



**US Army Corps  
of Engineers®**  
Portland District

March 15, 2021

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# **User's Guide**

## **For 2021 Nationwide Permits In the State of Oregon**

**Includes:**

**Portland District Regional Conditions  
Portland District Definitions  
Nationwide Permit Specific Terms and Conditions  
National General 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 (NWP). On January 13, 2021, the Corps modified and reissued 12 existing NWPs and issued four new NWPs (the “2021 NWPs”). General conditions and definitions were also revised. On March 8, 2021, the Portland District issued regional conditions for the 2021 NWPs, which apply in the state of Oregon. The 2021 NWPs are effective as of March 15, 2021. This User’s Guide lists general and regional NWP 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), Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes of the Umatilla Indian Reservation, and Region 10 of the U.S. Environmental Protection Agency (EPA).

The information in this User’s Guide forms the basis by which the 2021 NWP program will be implemented in the state of Oregon until the 2021 NWPs are modified, suspended, or revoked. The 2021 NWPs are scheduled to expire on March 14, 2026.

## **PRE-CONSTRUCTION NOTIFICATION**

The terms of many NWPs, 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’ NWP PCN form (ENG 6082), the Oregon 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 2021 Nationwide Permit Specific Terms and Conditions section provides further details on when a PCN must be submitted for activities proposed to be verified by the Corps using an NWP.

The forms can be obtained as follows:

ENG 6082 can be found at <https://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) or a WQC waiver. 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 the Warm Springs Reservation of Oregon) currently have 401 WQC authority. The Corps NWP verification letter will identify any 401 WQC requirements.

The EPA has 401 certification authority in Indian Country. Indian Country 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. On December 11, 2020, EPA provided certification for NWP 40, provided the work meets the WQC general conditions. The WQC was denied by EPA for NWP 12, 21, 29, 39, 42, 43, 44, 48, 50, 51, 52, 57 (identified as C in the proposed rule), and 58 (identified as D in the proposed rule).

The Confederated Tribes of Umatilla Indian Reservation and Confederated Tribes of the Warm Springs Reservation of Oregon are the only tribes in Oregon with 401 WQC authority over activities on their respective tribal lands. Both tribes have denied WQC for the NWPs that will result in a discharge within lands in which their WQC authority applies and will complete an individual 401 WQC decision for proposed activities.

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 general WQC to the Corps for the 2021 NWPs. DEQ will instead evaluate projects that the Portland District determines qualifies for an NWP and will complete or deny an individual 401 WQC decision for proposed activities. 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., activities only subject to Section 10 of the Rivers and Harbors Act) 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 DEQ’s denial of 401 WQC for the 2021 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, the Department of Land Conservation and Development (DLCD) is the agency responsible for federal consistency review of federally issued permits and licenses pursuant to the Oregon Coastal Management Program (OCMP) in Oregon's seven 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: <https://www.oregon.gov/LCD/OCMP/Pages/Federal-Consistency.aspx>

DLCD has conditionally granted advance concurrence to activities authorized by the 2021 NWP's, **except** for the following:

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).

2) 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. (Note: The OCMP has developed a Critical Habitat Mapping Tool to help determine whether the proposed project is located in one of the aquatic habitats of special concern. The tool can be found at <https://geo.maps.arcgis.com/apps/webappviewer/index.html?id=1b4a3202b66c4ab79b6907e7b4abf9db> ).

3) Activities authorized by NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 48 (Commercial Shellfish Mariculture Activities), NWP 50 (Underground Coal Mining Activities), NWP 55 (Seaweed Mariculture Activities), or NWP 56 (Finfish Mariculture Activities).

4) Activities authorized by NWP 29 (Residential Developments) or NWP 39 (Commercial and Institutional Developments) that require a local action as denoted in the applications Land Use Affidavit (JPA, Block 11). Local actions include but are not limited to text amendment, zoning change, goal exceptions, discretionary decision, or action by a city or county council or commission.

5) Activities authorized by NWP 40 (Agricultural Activities), NWP 42 (Recreational Facilities), NWP 43 (Stormwater Management Facilities), NWP 51 (Land-Based Renewable Energy Facilities), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility

Line Activities for Water and Other Substances) that propose greater than 300 linear foot loss of stream bed.

6) Activities authorized by NWP 44 (Mining Activities) that propose the use of explosives.

Where work is being proposed under one of these activity categories, DLCD 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 federal consistency review, concurrence decisions, and conditions can be found at: <https://www.oregon.gov/LCD/OCMP/Pages/Federal-Consistency.aspx>. The Standard OCMP Coastal Zone Conditions are also found at Appendix D for reference.

## **RELATED FEDERAL LAWS AND REQUIREMENTS**

### **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 Oregon as endangered or threatened under the Endangered Species Act (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. 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. When PCN is required, the permittee may not begin work until notified by the District Engineer that the provisions of the ESA have been satisfied and the activity is authorized.

### **National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (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. The Corps, in coordination with federally recognized Native American Tribes and the State Historic Preservation Office, is required to identify and evaluate potential effects to historic properties within the permit area as defined in 33 CFR 325 Appendix C. Compliance with Section 106 is a requirement of all NWPs pursuant to NWP General Condition 20 (Historic Properties) and Portland District Regional Condition 3 (Cultural Resources and Human Burials – Inadvertent Discovery Plan). When PCN is required, the permittee may not begin work until notified by the District Engineer that the provisions of the NHPA have been satisfied and the activity is authorized.

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



### **Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) governs 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 ensure federal agencies minimize the impact of their actions on EFH. Portland District Regional Condition 4 (Essential Fish Habitat) requires the submittal of a PCN if EFH may be affected, or is in the vicinity of, a proposed activity. When PCN is required 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 (FWCA) authorizes the Secretary of the Interior, through the USFWS, 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 under a federal permit or license. 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 Act**

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 Wild and Scenic Rivers 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. When PCN is required the permittee may not begin work until notified by the District Engineer that the provisions of the Wild and Scenic River Act have been satisfied and the activity is authorized.

### **Section 408**

33 U.S.C. Section 408 (Section 408) authorizes the Secretary of the Army to grant permission for the alteration or occupation or use of Corps federally authorized projects if the Secretary determines that the activity will not be injurious to the public interest and will not impair the usefulness of the project. The Portland District utilizes a Section 408 review process for certain activities to evaluate if Section 408 permission is required for the activity or whether no alteration

to the Corps federal project would occur. Examples of federally authorized projects include, but are not limited to, levees, dams and federal navigation channels. NWP General Condition 31 (Activities Affecting Structures or Work Built by the United States) requires PCN for activities that require review by, or approval from, the Corps. When PCN is required the permittee may not begin work until notified by the District Engineer that the provisions of Section 408 have been satisfied and the activity is authorized. More information on the Section 408 program may be found at: <https://www.nwp.usace.army.mil/408/>

### **Tribal Rights**

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 or its operations. If a proposed project may affect any of these Tribal resources, these concerns must be addressed before an NWP verification can be completed. Applicants should be aware that tribal coordination and/or consultation may add substantial time to the permit application review process.

## **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 Oregon 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 at: <https://www.oregon.gov/DSL/WW/Pages/Permits.aspx>

### **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. The 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/passagelaws/index.asp>.

## **OTHER IMPORTANT INFORMATION**

### **Wetland and Other Waters Delineations**

Wetland delineations are an important component of any jurisdictional determination involving wetlands or other waters of the U.S. 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 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0)* dated September 2008, the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0)* dated May 2010, the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region, Version 2.0* (2008), and the *Guide to Ordinary High Water Mark (OHWM)*

*Delineation Manual for non-Perennial Streams in the Western Mountains, Valleys, and Coastal Region of the United States* (2014), 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 which remain after all appropriate and practicable avoidance and minimization has been achieved. A compensatory mitigation plan describes the specific details of a compensatory mitigation project. Mitigation plans must be prepared in accordance with the [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 for the Pacific Northwest**

The Corps and EPA share federal responsibility for regulating dredged material within waters of the United States under Section 404 of the CWA and for regulating dredged material in ocean waters under Section 103 of the Marine Protection, Research, and Sanctuaries Act. Under Section 401 of the CWA, the states of Washington, Oregon, and Idaho must also certify that aquatic discharges do not violate state and federal water quality standards. The Sediment Evaluation Framework (SEF) for the Pacific Northwest provides a framework for assessing and characterizing sediment to determine the suitability of dredged material for unconfined, aquatic disposal; determine the suitability of post-dredged surfaces; and predict effects on water quality during dredging. The SEF describes procedures for evaluating potential contaminant-related environmental impacts of dredging, the aquatic placement of dredged material in inland waters and the disposal of dredged material in ocean waters. The Portland District utilizes the SEF to evaluate certain projects proposed within Oregon and Washington. For these types of projects, the applicant may have to provide additional information regarding the chemical and biological content of the proposed excavated or dredged material as part of their permit application. Further information can be found at: <http://www.nwp.usace.army.mil/Missions/Environmental-Stewardship/DMM.aspx>

## **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 NWPs issued on January 13, 2021. NWP-specific regional conditions are provided in the section describing the 2021 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](mailto: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, or directly affecting, 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 an 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.

**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 as outlined on the Inadvertent Discovery Plan posted on the Portland District Regulatory website at: <https://www.nwp.usace.army.mil/Missions/Regulatory/Nationwide.aspx>

a. Notify the Portland District Engineer as soon as possible following discovery but in no case later than 24 hours. Notification shall be sent 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.

**3. 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/>

**4. 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.

**5. 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. Contact ODFW for additional information regarding fish salvage.

6. **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:** 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).

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

b. 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.

**Note:** See Regional Condition 10 regarding timeframes for temporary fills.

8. **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.

9. **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 (1/2) 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.

10. **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.

11. **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 diameter at breast height.

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 m<sup>2</sup> (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 transverses, 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 are dominated primarily by graminoids, including tufted hairgrass (*Deschampsia caespitosa*), camas (*Camassia quamash*), dense sedge (*Carex densa*), and lateral sedge (*Carex unilateralis*).

## **2021 NATIONWIDE PERMIT SPECIFIC TERMS AND CONDITIONS**

The 2021 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, EPA, and Tribal 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 WQC authority over a given project, depending on the location of the project. Please refer to the Section 401 WQC section 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.

### **12. Oil or Natural Gas Pipeline Activities**

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

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

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

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

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

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

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

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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) a Section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project

length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA Authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

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

Note 2: For oil and natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

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

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

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

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) 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 (General Condition 18 and Regional Condition 4)
- c) an affect or potential to affect listed historic properties (General Condition 20)
- d) if the activity requires review by, or permission from, the Corps pursuant to Section 408 (General Condition 31)
- e) a Section 10 permit is required
- f) the oil or natural gas pipeline will result in the loss of greater than 1/10-acre of waters of the U.S.
- g) the oil or natural gas pipeline is associated with an overall project that is greater than 250 miles in length (e through g are required by NWP 12 Notification Conditions)

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

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP.

**CZM Consistency Response –** Individual consistency review is required for any project authorized under this NWP.

### **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. This NWP does not authorize discharges of dredged or fill material 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 General Condition 32 (Pre-construction Notification) for notification requirements.

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**CZM Consistency Response –** Advanced conditional review is 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. Residential Developments**

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

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

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

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

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

**NWP-Specific Regional Condition –** 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 – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge. No certification typically required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge).

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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. The project requires a local action as denoted in the applications Land Use Affidavit (JPA, Block 11). Local actions include but are not limited to text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. (see Appendix D for further information).

### **39. Commercial and Institutional Developments**

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures.

Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities



such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges 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 General Condition 32 (Pre-Construction Notification) and NWP 39 Regional Condition 1 (listed below) for notification requirements.

**NWP-Specific Regional Condition –** 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 –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge. No certification typically required for Section 10 only projects (unless in Portland Harbor or activity has potential for more than minimal discharge).

**EPA 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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. The project requires a local action as denoted in the applications Land Use Affidavit (JPA, Block 11). Local actions include but are not limited to text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission. (see Appendix D for further information).

#### **40. Agricultural Activities**

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

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

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

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

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

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

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

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

**State 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**EPA 401 Certification – Granted with conditions.** EPA general 401 certification conditions apply

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized

under this NWP that may result in a discharge.

**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. The project proposes greater than 300 linear foot loss of stream bed.

#### **42. Recreational Facilities**

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

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill materials 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 General Condition 32 (Pre-Construction Notification) and NWP 42 Regional Condition 1 (listed below) for notification requirements.

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

**State 401 Certification** – Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**EPA 401 Certification** – Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification** – Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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. Stormwater Management Facilities**

Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters 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. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges 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 4)an affect or potential to affect listed historic properties (National General Condition 20) if the activity requires review by, or permission from, the Corps pursuant to Section 408 (General Condition 31)
- d) See General Condition 32 (Pre-Construction Notification).

**NWP-Specific Regional Condition –** 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 –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**EPA 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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. Any project proposing greater than 300 linear foot loss of stream bed.

### **44. Mining Activities**

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

(a) For mining activities involving discharges of dredged or fill material into non-tidal jurisdictional wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal jurisdictional wetlands;

(b) For mining activities involving discharges of dredged or fill material in non-tidal jurisdictional open waters (e.g., rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (i.e., Section 10 waters), the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and

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

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

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

**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 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 unless specifically authorized by the District Engineer.

**State 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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. The use of explosives is proposed.

#### **48. Commercial Shellfish Mariculture Activities**

Structures or work in navigable waters of the United States necessary and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops) in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish 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.

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.

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

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

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

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

**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) directly affecting greater than ½-acre of submerged aquatic vegetation (NWP 48 Notification Condition)
- b) 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) impacts to aquatic resources of special concern (Regional Condition 2)
- d) an affect or potential to affect listed historic properties (National General Condition 20) if the activity requires review by, or permission from, the Corps pursuant to Section 408 (General Condition 31)

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

*Note: For projects involving commercial aquaculture or mariculture cultivation of oysters, clams, and mussels on state-owned submerged and submersible lands, the permittee should be advised that 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>.*

**NWP-Specific Regional Condition –** In addition to the information required by paragraph (b) of general condition 32, the applicant shall provide the following information: (1) a map showing the location and dimensions of the structures(s) and/or fill; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) general water depths in the project area(s) (a detailed survey is not required), and (4) a map showing areas of submerged aquatic vegetation in the project area. The information should describe all species and culture activities the operator expects to undertake during the effective period of this NWP.

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

**EPA 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

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



## **50. Underground Coal Mining Activities**

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

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

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

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

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

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

**EPA 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**CZM Consistency Response –** Individual consistency review is required for any project authorized under this NWP.

## **51. Land-Based Renewable Energy Generation Facilities**

Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may

include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

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

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

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

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 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided 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 General Condition 32 (Pre-Construction Notification) for notification requirements.

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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; or
3. Any project utilizing this NWP proposing greater than 300 linear foot loss of stream bed.

## **52. Water-Based Renewable Energy Generation Pilot Projects**

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

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

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

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

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

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

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

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

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate 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 General Condition 32 (Pre-Construction Notification) for notification requirements.

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge

**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: 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](http://www.oregon.gov/LCD/OCMP/Pages/Ocean_TSP.aspx).*

### **55. Seaweed Mariculture Activities**

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

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

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

This NWP does not authorize:

- a. The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of nonindigenous species unless that species has been previously cultivated in the waterbody; or
- b. Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

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

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

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

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

## **56. Finfish Mariculture Activities**

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

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

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

Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or

restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

This NWP does not authorize:

- a. The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of nonindigenous species unless that species has been previously cultivated in the waterbody; or
- b. Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

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

In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information (1) A map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one pre-construction notification per structure or group of structures should be submitted for the finfish mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authorities: Sections 10 and 404)

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

**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 in all instances.

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

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

**State 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge. No 401 typically required for Section 10 only

activities (unless in Portland Harbor or activity has potential for more than minimal discharge).

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

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

### **57. Electric Utility Line and Telecommunications Activities**

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

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

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

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each



tower leg (rather than a larger single pad) are used where feasible.

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

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

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a Section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.)  
Authorities: Sections 10 and 404)

Note 1: Where the electric utility line is constructed 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 electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications line activities must comply with 33 CFR 330.6(d).

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

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

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

Note 6: For overhead electric utility lines 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 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army 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) if the activity requires review by, or permission from, the Corps pursuant to Section 408 (General Condition 31)
- e) the discharge will result in the loss of greater than 1/10 acre of waters of the U.S;
- f) the work requires a Section 10 permit (d and e required by NWP 57 notification condition)

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

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

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

**EPA 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification – Denied.** Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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; or
3. For any project proposing greater than 300 linear foot of loss of stream bed.

### **58. Utility Line Activities for Water and Other Substances**

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

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

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

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

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

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead

utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit.

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

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a Section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.)  
Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed 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: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946.

However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a Section 404 permit (see NWP 15).

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

**Note 6:** For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) 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) if the activity requires review by, or permission from, the Corps pursuant to Section 408 (General Condition 31)
- e) the discharge will result in the loss of greater than 1/10 acre of waters of the U.S. the work requires a Section 10 Permit (e and f are required by NWP 58 Notification Conditions)

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

**NWP-Specific Regional Condition –** Manholes placed in streams or other waterways require specific approval by the District Engineer.

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

**EPA 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**Tribal 401 Certification –** Denied. Individual 401 certification required for projects authorized under this NWP that may result in a discharge.

**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; or
3. For any project proposing greater than 300 linear foot of loss of stream bed.

## **2021 NATIONWIDE PERMIT GENERAL CONDITIONS**

### C. Nationwide Permit General Conditions (Part C through F as listed in the Federal Register)

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. Erosion and Sediment Controls.

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

#### 13. Removal of Temporary Structures and Fills.

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

#### 14. Proper Maintenance.

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

#### 15. Single and Complete Project.

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

#### 16. Wild and Scenic Rivers.

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

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-

construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. 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 activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

#### 18. Endangered Species.

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

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

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

listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre- construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing) or critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

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

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

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

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

## 19. Migratory Birds and Bald and Golden Eagles.

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

## 20. Historic Properties.

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

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

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

Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the

potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.

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

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

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

## 22. Designated Critical Resource Waters.

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

or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

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

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

### 23. Mitigation.

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

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

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

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

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory

mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States,



unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(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 (see 33 CFR 332.4(c)(1)(ii)).

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

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

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

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

#### 24. Safety of Impoundment Structures.

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

## 25. Water Quality.

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

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

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

## 26. Coastal Zone Management.

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

## 27. Regional and Case-By-Case Conditions.

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

## 28. Use of Multiple Nationwide Permits.

The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of

the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

29. Transfer of Nationwide Permit Verifications.

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

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

30. Compliance Certification.

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

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

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

(c) The signature of the permittee certifying the completion of the activity and mitigation.

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

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

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

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

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

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent 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 or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

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

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

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 6082) may be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the

district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination:

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

(2) Agency coordination is required for: (i) all NWP activities that require pre- construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWP's, 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 single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.
2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee



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

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

#### E. Further Information

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

## F. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Ordinary High Water Mark:* The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear,

natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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

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

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

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

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

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

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

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

*Riparian areas:* Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface

and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

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

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

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

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

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

*Stream bed:* The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

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

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

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

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

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

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

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

## **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 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 Department of Fish and Wildlife
ODOT	Oregon Department of Transportation
WQC	Water Quality Certification

## **APPENDIX B: DEQ 401 WATER QUALITY CERTIFICATION DECISION**

DEQ did not issue a general water quality certification to the Corps for the 2021 Nationwide Permits. DEQ will instead evaluate projects that the Portland District determines qualify for a Nationwide Permit and will complete an Individual Nationwide 401 WQC decision for proposed activities. 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 expedited 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, a public notice, and a higher review fee.

**Certification Decision:** Based on information provided by the USACE and the Applicant, DEQ has determined that implementation eligible activities under the proposed NWP will be consistent with water quality requirements including 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.

**Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE Section 404 permit. A new or re-verified 401 WQC must be requested with any modification of the USACE 404 permit.



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.  
**Rule:** 40 CFR 121, OAR 340-048-0015  
**Justification:** DEQ must be aware of responsible parties to ensure compliance.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Permit Application 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.  
**Rule:** OAR 340-048-0015  
**Justification:** To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.
- 3) **401 WQC on Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.  
**Rule:** OAR 340-012  
**Justification:** All parties must be aware of and comply with the 401 WQC, including on-site contractors.
- 4) **Project Changes:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or 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.  
**Rule:** OAR 340-048-0050  
**Justification:** To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.

- 5) **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 Section 11 of the 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 & Department of State Lands (DSL) Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: <http://www.oregon.gov/deq/FilterDocs/lucs.pdf>

**Rule:** OAR 340-048-0020(2) (i), OAR 340-018

**Justification:** DEQ must ensure compliance with water quality land use laws at the local level.

- 6) **Access:** The Applicant and its contractors must allow DEQ access to the project site with or without prior notice, including 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 equipment or methods; and
  - c. To collect samples or monitor any discharge of pollutants.

**Rule:** OAR 340-012

**Justification:** DEQ must inspect facilities for compliance with all state rules and laws.

- 7) 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.

**Rule:** OAR 340-012

**Justification:** If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.

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

- 8) **Erosion and Sediment Control:** During construction, erosion control measures must be implemented to prevent or control movement of soil 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 a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater permit from DEQ.** Contact DEQ for more information. Contact information can be found at: <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx>

In addition, the Applicant (or responsible party) must:

- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
- b. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.
- c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;
  - i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
  - ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, Applicant must remove the sediment to its original contour.
- d. 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, unless otherwise authorized by DEQ.
- e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.
- f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.
- g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: petroleum products; chemicals; cement cured less than 24 hours; welding slag and grindings; concrete saw cutting by-products; sandblasted materials; chipped paint; tires; wire; steel posts; asphalt; and waste concrete.

The following specific requirements apply:

- a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;
- b. Use only clean fill, free of waste and polluted substances;
- c. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;
- d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;
- e. Remove all foreign materials, refuse, and waste from the project area

**Rule:** OAR 340-041-0007(8), ORS 468B.050, CWA Section 402

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 10) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges.

**Rule:** ORS 468B.025(1)(a)

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 11) **Spill & Incident Reporting:**

- a. In the event that deleterious materials are discharged into state waters, or onto land with a potential to enter 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 possible.
- b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS, and US Fish and Wildlife Service (USFW).

**Rule:** ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.

- 12) **Vegetation Protection and Site Restoration:**

- a. The 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 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.
- c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information:  
<https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>
- i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.
  - ii. Pesticide application should be applied during the dry season and avoid direct water application;
  - iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-041-0033

**Justification:** Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 13) **Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50 foot buffer to waters of the state, unless proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.

**Rule:** OAR 340-041, OAR 340-012

**Justification:** Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

- 14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011 Ex.6258.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040  
**Justification:** DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.
- 15) **Fish protection/ Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the ODFW 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 DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW, NMFS and/or the USFW as appropriate, and approved by DSL when applicable.  
**Rule:** OAR 340-041-0011  
**Justification:** DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 16) **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.  
**Rule:** OAR 340-041-0016; OAR 340-041-0028  
**Justification:** DEQ must be protective of all water quality standards, including beneficial uses such as fish.
- 17) **Isolation of in-water work areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.  
**Rule:** OAR 340-041, OAR 340-012, OAR 340-045  
**Justification:** DEQ must ensure that pollution does not enter waterways.
- 18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.  
**Rule:** OAR 340-041, OAR 340-012  
**Justification:** DEQ must ensure that pollution does not enter waterways.

19) **Turbidity:** The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities 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 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: The 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 up-current 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 down-current 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 down-current 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 are allowed as followed:

<b>MONITORING WITH A TURBIDIMETER EVERY 2 HOURS</b>	
<b>TURBIDITY LEVEL</b>	<b>Restrictions to Duration of Activity</b>
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 0-4 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 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

**c. Reporting:**

- i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs which must include: calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; and location; date; time; and tidal stage (if applicable) for each reading.
- ii. 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 regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.
- iii. Keep records on file for the duration of the permit cycle.

**d. BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless accepted in writing 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 at 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 in writing 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.
- vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

**Rule:** OAR 340-041-0036, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.



## **SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT**

- 20) **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. The plan must be reviewed and approved prior to construction 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 writing.

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

**Rule:** ORS 468B.050, OAR 340-045, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 21) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. Long- term operation and maintenance of stormwater treatment facilities will be the responsibility of the applicant or the entity listed in the approved post-construction stormwater management plan.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

**Rule:** OAR 340-041, OAR 340-012

**Justification:** DEQ must ensure that pollution does not enter waterways.

## **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 6 – Survey Activities:**

- 6.1) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: <https://www.dfw.state.or.us/lands/inwater/>

**Rule:** OAR 340-041, OAR-635-425

**Justification:** DEQ must be protective of all water quality standards, including beneficial uses such as fish.

## **NWP 7 – Outfall Structures and Associated Intake Structures:**

7.1) The following actions are denied expedited certification:

- a. Discharge outfalls that are not subject to an MS4 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.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045

**Justification:** DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines (at: <https://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf>), the Applicant must submit complete project information and water quality impacts analysis directly to DEQ in order to undergo standard individual 401 WQC evaluation and fulfill public participation requirements. **Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterway. Untreated stormwater is considered pollution.

## **NWP 13 – Bank Stabilization:**

13.1) Projects that do not include bioengineering are denied expedited certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

13.2) To apply for certification for a project without bioengineering, 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.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure

## **NWP 14 – Linear Transportation Projects:**

- 14.2) 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 transportation related structure.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

- 14.3) To apply for certification for a project without bioengineering, 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.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.

**NWP 16 - Return Water from Upland Contained Disposal Areas:** Water-quality criteria and guidance values for toxics, per OAR 340-041-0033, are available in Tables 30, 31, and 40 at: <http://www.oregon.gov/deq/Rulemaking%20Docs/tables303140.pdf>.

- 16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.

**Rule:** OAR 340-041-0053(b)(A), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 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.

**Rule:** OAR 340-041-0053(b)(A), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

- 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 Applicant performing the MET.
- c. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

## **NWP 20 – Response Operations for Oil or Hazardous Substances:**

20.1) Coordination with DEQ’s Emergency Response program is required. See: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.

**Rule:** OAR 340-142-0130(3), OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

## **NWP 22 – Removal of Vessels:**

22.1) Coordination with DEQ’s Emergency Response program is required. See: <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx>.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.

## **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.

**Rule:** OAR 340-041-0028, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways.

## **NWP 38 – Cleanup of Hazardous and Toxic Waste:**

38.1) For removal of contaminated material from waters, dredging method is limited to divers-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 Applicant is referred to Appendix D of DEQ’s Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: <https://www.oregon.gov/deq/FilterPermitsDocs/ErosionSedimentControl.pdf>.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.2) Discharge to waters of the state resulting from dewatering during dredging or release of returnwater 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 Applicant performing the MET.
  - iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: <http://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx>) or Solid Waste (see: <http://www.oregon.gov/deq/mm/swpermits/Pages/Solid-Waste-Disposal-Sites-and-Landfill.aspx>).

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

38.4) The new in-water surface must be managed to prevent exposure or mobilization of contaminants.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

#### **NWP 41 - Reshaping Existing Drainage and Irrigation 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; **Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

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.

**Rule:** OAR 340-041-0004(5)(a)

**Justification:** Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.

## **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.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx>).

**Rule:** OAR 340-041-0033, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.

## **NWP 43 – Stormwater Management Facilities:**

- 43.1) Projects that propose the following elements are denied expedited certification:

- a. In-stream stormwater facilities;
- b. Discharge outfalls not subject to an MS4 NPDES permit; and,
- c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

- 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.oregon.gov/deq/FilterDocs/401wqcertPostCon.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.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.

## **NWP 44 – Mining Activities:**

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied expedited certification.

**Rule:** OAR 340-045-0033, OAR 340-041

**Justification:** DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.

44.2) To apply for certification for a project without an NPDES permit, 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.

**Rule:** OAR 340-041-0059

**Justification:** DEQ must ensure that pollution does not enter waterways.

44.3) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: <https://www.dfw.state.or.us/lands/inwater/>

**Rule:** OAR 340-041-0011

**Justification:** DEQ must be protective of all water quality standards, including beneficial uses such as fish.

## **NWP 51 – Land-Based Renewable Energy Generation Facilities:**

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition D.1 must be applied.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways.

## **NWP 53 – Removal of Low-Head Dams**

53.1) Projects must be coordinated with the Portland Sediment Evaluation Team (PSET) if sediments are to be dispersed in-water.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. DEQ must ensure sediments are considered suitable for in-water disposal.

## **NWP 54 – Living Shorelines**

54.1) Projects that do not include bioengineering are denied expedited certification, unless a registered professional engineer provides a written statement that non-bioengineered solutions are the only means of protection.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.



## NWP 58 (NWP D) – Utility Lines:

D.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. Recycling using a tank instead of drill recovery/recycling pits is preferable;
- 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 1-800-452-0311.
- 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.

**Rule:** OAR 340-142-0030, OAR 340-142-0040(1)

**Justification:** *Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.*

D.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

**Rule:** OAR 340-041, OAR 340-012, OAR 340-048

**Justification:** *DEQ must ensure that pollution does not enter waterways.*

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 Haley Teach at 503-229-5051, by email at [Teach.Haley@deq.state.or.us](mailto:Teach.Haley@deq.state.or.us), or at the address on this letterhead.

Sincerely,

Steve Mrazik,  
Water Quality Manager  
Northwest Region



## **APPENDIX C: EPA 401 WATER QUALITY CERTIFICATION DECISION**

The EPA has 401 certification authority in Indian Country. Indian Country 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 2021 NWP by letter dated December 11, 2020.

U.S. Environmental Protection Agency, Region 10  
Water Quality Certification Conditions for the 2021 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' Nationwide Permit National Conditions and Portland District's Regional Conditions, the following EPA Section 401 water quality certification General Conditions apply to Nationwide Permit 40.

### **EPA GENERAL CONDITIONS:**

#### **EPA General Condition 1 – Compliance with Stormwater Pollution Prevention and the National Pollutant Discharge Elimination System Permit Provisions**

For land disturbances during construction that disturb one or more acres of land, or will disturb less than one acre of land but are part of a common plan of development or sale that will ultimately disturb one or more acres of land, the permittee must obtain and implement Construction Stormwater General Permit requirements<sup>1</sup>, including:

- a. The permittee must develop an appropriate Stormwater Pollution Prevention Plan (SWPPP)<sup>2</sup>; and
- b. Following construction, prevention or treatment of ongoing stormwater runoff from impervious surfaces that includes soil infiltration must be implemented.

#### **EPA General Condition 2 – Projects or Activities Discharging to Impaired Waters**

Projects or activities are not authorized under the NWPs if the project will involve point source discharges into an active channel of a water of the U.S. identified as a Section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g. total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 10's web site at:  
<https://www.epa.gov/tmdl/impaired-waters-and-tmdls-region-10>.

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<sup>1</sup> See: <https://www.epa.gov/npdes/2017-construction-general-permit-cgp>

<sup>2</sup> See: <https://www.epa.gov/npdes/developing-stormwater-pollution-prevention-plan-swppp>

### **EPA General Condition 3 – Notice to EPA**

All applicants must provide notice to EPA Region 10 prior to commencing construction to provide EPA Region 10 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to Region 10. EPA Region 10 will provide written notification to the applicant if the proposed project will violate the water quality certification of the NWP.

### **EPA General Condition 4 – Unsuitable Materials**

The applicant shall not cause a point source discharge of toxic chemical components (e.g., copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol) into waters of the United States during installation or removal of structures, unless the structures 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. Discharges 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;
- c. For new or replacement wood structures installed into waters of the United States, 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 Region 10 denied certification for NWPs 12, 21, 29, 39, 42, 43, 44, 48, 50, 51, 52, 56, 57 and 58. Applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Corps did not request certification for NWP 55.

## **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.

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.

**DLCD extended Advanced Conditional Review for the following Nationwide Permits:** 21 and 52; however, if the project is located in an exclusion area, the project will require individual consistency review:

### **Exclusion 1: Territorial Sea**

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.

### **Exclusion 2: Aquatic Habitats of Special Concern:**

Individual consistency review is required for any permit where the project is within or directly impacts the following aquatic habitats of special concern within Corps jurisdiction.

- 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)
- Native oyster beds

**DLCD has not extended advance concurrence to, and will require an individual consistency review of any proposed Nationwide Permit that takes place under the following scenarios:**

**NWP #29**

(Residential Developments)

Individual consistency review is required for any project utilizing NWP 29 (Residential Developments) that requires a local action as denoted in the applications Land Use Affidavit (JPA, Block 11). Local actions include but are not limited to text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

**NWP #39**

(Commercial and Institutional Developments)

Individual consistency review is required for any project utilizing NWP 39 (Commercial and Institutional Developments) that requires a local action as denoted in the applications Land Use Affidavit (JPA, Block 11). Local actions include but are not limited to text amendment, zoning change, goal exception, discretionary decision, or action by a city or county council or commission.

**NWP #40**

(Agricultural Activities)

Individual consistency review is required for any project that utilizes NWP #40 (Agricultural Activities) proposing greater than 300 linear foot loss of stream bed.

**NWP #42**

(Recreational Facilities)

Individual consistency review is required for any project that utilizes NWP #42 (Recreational Facilities) proposing greater than 300 linear foot loss of stream bed.

**NWP #43**

(Stormwater Management Facilities)

Individual consistency review is required for any project that utilizes NWP #43 (Stormwater Management Facilities) proposing greater than 300 linear foot loss of stream bed.

**NWP# 44**

(Mining Activities)

Individual consistency review is required for any project that utilizes NWP 44 that proposes the use of explosives.

**NWP #51**

(Land-Based Renewable Energy Generation Facilities)

Individual consistency review is required for any project that utilizes NWP 51 (Land-Based Renewable Energy Generation Facilities) proposing greater than 300 linear foot loss of stream bed.

**NWP #57**

(Electrical and Telecommunication Activities and Proposed)

Individual consistency review is required for any project that utilizes NWP C (Electrical and Telecommunication Activities and Proposed) proposing greater than 300 linear foot loss of stream bed.

**NWP #58**

(Utility Line Activities for Water and Other Substances)

Individual consistency review is required for any project that utilizes NWP D (Utility Line Activities for Water and Other Substances) proposing greater than 300 linear foot loss of stream bed.

**The following Nationwide Permits always require an individual consistency review from DLCD:**

**NWP #12**

(Oil or Natural Gas Pipeline Activities)

Individual consistency review is required for any project that utilizes NWP 12 (Oil or Natural Gas Pipeline Activities).

**NWP #48**

(Commercial Shellfish Aquaculture Activities)

Individual consistency review is required for any project that utilizes Nationwide Permit 48 (Commercial Shellfish Aquaculture Activities).

**NWP #50**

(Underground Coal Mining Activities)

Individual consistency review is required for any project that utilizes NWP 50 (Underground Coal Mining Activities).

**NWP #55**

(Seaweed Mariculture)

Individual consistency review is required for any project that utilizes NWP 55 (Seaweed Mariculture Activities).

**NWP #56**

(Finfish Mariculture)

Individual consistency review is required for any project that utilizes NWP 56 (Finfish Mariculture Activities).

**Permitted projects in Oregon’s coastal zone must comply with the following coastal zone conditions.**

**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. Permittees are encouraged to provide USACE and the OCMP with verification of the local jurisdiction’s approval in the form of a completed block eleven (11) 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.

**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.

**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.

**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.

**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.

**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.

**CZ Condition 7. Fish Screening**

(1) Where applicable, all authorized projects shall be in conformance with ODFW standards for fish screening and bypass devices. Decisions to abrogate ODFW fish passage standards shall be accompanied by written approval from ODFW.

(2) This condition is effective only where ODFW regulations apply.