.*

**State 401 Certification –** No 401 required for Section 10 only activities (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities require certification if an application is filed with the Corps. In those cases, WQC will be granted upon review and payment of fee.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence denied. Individual consistency review is required for all activities authorized under this NWP.

**49. <u>Coal Remining Activities</u>**

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions –** None.

**State 401 Certification –** No 401 WQC required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities under this NWP are denied and will require Individual 401 Certification.

**EPA 401 Certification –** Denied. Individual 401 certification required.

**CZM Consistency Response –** Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

## 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 as part of an integrated permit processing procedure, 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges 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 and receive written authorization prior to commencing the activity. (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)

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification** – No 401 WQC required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge). All other activities under this NWP are denied and will require Individual 401 Certification.

**EPA 401 Certification** – Denied. Individual 401 certification required.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:

1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

## 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. The discharge must not cause the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written

determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre. This NWP does not authorize discharges 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: 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 utility lines may be authorized by NWP 12 or another Department of the Army authorization.

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 utility lines and/or road crossings, then NWP 12 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 12 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 to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps for discharges resulting in the loss of more than 0.1 acre of waters of the U.S.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

**State 401 Certification** – No 401 required for Section 10 only activities (unless in Portland Harbor or the activity has the potential for more than minimal discharge). All other activities require certification if notification is required by the Corps and there is a 404 discharge. In those cases, WQC will be granted upon review and payment of fee. NWP-Specific Conditions apply.

**EPA 401 Certification** – Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if:

1. The project affects greater than 1 acre of aquatic resources.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

**52. <u>Water-Based Renewable Energy Generation Pilot Projects</u>**

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 discharge must not cause the loss of greater than 1/2-acre of waters of the United States, including the loss of more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the NWP activity cannot exceed 1/2-acre.

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 or 300 linear foot limits.

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: 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 utility lines may be authorized by NWP 12 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 approval from the Chief of Engineers or District Engineer 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.

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 to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None.

*Note: Activities located within ocean waters may be subject to the siting requirements of the Oregon Territorial Sea Plan, which designates areas as suitable for such activities. For more information go to http://www.oregon.gov/LCD/OCMP/Pages/Ocean_TSP.aspx.*

**State 401 Certification** – No 401 required for Section 10 only activities (unless in Portland Harbor or the activity has the potential for more than minimal discharge). All other activities under this NWP are denied and will require Individual 401 Certification.

**EPA 401 Certification** – Denied. Individual 401 certification required.

**CZM Consistency Response** – Advance concurrence granted with standard conditions except where:
1. The activity is within or directly impacting the Territorial Sea; or
2. The activity is within or directly impacting certain aquatic habitats of special concern.

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

For the purposes of this NWP, the term “low-head dam” is defined as a dam built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis. (During a drought, there might not be water flowing over the dam crest.) In general, a low-head dam does not have a separate spillway or spillway gates but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

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

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized

by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure the authorized activity results in no more than minimal adverse environmental effects.

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None

**State 401 Certification** – No 401 required for Section 10 only activities (unless in Portland Harbor or the activity has the potential for more than minimal discharge). All other activities under this NWP are denied and will require Individual 401 Certification.

**EPA 401 Certification** – Denied. Individual 401 certification required.

**CZM Consistency Response** – Advance concurrence denied. Individual consistency review is required for all activities authorized under this NWP except where ODFW has determined no current or historical native migratory fish presence or the applicant already has a fish passage approval/waiver.

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

(a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;

(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used if the site is planted by the permittee;

(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;

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

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

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

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

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

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

**Summary of National and Regional Pre-Construction Notification Requirements –**
Pre-construction notification (e.g., a permit application or JPA) must be submitted to the Corps in all instances.

See National General Condition 32 (Pre-Construction Notification) for notification requirements.

**NWP-Specific Regional Conditions** – None

**State 401 Certification –** No certification required for Section 10 only projects (unless in Portland Harbor or the activity has potential for more than minimal discharge). Individual 401 certification required for projects authorized under this NWP if:

1. Projects do not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the *only* way to protect an *existing* structure), or
2. The project proposes permanent fill in adjacent wetlands.

For all other actions, WQC will be granted upon review and payment of fee. NWP-specific conditions apply.

**EPA 401 Certification –** Partially denied without prejudice. Individual 401 review is required for projects authorized under this NWP if:
1. The project does not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions as the only way to protect an existing transportation related structure), or

2. The project is located within a special aquatic site.

**CZM Consistency Response –** Advance concurrence denied. Individual consistency review is required for all activities authorized under this NWP unless the project consists solely of wood, vegetation, or other living natural ‘soft’ elements.

## NATIONAL GENERAL NWP 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 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.

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 Fills.

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. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

17. Tribal Rights.

No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

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 the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, 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 designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat 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. 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 activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the

agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

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

19. Migratory Birds and Bald and Golden Eagles.

The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts 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) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, 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. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer

shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties.

Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and 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.

(d) 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.

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

22. Designated Critical Resource Waters.

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

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 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 in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined 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) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than 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. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most

appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

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

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

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

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

the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

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

24. Safety of Impoundment Structures.

To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state 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.

Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe 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)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions.

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

28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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. 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 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 is not authorized by NWP until the appropriate Corps office issues the section 408 permission 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. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. 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) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, 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. 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, intermittent, and ephemeral 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 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 designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

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

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

(10) For an activity that requires 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 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 the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. 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 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) 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 (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure 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

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 individual crossings of waters of the United States 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 authorized by

NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, 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. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

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 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, 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 (e.g., streams). 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 the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no

more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Definitions

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

*Compensatory mitigation*: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

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

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

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

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

ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

*Ephemeral stream*: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

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

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

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

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

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

*Intermittent stream*: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

*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. 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 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. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

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

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

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

*Ordinary High Water Mark*: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

*Perennial stream*: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

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

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

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

*Protected tribal resources*: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Waterbody*: For purposes of the NWPs, a waterbody is a jurisdictional 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)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## APPENDIX A: ABBREVIATIONS AND ACRONYMS

| | | |
|---|---|---|
| 401 Certification | – | Section 401 Water Quality Certification |
| BE | – | Biological Evaluation |
| Corps | – | U.S. Army Corps of Engineers |
| CBSA | – | Commencement Bay Study Area |
| CZMA | – | Coastal Zone Management Act |
| DEQ | – | Oregon Department of Environmental Quality |
| DLCD | – | Oregon Department of Land Conservation and Development |
| EPA | – | U.S. Environmental Protection Agency |
| ESA | – | Endangered Species Act |
| HPA | – | Hydraulic Project Approval |
| JPA | – | Joint Aquatic Resource Permit Application |
| NMFS | – | National Marine Fisheries Service |
| NPDES | – | National Pollution Discharge Elimination System |
| NRCS | – | Natural Resources Conservation Service |
| NWP | – | Nationwide Permit |
| PCN | – | Pre-Construction Notification |
| SPN | – | Special Public Notice |
| State | – | State of Oregon |
| TMDL | – | Total Maximum Daily Load |
| USFWS | – | U.S. Fish and Wildlife Service |
| OCMP | – | Oregon Coastal Management Program |
| ODFW | – | Oregon State Department of Fish and Wildlife |
| ODOT | – | Oregon State Department of Transportation |

# APPENDIX B: DEQ 401 WATER QUALITY CERTIFICATION DECISION

DEQ did not issue a programmatic certification to the USACE for the 2017 Nationwide Permits. In order to comply with the fee schedule in OAR 340-048-0055, DEQ will instead evaluate projects that the Portland District determines qualifies for a Nationwide Permit, and will issue an Individual Nationwide 401 WQC to each applicant following review and payment of the fee. The following are the conditions that DEQ will apply to projects qualifying for the Nationwide 401 WQC. For further information, please see http://www.oregon.gov/deq/wq/wqpermits/Pages/Section-401-Nationwide.aspx.

TEMPLATE FOR CERTIFICATION TO BE ISSUED DIRECTLY TO APPLICANT UPON APPLICATION TO USACE AND PAYMENT TO DEQ

DATE

APPLICANT NAME APPLICANT ADDRESS

RE: Nationwide 401 Water Quality Certification Approval for Project Number, Project Name

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #XX. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the Nationwide Section 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information and higher fees will apply.

**Certification Decision:** Based on information provided by USACE and the Applicant, DEQ is reasonably assured that implementation-eligible activities under the proposed NWP will be consistent with applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water-quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

**In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.**

## 401 GENERAL CERTIFICATION CONDITIONS

1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.

2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Application or Pre-Construction Notification submitted to the USACE and additional application materials (hereafter “the permit application materials”), unless otherwise authorized by DEQ. If the project is operated in a manner not consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.

3) A copy of this 401 WQC must be kept on the job site and readily available for reference by Applicant and its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government officials.

4) In accordance with OAR 340-048-0050, DEQ may modify or revoke this 401 WQC if project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.

5) The Applicant and its contractors must allow DEQ access to the project site, staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:
   a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;
   b. To inspect best management practices (BMPs), monitoring or operational equipment or methods; and
   c. To collect samples or monitor any discharge of pollutants.

6) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

7) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant must submit findings prepared by the local land use jurisdiction that demonstrates the activity's compliance with the local comprehensive plan. Such findings can be submitted using the appropriate section of the USACE & DSL Joint Permit Application, signed by the appropriate local official and indicating:

   a. "This project is consistent with the comprehensive plan and land use regulations;" or,

   b. "This project will be consistent with the comprehensive plan and land use regulations when the following local approvals are obtained," accompanied by the obtained local approvals.

   c. Rarely, such as for federal projects on federal land, "this project is not regulated by the comprehensive plan" will be acceptable.

In lieu of submitting the appropriate section of the USACE & DSL Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at:
http://www.deq.state.or.us/pubs/permithandbook/lucs.pdf

**FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL CONDITIONS APPLY**

8) **Erosion and Sediment Control**: During construction, erosion and sediment control measures must be implemented to prevent or control movement of sediment, soil or pollutants into waters of the state. The applicant is required to develop and implement an effective erosion and sediment control plan. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater permit from DEQ.** In addition, the applicant (or responsible party) must:

   a. Where practicable, use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction.

b. Demarcate wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.

c. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands. Place BMPs as necessary to stabilize and prevent erosion.

9) **Spill Prevention:** Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not impact water quality either directly or due to potential discharges.

10) **Spill & Incident Reporting:**

a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311). Containment and cleanup must begin immediately and be completed as soon as practicable.

b. If the project operations result in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; and immediately notify DEQ and ODFW.

11) **Vegetation Protection and Site Restoration:**

a. Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:

i. Minimization of project and impact footprint;
ii. Designation of staging areas and access points in open, upland areas;
iii. Fencing and other barriers demarking construction areas; and
iv. Use of alternative equipment (e.g., spider hoe or crane).

b. If authorized work results in any vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.

12) The Applicant shall avoid and protect from harm, all wetlands and riparian areas located within 50 feet of USACE jurisdictional waters, unless proposed, neccesary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will override this certification requirement.

**FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS**

13) **Fish protection/Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the Oregon Department of Fish and Wildlife preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or Department of State Lands removal/fill permit. Exceptions to the timing window must be recommended by Oregon Department of Fish and Wildlife, the National Marine Fisheries Services and/or the US Fish and Wildlife as appropriate.

14) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.

15) **Turbidity**: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

a. **Monitoring**: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two hour intervals each day during daylight hours when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ**.

i. Representative Background Point: Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet upcurrent of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring downcurrent at the compliance point described below.

ii. Compliance Point: The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet downcurrent from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

b. **Compliance**: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as follows:

| **MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*** | |
|---|---|
| ***TURBIDITY LEVEL*** | ***Restrictions to Duration of Activity*** |
| 0 to 4 NTU above background | No Restrictions |
| 5 to 29 NTU above background | Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-5 above background. |
| 30 to 49 NTU above background | Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-5 above background. |
| 50 NTU or more above background | Stop work immediately and inform DEQ |

c. **Reporting**: The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

d. **BMPs to Minimize In-stream Turbidity:** The Applicants must implement the following BMPs, unless otherwise accepted by DEQ:

i. Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or using a closed-lipped environmental bucket must be implemented;
iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
iv. Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

## FOR PROJECTS THAT INCLUDE NEW IMPERVIOUS SURFACES OR REDEVELOPMENT OF EXISTING SURFACES, THE FOLLOWING CONDITIONS APPLY

16) **Post-Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post- construction stormwater management plan to DEQ for review and approval prior to construction, in order to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ.

In lieu of a complete stormwater management plan, the applicant may submit documentation of acceptance of the stormwater into a DEQ permitted National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Separate Storm Sewer System (MS4).

17) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility.

## CATEGORY-SPECIFIC CONDITIONS

**In addition to all national and regional conditions of the USACE permit and the 401 Water Quality Certification general conditions above, the following conditions apply to the noted specific categories of authorized activities.**

**NWP 7 – Outfall Structures and Associated Intake Structures:**

7.1) The following actions are denied certification:

a. Discharge outfalls that are not subject to an NPDES permit; and

b. Outfalls that discharge stormwater without pollutant removal demonstrated to meet water-quality standards prior to discharge to waters of the state.

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidelines.pdf, the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 12 – Utility Lines:**

12.1) For proposals that include directionally-bored stream or wetland crossings:

a. All drilling equipment, drill recovery and recycling pits, and any waste or spoil produced, must be completely isolated, recovered, then recycled or disposed of to prevent entry into waters of the state.

b. In the event that drilling fluids enter a water of the state, the equipment operator must stop work, immediately initiate containment measures and report the spill to the Oregon Emergency Response System (OERS) at 800-452-0311.

c. An adequate supply of materials needed to control erosion and to contain drilling fluids must be maintained at the project construction site and deployed as necessary.

d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

12.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

**NWP 13 – Bank Stabilization:**

13.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

13.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 14 – Linear Transportation:**

14.1) For projects that include bank stabilization, bioengineering must be a component of the project, unless a registered professional engineer provides a written statement that non- bioengineered solutions are the only means to protect an existing structure.

14.2) To apply for certification for a project without bioengineering, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 16 - Return Water from Contained Upland Disposal Areas:** Water-quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 20, 33A, 33B, and 33C at: http://www.deq.state.or.us/wq/standards/toxics.htm#Cur.

16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.

16.2) Water removed with contaminated dredged material that could or does exceed chronic water-quality criteria must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration.

16.3) If a Modified Elutriate Test (MET) is performed for the known contaminants of concern (CoCs) and CoC concentrations are below DEQ chronic water-quality criteria, return water discharge is not limited.

a. The MET must be performed before dredging.
b. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

**NWP 20 – Response Operations for Oil and Hazardous Waste:**

20.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

**NWP 22 – Removal of Vessels:**

22.1) Coordination with DEQ's Emergency Response program is required. See: http://www.deq.state.or.us/lq/cu/emergency/index.htm.

**NWP 31 – Maintenance of Existing Flood Control Facilities:**

31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.

**NWP 38 – Cleanup of Hazardous and Toxic Waste:**

38.1) For removal of contaminated material from waters, dredging method is limited to diver assisted hydraulic suction, hydraulic suction, closed-lipped environmental bucket, or excavation in the dry, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the permittee is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: http://www.deq.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf.

38.2) Discharge to waters of the state resulting from dewatering during dredging or release of return water from an upland facility is prohibited except as provided below.

a. All water removed with sediment must be contained and disposed of at an appropriately sized and sealed upland facility by evaporation or infiltration; or,

b. A Modified Elutriate Test (MET) may be performed for the known Contaminants of Concern (CoCs) and if CoC concentrations are below DEQ chronic water-quality criteria; return water discharge is not limited.

   i. The MET must be performed before dredging.
   ii. DEQ must approve the list of CoCs and analytical method prior to the permittee performing the MET.
   iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: http://www.deq.state.or.us/lq/hw/hwmanagement.htm) or Solid Waste (see: http://www.deq.state.or.us/lq/sw/index.htm).

38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

**NWP 41 - Reshaping Existing Drainage Ditches:**

41.1) To the extent practicable, permittees must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;

41.2) Following authorized work, permittee must establish in-stream and riparian vegetation on reshaped channels and side-channels using native plant species wherever practicable. Plantings must be targeted to address water-quality improvement (e.g., provide shade to water to reduce temperature or provide bank stability through root systems to limit sediment inputs). Planting options may include clustering or vegetating only one side of a channel, preferably the side which provides maximum shade.

**NWP 42 – Recreational Facilities:**

42.1) For facilities that include turf maintenance actions, the permittee must develop and implement an Integrated Pest Management Plan (IPM) that describes pest prevention, monitoring and control techniques with a focus on prevention of chemical and nutrient inputs to waters of the state, including maintenance of adequate buffers for pesticide application near salmonid streams, or coverage under an NPDES permit, if required (information is available at: http://www.deq.state.or.us/wq/wqpermit/pesticides.htm).

**NWP 43 – Stormwater Management Facilities:**

43.1) Projects that propose the following elements are denied certification:
   a. In-stream or wetland stormwater facilities;
   b. Discharge outfalls not subject to an NPDES permit; and,
   c. Proposals that do not demonstrate pollutant removal to meet water-quality standards prior to discharge to waters of the state.

43.2) To apply for certification for a project with in-stream stormwater facilities, without an NPDES permit, or without submittal of an approvable stormwater management plan per DEQ's Guidelines (at: http://www.deq.state.or.us/wq/sec401cert/docs/stormwaterGuidlines.pdf), the

permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 44 – Mining Activities:**

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied certification.

44.2) To apply for certification for a project without an NPDES permit, the permittee must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo individual 401 WQC evaluation and fulfill public participation requirements.

**NWP 51 – Land-Based Renewable Energy Generation Facilities:**

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition 12.1 must be applied.

**NWP 54** – Living Shorelines

54.1) Projects that do not include bioengineering are denied certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Sara Christensen at 541-633-2007, by email at christensen.sara@deq.state.or.us, or at the address on this letterhead.

Sincerely,

Steve Mrazik,
Water Quality Manager Northwest Region

cc: ADD CC

# APPENDIX C: EPA 401 WATER QUALITY CERTIFICATION DECISION

The EPA has 401 certification authority in Indian Country. Indian County includes lands within Reservation boundaries, lands held in trust by the Federal Government outside of Reservation boundaries, and "In-Lieu" sites (e.g., in-lieu fishing sites along the Columbia River). EPA also has WQC authority on lands with exclusive Federal jurisdiction; currently the only such land within the state of Oregon is the dam at Willamette Falls. EPA provided certification for the 2017 NWPs by letter dated August 16, 2017. This letter, along with the conditions provided below, can be found at http://www.nwp.usace.army.mil/Portals/24/docs/regulatory/nationwide/2017_NWP_EPA_Water_Conditions_Tribal.pdf.

U.S.Environmental Protection Agency's
Water Quality Conditions for the 2017 U.S.Army Corps of Engineers Nationwide Permits on Tribal Lands without Treatment as a State and Lands with Exclusive Federal Jurisdiction in Oregon

In addition to all the U.S. Army Corps of Engineers' National and Portland District's Regional permit conditions, the following EPA Section 401 water quality certification General Conditions apply to all Nationwide Permits, whether certified or partially certified with conditions.

**EPA GENERAL CONDITIONS:**

**EPA General Condition 1 - Special Aquatic Sites**
Any activities in the following types of waters of the U.S., including wetlands, will require an individual 401 certification: Mature forested wetlands; bogs; peatlands; wetlands in dunal systems along the Oregon coast; vernal pools; aspen-dominated wetlands; alkali wetlands; camas prairie wetlands; salt marshes; or marine waters with eelgrass or kelp beds.

**EPA General Condition 2 - Soil Erosion and Sediment Controls**
A 401 certification determination is based on the project or activity meeting established turbidity levels. The EPA will use as guidance the State of Oregon's water quality standards [OAR 340-041-001] to determine.if standards are exceeded. Projects or activities that are expected to exceed these levels will require individual 401certification, as determined by the EPA.

The water quality standards allow for short-term turbidity exceedances after all necessary Best Management Practices have been implemented (e.g., properly placed and maintained filter fences, hay bales and/or other erosion control devices, adequate detention of runoff to prevent turbid water from flowing off-site, providing a vegetated buffer between the activity and open water, etc.), and only up to the following limits:

| Wetted Stream Width at Discharge Point | Approximate Downstream Point for Determinin2 Compliance |
|---|---|
| Up to 30 feet | 50 feet |
| >30 to 100 feet | 100 feet |
| >100 feet to 200 feet | 200 feet |
| >200 feet | 300 feet |
| Lake, Pond, reservoir | Lesser of 100 feet or maximum surface dimension |

**EPA General Condition 3 - Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions**
All projects that involve land disturbance or impervious surfaces must implement stormwater pollution prevention or control measures to avoid discharge of pollutants in stormwater runoff to waters of the U.S.

a. For land disturbances during construction, the permittee must obtain and implement Construction Stormwater General Permit requirements where required [https://www.epa.gov/npdes/stormwater-discharges-construction-activities]

b. Following construction, prevention or treatment of on-going stormwater runoff from impervious surfaces must be provided.

The EPA encourages prevention of discharges by managing stormwater on site through Low Impact Development principles and other prevention techniques. The EPA will use the applicable provisions of the Oregon Department of Environmental Quality's 2013 Construction Stormwater Best Management Practices manual and the 2013 Construction Stormwater Erosion and Sediment Control Manual as guidance in meeting the applicable water quality standards.

**EPA General Condition 4 - Compliance with Requirements of the National Pollutant Discharge Elimination System Permit for Industrial or Municipal Activities**
For projects and activities requiring coverage under an industrial or municipal (non-stormwater) NPDES permit, certification is based on compliance with the requirements of that permit. The EPA will determine if the project is compliant. The projects and activities not in compliance with NPDES requirements will require an individual 401certification, as determined by the EPA.

**EPA General Condition 5 - Projects or Activities Discharging to Impaired Waters**
An individual 401 certification is required for projects or activities authorized under the Nationwide Permits (NWPs) if the project will discharge to a waterbody on the list of impaired waterbodies (the 303(d) List) *a11d* the discharge may result in further exceedance of a specific parameter for which the waterbody is listed; The EPA will determine if the discharge results in exceedance of a specific parameter. The current list of 303(d)-listed waterbodies is available on the Oregon's Department of Environmental Quality web site at: http://www.deq.state.or.us/wq/assessment/rpt2012/search.asp or by contacting DEQ's water quality staff.

For projects or activities that will discharge to a 303(d)-listed waterbody that does have an approved Total Maximum Daily Load, the permittee must provide documentation for EPA approval showing that the discharge is within the limits established in the TMDL. Locating a proposed project within a watershed with a TMDL can be done at EPA's web site https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10 with links to https://www.deq.state.or.us/wq/tmdls/docs/TMDLStatusMap.pdf.

For projects or activities that will discharge to a 303(d)-listed waterbody that does not have an approved TMDL or an approved water quality management plan, the permittee must provide documentation for EPA approval demonstrating that the discharge will not result in further exceedance of the listed contaminant or impairment.

**EPA General Condition 6 - Notification and 401Water Quality Certification Application**
For projects requiring an individual 401 certification, permittees must provide the EPA with the same documentation provided to the Corps (as described in the Corps' National General Condition 32, Pre-Construction Notification), including, when applicable:

a. A description of the project, including site plans, project purpose, direct and indirect adverse environmental effects the project would cause, any other U.S. Department of the Army permits used or intended to be used to authorize any part of the proposed project or any related activity.

b. Delineation of special aquatic sites and other waters of the United States. Wetland delineations must be prepared in accordance with the current method required by the Corps. Eelgrass delineation must be prepared in accordance with current methods recommended by the Corps and state agencies.

c. A statement describing how the mitigation requirement will be satisfied. A conceptual or detailed mitigation or restoration plan may be submitted.

d. Other applicable requirements of Corps National General Condition 32, Corps Regional Conditions, or notification conditions of the applicable NWP.

A request and application for an individual 401 certification is not complete until the EPA is provided the applicable documents noted above and the EPA has received a copy of the Corps' verification letter stating the applicant must contact the EPA to obtain a 401 water quality certification providing coverage for a proposed project or activity under the NWP Program.

**EPA General Condition 7 - Mitigation**
An individual 401 certification is based on adequate compensatory mitigation being provided for unavoidable impacts to aquatic resources and other water quality-related impacts of projects or activities authorized under the NWP Program.

A 401 certification is contingent upon written approval from the EPA of the compensatory mitigation plan for projects and activities resulting in any of the following:

a. impacts to any aquatic resources requiring special protection (as defined in the EPA General Condition 1);

b. any impacts to tidal waters or non-tidal waters adjacent to tidal waters; or

c. any impacts to aquatic resources greater than 1/10 acre.

Compensatory mitigation plans submitted to the EPA must be based on the 2008 Corps and EPA Joint Federal Rule on Compensatory Mitigation (see: https://www.epa.gov/sites/production/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf) and must include, at a minimum, the following:

1) A description of the measures taken to avoid and minimize impacts to wetlands and other waters of the U.S.
2) The nature of the proposed impacts (e.g., acreage of wetlands and functions lost or degraded).
3) The rationale for the mitigation site that was selected.

4) The ecological goals and objectives of the compensatory mitigation project.
5) How the mitigation project will be accomplished (work plan), including proposed performance standards for measuring success.
6) How the site will be maintained and monitored through time to assess progress towards goals and objectives.
7) Submittal of an "as-built conditions report" upon construction of the mitigation.
8) Submittal of monitoring reports at agreed upon intervals showing the results of monitoring to meet performance standards and criteria.
9) Legal site protection mechanism (conservation easement or restrictive covenant) to ensure that the compensatory mitigation site will be legally protected for the long-term.
10) Long term management plan.
11) Financial assurances.

**EPA General Condition 8 - Temporary Fills**
An individual 401 certification is required for any activity where temporary fill will remain in wetlands or other waterbodies for more than 90 days. The 90-day period begins when filling activity starts in the wetland or other waterbody.

**EPA General Condition 9 - Designated Critical Resource Waters**
An individual 401 certification is required for any proposed project or activity in waterbodies on the most current list of Designated Critical Resource Waters (per the Corps' National General Condition #22).

**EPA General Condition 10 - Fills Within 100-Year Floodplains**
An individual 401 certification is required for any proposed project or activity that involves fill in waters of the U.S. and would increase permanent, above-grade fill within the 100-year floodplain (including the floodway and the flood fringe).

[*Note:* The 100-year floodplain is defined as those areas identified as Zones A, Al-30, AE, AH, AO, A99, V, Vl-30, and VE on the most current Federal Emergency Management Agency Flood Rate Insurance Maps, or areas identified as within the 100-year floodplain on applicable local Flood Management Program maps. The 100-year flood is also known as the flood with a 100- year recurrence interval, or as the flood with an exceedance probability of 0.01.]

**EPA General Condition 11- Chemically Treated Wood**
An individual 401 water quality certification is required if the permittee proposes to use wood products treated with biologically harmful teachable chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol), unless the wood products meet the following conditions:

a. Wood preservatives and their application must be in compliance with EPA label requirements and criteria of approved EPA Registration Documents under the Federal Insecticide, Fungicide, and Rodenticide Act,
b. Use of chemically treated wood products must follow the Western Wood Preservatives Institute (WWPI) guidelines and best management practices to minimize the preservative migrating from treated wood into the aquatic environment (see: http://preservedwood.org/HowTo/BestManagementPractices.aspx )
c. For new or replacement wood structures, the wood must be sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers to prevent or limit leaching. Acceptable alternatives to chemically treated wood are encouraged and include

untreated wood, steel (painted, unpainted or coated with epoxy petroleum compound or plastic), concrete and plastic lumber; and

d. All removal of chemically treated wood products (including pilings) must follow the most recent "EPA Region 10 Best Management Practices for Piling Removal and Placement in Washington State."

**EPA NWP-SPECIFIC WATER QUALITY CONDITIONS**

1. Aids to Navigation.
EPA 401 Certification - Certified

2. Structures in Artificial Canals.
EPA 401 Certification - Certified

3. Maintenance.
EPA 401Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. Activities occur in fish bearing waters of the U.S. that extend beyond their prior footprint, or
b. Activities require excavation or dredging in open water.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.
EPA 401 Certification - Certified

5. Scientific Measurement Devices.
EPA 401 Certification - Certified

6. Survey Activities.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project or activity involves oil or natural gas exploration, or
b. The project or activity requires trenching in waters of the U.S.

7. Outfall Structures and Associated Intake Structures.
EPA 401Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project or activities have an associated outfall to a special aquatic site (e.g., mudflat, vegetated shallow, wetland), or
b. The receiving waters cannot be diverted.

8. Oil and Gas Structures on the Outer Continental Shelf.
EPA 401 Certification - Certified

9. Structures in Fleeting and Anchorage Areas.
EPA 401 Certification - Certified

10. Mooring Buoys.
EPA 401 Certification - Certified

11. Temporary Recreational Structures.
EPA 401 Certification - Certified

12. Utility Line Activities.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. There are any excavation or dredging activities affecting open water areas (e.g., trenching across streams), or

b. There are any permanent access roads, temporary structures or fill associated with the utility line activities, or

c. The project is authorized under one or more nationwide permit by the Corps that result(s) in greater than 1/10 acre of impacts to aquatic resources, or results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or over 300 linear feet of stream.

13. Bank Stabilization.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The entire scope of the project is greater than 300 linear feet, or

b. Does not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions that are the only way to protect an existing transportation related structure), or

c. Proposes permanent fill in adjacent wetlands.

14. Linear Transportation Projects.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project is authorized under one or more nationwide permits by the Corps that result(s) in greater than 1/10 acre of impacts to aquatic resources,

b. Results in a permanent conversion of greater than 1/10 acre of wetlands (i.e., forested wetlands to emergent wetlands), or

c. Over 300 linear feet of stream.

15.U.S.Coast Guard Approved Bridges.
EPA 401 Certification -Certified

16. Return Water from Upland Contained Disposal Areas.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

17. Hydropower Projects.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

18. Minor Discharges.
EPA 401 Certification - Certified

19. Minor Dredging.
EPA 401 Certification – Certified

20. Response Operations for Oil or Hazardous Substances.
EPA 401 Certification - Certified

21. Surface Coal Mining Operations.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

22. Removal of Vessels.
EPA 401Certification - Certified

23. Approved Categorical Exclusions.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project or activities impact greater than 1/10 acre of aquatic resources, or
b. Greater than 300 linear feet of stream.

24. Indian Tribe or State Administered Section 404 Programs.
EPA 401 Certification - Certified

25. Structural Discharges.
EPA 401 Certification - Certified

26. (Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project or activities involve greater than 1/2 acre of wetlands, or 300 linear feet of fish bearing stream, or any activity in tidal wetlands or waters.

28. Modifications of Existing Marinas.
EPA 401 Certification - Certified

29. Residential Developments.
EPA 401Certification – Denied. An individual 401 certification is required for all projects.

30. Moist Soil Management for Wildlife.
EPA 401Certification - Certified

31. Maintenance of Existing Flood Control Facilities.
EPA 401 Certification - Certified

32. Completed Enforcement Actions.
EPA 401 Certification - Certified

33. Temporary Construction, Access, and Dewatering.
EPA 401 Certification - Certified

34. Cranberry Production Activities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

35. Maintenance Dredging of Existing Basins.
EPA 401 Certification - Certified

36. Boat Ramps.
EPA 401 Certification - Certified

37. Emergency Watershed Protection and Rehabilitation.
EPA 401 Certification - Certified

38. Cleanup of Hazardous and Toxic Waste.
EPA 401 Certification - Certified

39. Commercial and Institutional Developments.
EPA 401 Certification – Denied. In individual 401 certification is required for all projects.

40. Agricultural Activities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

41. Reshaping Existing Drainage Ditches.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if the scope of the project is greater than 500 linear feet.

42. Recreational Facilities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

43. Stormwater Management Facilities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

44. Mining Activities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

45. Repair of Uplands Damaged by Discrete Events.
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if:

a. The project or activity is greater than 1/2 acre, or
b. The project or activity requires restoration waterward of the pre-event High Tide Line or Ordinary High Water Mark before the event occurred.

46. Discharges in Ditches.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

47. [Reserved].

48. Commercial Shellfish Aquaculture Activities.
EPA 401 Certification - Denied. An individual 40 I certification is required for all projects.

49. Coal Remining Activities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

50. Underground Coal Mining Activities.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

51. Land-Based Renewable Energy Generation Facilities
EPA 401 Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if the project or activity affects greater than 1/2 acre of aquatic resources or 300 linear feet of stream.

52. Water-Based Renewable Energy Generation Pilot Projects.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

53. Low-Head Dam Removal.
EPA 401 Certification – Denied. An individual 401 certification is required for all projects.

54. Living Shorelines.
EPA 401Certification – Conditioned. An individual 401 certification is required for projects authorized under this NWP if the project is located within a special aquatic site (e,g., mudflat, vegetated shallow, wetland) or could affect submerged aquatic vegetation or forage fish in marine waters.

# APPENDIX D: STANDARD OCMP COASTAL ZONE CONDITIONS

The federal Coastal Zone Management Act provides that federal actions affecting any use or resource of the coastal zone,* including projects permitted by the U.S. Army Corps of Engineers (USACE), must be consistent with the enforceable policies of a State's federally approved coastal management program. Oregon's approved program, the Oregon Coastal Management Program (OCMP), is a "networked" program that integrates authorities of local governments and other state agencies. The coastal zone conditions contained in this document reflect the networked nature of the OCMP, and reference the specific applicable enforceable policies.

**In addition to all USACE national and regional permit conditions, permitted projects in Oregon's coastal zone must comply with the following coastal zone conditions.**

If an applicant chooses not to follow one or more of the coastal zone conditions, DLCD will object to the permit issuance pursuant to 15 CFR § 930.63(e). In that instance, the permittee may appeal the state's objection by requesting that the Secretary of Commerce override the objection pursuant to 15 CFR 930, subpart H, within 30 days of receipt of the letter informing the applicant of the OCMP's objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the OCMP and the USACE. The Secretary may collect fees from the permittee for administering and processing the override request.

*Oregon's coastal zone generally includes the area lying between the Oregon/Washington border on the north, to the Oregon/California border on the south, seaward to the extent of the state's jurisdiction as recognized by federal law, and inland to the crest of the Coast Range Mountains, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;
(b) The Rogue River basin, where the coastal zone extends to Agness; and
(c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.

**CZ Condition 1. Consistency with Local Comprehensive Plans**

(1) Permitted projects must be consistent with or not subject to the applicable local comprehensive plan and implementing land use regulations, including the applicable estuary management plan, or the statewide land use planning goals where applicable. Permittee must obtain required permits or other authorizations from the applicable local government before initiating work under any USACE permit. Permittee are encouraged to provide USACE and the OCMP with verification of the local jurisdiction's approval in the form of a completed block ten (10) of the Joint Permit Application. All appeals of the local jurisdiction's decision(s) must be resolved before any regulated work may begin.

(2) All conditions placed on an authorization or permit by the local government are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 197, Comprehensive Land Use Planning Coordination]*

**CZ Condition 2. Consistency with Removal-Fill Law**

(1) Permitted projects must be consistent with or not subject to the state requirements governing removal-fill in waters of the state. Permittee must obtain required permits or other authorizations from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) Projects requiring a DSL Removal-Fill permit must compensate for reasonably expected adverse impacts by complying to the full extent with DSL's compensatory mitigation requirements.
(3) Where DSL finds a project not subject to the Removal/Fill Law, permittee must submit to DSL any changes in project design or implementation that may reasonably be expected to require application of the Removal/Fill Law.

(4) All conditions placed on a Removal-Fill permit by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 196, Removal of Material; Filling]*

**CZ Condition 3. Leases of State Lands**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of state lands. Permittee must obtain any required lease, license, or other authorization for the use of state lands or waters from the Oregon Department of State Lands (DSL) before any regulated work may begin.

(2) All conditions placed on a lease, license, or authorization by DSL are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 274, Submersible and Submerged Lands]*

**CZ Condition 4. Department of Environmental Quality**

(1) Permitted projects must be consistent with or not subject to the state requirements governing water quality. Permittee must obtain certification, if required, from the Oregon Department of Environmental Quality (DEQ) through its 401 Water Quality Certification process before any regulated work may begin.

(2) All conditions placed on a license, permit, or authorization by DEQ are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 468B, Water Quality]*

**CZ Condition 5. Fish and Aquatic Life Passage**

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish passage (http://www.dfw.state.or.us/fish/passage/). Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) No work shall be authorized that does not provide for adequate passage of "aquatic life." Aquatic life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of this state and which are generally present in or around, or pass through the project site.

(3) This condition is effective only where ODFW regulations apply.

*[Enforceable Policy: ORS chapter 509, Additional Fishery Requirements]*

**CZ Condition 6. Ocean Shore**

(1) Permitted projects must be consistent with or not subject to state requirements governing use of the ocean shore. Permittee must obtain, if required, an ocean shore permit from the Oregon Parks and Recreation Department (OPRD) before any regulated work may begin.

(2) All conditions placed on an Ocean Shore permit by OPRD are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 390, Ocean Shores]*

**CZ Condition 7. Aquaculture**

(1) Permitted projects must be consistent with or not subject to state requirements governing commercial aquaculture or mariculture cultivation of oysters, clams, and mussels. Permittee must obtain, if required, authorization from the Oregon Department of Agriculture (ODA) for use of state submerged and submersible lands for aquaculture purposes.

(2) All conditions placed on an aquaculture or mariculture operation by the ODA are incorporated by reference into the OCMP coastal zone conditions.

*[Enforceable Policy: ORS chapter 622, Shellfish]*

**Guidance: Permits Requiring Individual Consistency Review**

The Oregon Department of Land Conservation and Development (DLCD) has not extended advance concurrence to, and will require individual review of, the following six categories of permits:

1) Any permit where the project is within or directly impacts the Territorial Sea (waters and seabed extending three (3) nautical miles seaward from the coastline, in conformance with federal law), except for projects permitted under NWP 1: Aids to Navigation.
2) Any project utilizing NWP 29 or NWP 39 that requires a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.
3) Any permit where the project is within or directly impacts the following aquatic habitats of special concern: native eel grass beds, mature forested wetland, wetlands in dunal systems, estuarine wetlands (in natural or conservation management units only), state special management areas (including marine gardens, marine reserves, research reserves, state habitat refuges, marine protected areas, and shellfish preserves), kelp beds, rocky substrate in tidal waters (interpreted as all marine subtidal rock substrate and reefs and rocky intertidal shores), and native oyster beds, except for projects permitted under NWP 20, 22, 27, 32, and 38.
4) Any project utilizing NWP 48 Commercial Shellfish Aquaculture Activities
5) Any project utilizing NWP 53: Removal of Low-Head Dams unless a determination has already been provided in writing by the Oregon Department of Fish and Wildlife that native migratory fish (as defined in OAR 635-412-0005) were not historically (prior to 1859) nor currently present in the waters where the dam is to be removed or a fish passage approval/waiver has already been obtained in writing from the Oregon Department of Fish and Wildlife.
6) Any project that utilizes Nationwide Permit 54: Living Shorelines unless the project consists solely of wood, vegetation, or other living natural ‘soft’ elements.

The District Engineer shall be responsible for determining when proposed projects meet any of these circumstances. The discussion below provides additional guidance, and DLCD staff are available to assist in this determination. For projects not afforded advance concurrence, DLCD will undertake an individual review of the project to ensure consistency with the Oregon Coastal Management Program (OCMP).

DLCD is afforded 180 days (6 months) to conduct an individual review. The review starts when all necessary data and information (NDI) is received from the applicant. NDI includes applications for the federal permit and an analysis of potential coastal effects and whether project meets or how it plans to meet the enforceable policies of the Oregon Coastal Management Program. Once NDI is received, the review period begins. DLCD has a template analysis table available to help applicants assess coastal effects and consistency enforceable policies. If all necessary state permits have not been obtained at the end of 180 days, a stay agreement is signed to provide additional time for the applicant to receive permits/authorizations or an objection is provided.

***Territorial Sea***
Oregon's Territorial Sea extends from the shoreline seaward for a distance of three (3) nautical miles. Except for projects permitted under NWP 1: Aids to Navigation**,** DLCD must individually review any project which occurs on or under the Territorial Sea, or on or beneath the sea bottom, for consistency with the OCMP. In addition, DLCD will individually review any project which results in new or increased activity or impacts on or under the Territorial Sea.

Examples of projects requiring an individual review include:

- Construction of an offshore structure or platform;
- Installation of water-based renewable energy devices and related infrastructure;
- Installation of a buried or exposed cable;
- A new or expanded port facility which increases ship traffic in the Territorial Sea;
- A new or relocated shipping channel in the Territorial Sea.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

***NWP 29: Residential Developments and NWP 39: Commercial and Institutional Developments***
DLCD must individually review any project authorized by NWP 29 or 39 ***and*** requiring a local plan amendment, text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. Block ten (10) of the Joint Permit Application identifies such projects.

Examples of projects requiring an individual review include projects where block 10 indicates one of the following:

- The project is **not** consistent with the comprehensive plan;
- The project would require an amendment to a comprehensive plan;
- The project would require a change in zoning;
- The project would require an exception to a Statewide Planning Goal.

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

***Aquatic Habitats of Special Concern in the Coastal Zone***
Oregon's coastal zone contains high value and rare aquatic habitats, often associated with explicit enforceable policies of the OCMP. Except for projects permitted under NWP 20: Response for Oil and Hazardous Substances, NWP 22: Removal of Vessels, NWP 27: Aquatic Habitat Restoration, NWP 32: Completed Enforcement Actions, and NWP 38:Cleanup Hazardous/Toxic Waste, DLCD must individually review any project which occurs within or directly impacts the following habitat types in the coastal zone:

- native eel grass beds,
- mature forested wetland,
- wetlands in dunal systems,
- estuarine wetlands (in natural or conservation management units only),
- state special management areas (including marine gardens, marine reserves, research reserves, state habitat refuges, marine protected areas, and shellfish preserves) (TS, excepting shellfish preserves)
- kelp beds (TS)
- and rocky substrate in tidal waters (interpreted as all marine subtidal rock substrate and reefs and rocky intertidal shores) (TS)
- native oyster beds

DLCD is compiling a data tool to assist the Corps in determining where these resources are in the coastal zone in addition to the information provided by the applicant. Some of these habitat types are located in the Territorial Sea (indicated with TS), which already receive an ICR under the above Territorial Sea category. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.

***NWP 48: Commercial Shellfish Aquaculture Activities***
DLCD must individually review any project authorized by NWP 48: Commercial Shellfish Aquaculture Activities.

***NWP 53: Removal of Low-head Dams***
DLCD must individually review any project authorized by NWP 53: Removal of Low-head Dams ***unless*** a determination has already been provided in writing by the Oregon Department of Fish and Wildlife that native migratory fish (as defined in OAR 635-412-0005) were not historically (prior to 1859) nor currently present in the waters where the dam is to be removed ***or*** a fish passage approval/waiver has already been obtained in writing from the Oregon Department of Fish and Wildlife.

***NWP 54: Living Shorelines***
DLCD must individually review any project authorized by NWP 54: Living Shorelines unless the project consists solely of 'vegetation or other living natural 'soft' elements.

Examples of projects requiring an individual review include:

- Construction of projects including rock or cobble with no previous structure present
- Construction of projects that contain engineered rock/wood structures

These examples are illustrative, not comprehensive. Please direct any questions regarding specific projects to DLCD's Coastal Management Program office.