DECISION DOCUMENT
NATIONWIDE PERMIT 8

This document discusses the factors considered by the Corps of Engineers (Corps) during the issuance process for this Nationwide Permit (NWP). This document contains: (1) the public interest review required by Corps regulations at 33 CFR 320.4(a)(1) and (2); and (2) a discussion of the environmental considerations necessary to comply with the National Environmental Policy Act. This evaluation of the NWP includes a discussion of compliance with applicable laws, consideration of public comments, an alternatives analysis, and a general assessment of individual and cumulative impacts, including the general potential effects on each of the public interest factors specified at 33 CFR 320.4(a).

1.0 Text of the Nationwide Permit

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 10)

1.1 Requirements

General conditions of the NWPs are in the Federal Register notice announcing the issuance of this NWP. Pre-construction notification requirements, additional conditions, limitations, and restrictions are in 33 CFR part 330.

1.2 Statutory Authority

- Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

1.3 Compliance with Related Laws (33 CFR 320.3)

1.3.1 General

NWPs are a type of general permit designed to authorize certain activities that have minimal adverse effects on the aquatic environment and generally comply with the related laws cited in 33 CFR 320.3. Activities that result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, cannot be authorized by NWPs. Individual review of each activity authorized by an NWP will not normally be performed, except when preconstruction notification to the Corps is required or when an applicant requests verification that an activity complies with an NWP. Potential adverse impacts and compliance with the laws cited in 33 CFR 320.3 are controlled by the terms and conditions of each NWP, regional and case-specific conditions, and the review process that is undertaken prior to the issuance of NWPs.

The evaluation of this NWP, and related documentation, considers compliance with each of the following laws, where applicable: Sections 401, 402, and 404 of the Clean Water Act; Section 307(c) of the Coastal Zone Management Act of 1972, as amended; Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the National Environmental Policy Act of 1969; the Fish and Wildlife Act of 1956; the Migratory Marine Game-Fish Act; the Fish and Wildlife Coordination Act, the Federal Power Act of 1920, as amended; the National Historic Preservation Act of 1966; the Interstate Land Sales Full Disclosure Act; the Endangered Species Act; the Deepwater Port Act of 1974; the Marine Mammal Protection Act of 1972; Section 7(a) of the Wild and Scenic Rivers Act; the Ocean Thermal Energy Act of 1980; the National Fishing Enhancement Act of 1984; and the Magnuson-Stevens Fishery and Conservation and Management Act. In addition, compliance of the NWP with other Federal requirements, such as Executive Orders and Federal regulations addressing issues such as floodplains, essential fish habitat, and critical resource waters is considered.

1.3.2 Terms and Conditions

Many NWPs have notification requirements that trigger case-by-case review of certain activities. Two NWP general conditions require case-by-case review of all activities that may adversely affect Federally-listed endangered or threatened species or historic properties (i.e., general conditions 17 and 18). General condition 15 restricts the use of NWPs for activities that are located in Federally-designated wild and scenic rivers. None of the NWPs authorize artificial reefs. General condition 24 prohibits the use of an NWP with other NWPs, except when the acreage loss of waters of the United States does not exceed the highest specified acreage limit of the NWPs used to authorize the single and complete project.

In some cases, activities authorized by an NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to: activities that are in marine sanctuaries or affect marine sanctuaries or marine mammals; the ownership,

construction, location, and operation of ocean thermal conversion facilities or deep water ports beyond the territorial seas; activities that result in discharges of dredged or fill material into waters of the United States and require Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce under the Coastal Zone Management Act. In such cases, a provision of the NWPs states that an NWP does not obviate the need to obtain other authorizations required by law. [33 CFR 330.4(b)(2)]

Additional safeguards include provisions that allow the Chief of Engineers, division engineers, and/or district engineers to: assert discretionary authority and require an individual permit for a specific activity; modify NWPs for specific activities by adding special conditions on a case-by-case basis; add conditions on a regional or nationwide basis to certain NWPs; or take action to suspend or revoke an NWP or NWP authorization for activities within a region or state. Regional conditions are imposed to protect important regional concerns and resources. [33 CFR 330.4(e) and 330.5]

1.3.3 Review Process

The analyses in this document and the coordination that was undertaken prior to the issuance of the NWP fulfill the requirements of the National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act, and other acts promulgated to protect the quality of the environment.

All NWPs that authorize activities which may result in discharges of dredged or fill material into waters of the United States require water quality certification. NWPs that authorize activities within, or affecting land or water uses within a state that has a Federally-approved coastal zone management program, must also be certified as consistent with the state's program. The procedures to ensure that the NWPs comply with these laws are described in 33 CFR 330.4(c) and (d), respectively.

1.4 Public Comment and Response

For a summary of the public comments received in response to the September 26, 2006, Federal Register notice, refer to the preamble in the Federal Register notice announcing the reissuance of this NWP. The substantive comments received in response to the September 26, 2006, Federal Register notice were used to improve the NWP by changing NWP terms and limits, notification requirements, and/or NWP general conditions, as necessary.

We proposed to clarify that pre-construction notification is required for all activities authorized by this NWP. No comments were received in response to the September 26, 2006, Federal Register notice.

2.0 Alternatives

This evaluation includes an analysis of alternatives based on the requirements of NEPA. The alternatives discussed below are based on an analysis of the potential environmental impacts and impacts to the Corps, Federal and state resource agencies, general public, and prospective permittees.

2.1 No Action Alternative (No Nationwide Permit)

The no action alternative would not achieve one of the goals of the Corps Nationwide Permit Program, which is to reduce the regulatory burden on applicants for activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively. The no action alternative would also reduce the Corps ability to pursue the current level of review for other activities that have greater adverse effects on the aquatic environment, including activities that require individual permits as a result of the Corps exercising its discretionary authority under the NWP program. The no action alternative would also reduce the Corps ability to conduct compliance actions.

If this NWP is not available, substantial additional resources would be required for the Corps to evaluate these minor activities through the individual permit process, and for the public and Federal, Tribal, and state resource agencies to review and comment on the large number of public notices for these activities. In a considerable majority of cases, when the Corps publishes public notices for proposed activities that result in minimal adverse effects on the aquatic environment, the Corps typically does not receive responses to these public notices from either the public or Federal, Tribal, and state resource agencies. Another important benefit of the NWP program that would not be achieved through the no action alternative is the incentive for project proponents to design their projects so that those activities meet the terms and conditions of an NWP. The Corps believes the NWPs have significantly reduced adverse effects to the aquatic environment because most applicants modify their projects to comply with the NWPs and avoid the delays and costs typically associated with the individual permit process.

In the absence of this NWP, Department of the Army (DA) authorization in the form of another general permit (i.e., regional or programmatic general permits, where available) or individual permits would be required. Corps district offices may develop regional general permits if an NWP is not available, but this is an impractical and inefficient method for activities with minimal individual or cumulative adverse effects on the aquatic environment that are conducted across the Nation. Not all districts would develop these regional general permits for a variety of reasons. The regulated public, especially those companies that conduct work in more than one Corps district, would be adversely affected by the widespread use of regional general permits because of the greater potential for lack of consistency and predictability in the authorization of similar activities with minimal adverse effects on the aquatic environment. These companies would incur greater costs in their efforts to comply with different regional general permit requirements between Corps districts. Nevertheless, in some states Corps districts have issued programmatic general

permits to take the place of this and other NWPs. However, this approach only works in states with regulatory programs comparable to the Corps Regulatory Program.

2.2 National Modification Alternatives

Since the Corps Nationwide Permit program began in 1977, the Corps has continuously strived to develop NWPs that authorize activities that result only in minimal adverse effects on the aquatic environment, individually or cumulatively. Every five years the Corps reevaluates the NWPs during the reissuance process, and may modify an NWP to address concerns for the aquatic environment. Utilizing collected data and institutional knowledge concerning activities authorized by the Corps regulatory program, the Corps reevaluates the potential impacts of activities authorized by NWPs. The Corps also uses substantive public comments on proposed NWPs to assess the expected impacts. This NWP was developed to authorize structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf, provided those activities have minimal adverse effects on the aquatic environment. The Corps has considered modifying or adding NWP general conditions, as discussed in the preamble of the Federal Register notice announcing the issuance of this NWP.

In the September 26, 2006, Federal Register notice, the Corps requested comments on the proposed reissuance of this NWP. The Corps proposed to change this NWP by clarifying that pre-construction notification is required for all activities.

2.3 Regional Modification Alternatives

An important aspect for the NWPs is the emphasis on regional conditions to address differences in aquatic resource functions and values across the nation. All Corps divisions and districts are expected to add regional conditions to the NWPs to enhance protection of the aquatic environment and address local concerns. Division engineers can also revoke an NWP if the use of that NWP results in more than minimal adverse effects on the aquatic environment, especially in high value or unique wetlands and other waters.

Corps divisions and districts also monitor and analyze the cumulative adverse effects of the NWPs, and if warranted, further restrict or prohibit the use of the NWPs to ensure that the NWPs do not authorize activities that result in more than minimal adverse effects on the aquatic environment. To the extent practicable, division and district engineers will use regulatory automated information systems and institutional knowledge about the typical adverse effects of activities authorized by NWPs, as well as substantive public comments, to assess the individual and cumulative adverse effects on the aquatic environment resulting from regulated activities. When conducting such assessments, division and district engineers can only consider those activities regulated by the Corps under Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972. Adverse impacts resulting from activities outside of the Corps scope of review, such as the construction or expansion of upland developments, cannot be considered in the Corps analysis of cumulative adverse

effects on the aquatic environment.

2.4 Case-specific On-site Alternatives

Although the terms and conditions for this NWP have been established at the national level to authorize most activities that have minimal adverse effects on the aquatic environment, division and district engineers have the authority to impose case-specific special conditions on an NWP authorization to ensure that the authorized work will result in minimal adverse effects.

General condition 20 requires the permittee to minimize and avoid impacts to waters of the United States to the maximum extent practicable at the project site. Off-site alternatives cannot be considered for activities authorized by NWPs. During the evaluation of a pre-construction notification, the district engineer may determine that additional avoidance and minimization is practicable. The district engineer may also condition the NWP authorization to require compensatory mitigation to offset losses of waters of the United States and ensure that the net adverse effects on the aquatic environment are minimal. As another example, the NWP authorization can be conditioned to prohibit the permittee from conducting the work during specific times of the year to protect spawning fish and shellfish. If the proposed work will result in more than minimal adverse effects on the aquatic environment, then the district engineer will exercise discretionary authority and require an individual permit. Discretionary authority can be asserted where there are concerns for the aquatic environment, including high value aquatic habitats. The individual permit review process requires a project-specific alternatives analysis, including the consideration of off-site alternatives, and a public interest review.

3.0 Affected Environment

The affected environment consists of the outer continental shelf. The term "outer continental shelf" means "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) whose subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." (30 CFR 250.105, 7/1/2005 edition). The outer continental shelf is seaward of the State Seaward Boundary (Minerals Management Service 1999). Water depths may be 200 meters (656 feet) or greater. The extent of the outer continental shelf varies from coast to coast, and is widest in the Gulf of Mexico and western and northwestern Alaska (Minerals Management Service 2005).

The outer continental shelf and its overlying waters provide habitat for a variety of organisms. The waters overlying the outer continental shelf provide habitat for a wide variety of plankton and nekton species. The plankton communities in the ocean waters provide primary and secondary production that supports complex communities of oceanic organisms. Some fish species inhabiting those waters provide the basis for commercial fisheries. Benthic communities of the outer continental shelf consist of a variety of

organisms that inhabit the surface of the benthos and the upper surface of the sediments covering the benthos.

Functions provided by the open oceans and outer continental shelf include nutrient cycling, primary production, and secondary production.

Marine ecosystems provide a number of ecosystem services, including fish production; materials cycling (e.g., nitrogen, carbon, oxygen, phosphorous, and sulfur); transformation, detoxification, and sequestration of pollutants and wastes produced by humans; support of ocean-based recreation, tourism, and retirement industries; and coastal land development and valuation, including aesthetics related to living near the ocean (Peterson and Lubchenco 1997).

Activities authorized by this NWP will provide a wide variety of goods and services that are valued by society. Oil and gas structures on the outer continental shelf are used for the exploration, production, and transportation of oil, gas, and minerals.

4.0 Environmental Consequences

4.1 General Evaluation Criteria

This document contains a general assessment of the foreseeable effects of the individual activities authorized by this NWP, the anticipated cumulative effects of those activities, and the potential future losses of waters of the United States that are estimated to occur until the expiration date of the NWP. In the assessment of these individual and cumulative effects, the terms and limits of the NWP, pre-construction notification requirements, and the standard NWP general conditions are considered. The supplementary documentation provided by division engineers will address how regional conditions affect the individual and cumulative effects of the NWP.

The following evaluation comprises the NEPA analysis and the public interest review specified in 33 CFR 320.4(a)(1) and (2).

The issuance of an NWP is based on a general assessment of the effects on public interest and environmental factors that are likely to occur as a result of using this NWP to authorize activities in waters of the United States. As such, this assessment must be speculative or predictive in general terms. Since NWPs authorize activities across the nation, projects eligible for NWP authorization may be constructed in a wide variety of environmental settings. Therefore, it is difficult to predict all of the indirect impacts that may be associated with each activity authorized by an NWP. For example, the NWP that authorizes 25 cubic yard discharges of dredged or fill material into waters of the United States may be used to fulfill a variety of project purposes. Indication that a factor is not relevant to a particular NWP does not necessarily mean that the NWP would never have an effect on that factor, but that it is a factor not readily identified with the authorized activity. Factors may be relevant,

but the adverse effects on the aquatic environment are negligible, such as the impacts of a boat ramp on water level fluctuations or flood hazards. Only the reasonably foreseeable direct or indirect effects are included in the environmental assessment for this NWP. Division and district engineers will impose, as necessary, additional conditions on the NWP authorization or exercise discretionary authority to address locally important factors or to ensure that the authorized activity results in no more than minimal individual and cumulative adverse effects on the aquatic environment. In any case, adverse effects will be controlled by the terms, conditions, and additional provisions of the NWP. For example, Section 7 Endangered Species Act consultation will be required for activities that may affect endangered or threatened species or critical habitat.

4.2 Impact Analysis

This NWP authorizes structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf. This NWP authorizes structures in navigable waters of the United States, but it does not authorize discharges of dredged or fill material into those waters.

Pre-construction notification is required for activities authorized by this NWP. If the district engineer determines that the adverse effects of a particular project are more than minimal after considering mitigation, then discretionary authority will be asserted and the applicant will be notified that another form of DA authorization, such as a regional general permit or individual permit, is required (see 33 CFR 330.4(e) and 330.5).

Additional conditions can be placed on proposed activities on a regional or case-by-case basis to ensure that the work has minimal adverse effects on the aquatic environment. Regional conditioning of this NWP will be used to account for differences in aquatic resource functions, services, and values across the country, ensure that the NWP authorizes only those activities with minimal individual or cumulative adverse effects on the aquatic environment, and allow each Corps district to prioritize its workload based on where its efforts will best serve to protect the aquatic environment. Regional conditions can prohibit the use of an NWP in certain waters (e.g., high value waters or specific types of wetlands or waters), lower notification thresholds, or require notification for all work in certain watersheds or types of waters. Specific NWPs can also be revoked on a geographic or watershed basis where the adverse effects resulting from the use of those NWPs are more than minimal.

In high value waters, division and district engineers can: 1) prohibit the use of the NWP in those waters and require an individual permit or regional general permit; 2) add regional conditions to the NWP to ensure that the adverse environmental effects are minimal; or 3) for those activities that require notification, add special conditions to NWP authorizations, such as compensatory mitigation requirements, to ensure that the adverse effects on the aquatic environment are minimal. NWPs can authorize activities in high value waters as long as the individual and cumulative adverse effects on the aquatic environment are minimal.

4.3 Cumulative Impacts

The cumulative impacts of an NWP generally depends on the number of times the permit is used on a national basis. However, in a specific watershed, division or district engineers may determine that the cumulative adverse effects of activities authorized by NWPs are more than minimal. Division and district engineers will conduct more detailed assessments for geographic areas that are determined to be potentially subject to more than minimal cumulative adverse effects. Division and district engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case or regional basis to ensure that the cumulative adverse effects are minimal. When division or district engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5. In reaching the final decision, they will compile information on the cumulative adverse effects and supplement this document.

Based on reported use of this NWP during fiscal year 2003 and the period of July 1, 2005 to June 30, 2006, the Corps estimates that this NWP will be used approximately two times per year on a national basis, resulting in no losses of waters of the United States, including jurisdictional wetlands. Compensatory mitigation is not normally required to offset the impacts resulting from the activities authorized by this NWP. The demand for these types of activities could increase or decrease over the five-year duration of this NWP. Using the current trend, approximately ten activities could be authorized over a five year period until this NWP expires, resulting in no losses of waters of the United States, including jurisdictional wetlands. Because of the small amount of estimated impacts to waters of the United States expected to result from the use of this NWP over a five year period and the size of the Nation's aquatic resource base as described in Section 3.0 of this document, the net effects on the aquatic environment resulting from the activities authorized by this NWP will be minimal. The Corps expects that the convenience and time savings associated with the use of this NWP will encourage applicants to design their projects within the scope of the NWP rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

5.0 Public Interest Review

5.1 Public Interest Review Factors (33 CFR 320.4(a)(1))

For each of the 20 public interest review factors, the extent of the Corps consideration of expected impacts resulting from the use of this NWP is discussed, as well as the reasonably foreseeable cumulative adverse effects that are expected to occur. The Corps decision process involves consideration of the benefits and detriments that may result from the activities authorized by this NWP.

(a) Conservation: The activities authorized by this NWP may modify the natural resource characteristics of the project area. Impacts to conservation are addressed on a case-by-case basis through the leasing process of the Minerals Management Service of the Department of the Interior.

(b) Economics: The oil and gas structures authorized by this NWP will have positive impacts on the local economy. During construction, these activities will generate jobs and revenue for local contractors as well as revenue to building supply companies that sell construction materials. Oil and gas facilities generate income for energy companies. The production of goods and services will be facilitated by the energy provided through oil and gas structures.

(c) Aesthetics: The activities authorized by this NWP may alter the visual character of waters on the outer continental shelf. The extent and perception of these changes will vary, depending on the size and configuration of the activity, the nature of the surrounding area, and the public uses of the area. Impacts to aesthetics are addressed on a case-by-case basis through the leasing process of the Minerals Management Service of the Department of the Interior.

(d) General environmental concerns: Activities authorized by this NWP will affect general environmental concerns, such as water, air, and noise pollution. The authorized work will also affect the physical, chemical, and biological characteristics of the environment. The adverse effects of the activities authorized by this NWP on general environmental concerns will be minor. Adverse effects to the chemical composition of the aquatic environment will be controlled by general condition 6, which states that the material used for construction must be free from toxic pollutants in toxic amounts. Impacts to general environmental concerns are addressed on a case-by-case basis through the leasing process of the Minerals Management Service of the Department of the Interior. Specific environmental concerns are addressed in other sections of this document.

(e) Wetlands: Structures constructed in navigable waters of the United States for oil and gas facilities will have no adverse effects on wetlands since this NWP is limited to activities on the outer continental shelf.

(f) Historic properties: General condition 18 states that in cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied.

(g) Fish and wildlife values: This NWP authorizes structures in navigable waters of the United States, specifically the outer continental shelf. Impacts to fish and wildlife values are addressed on a case-by-case basis through the leasing process of the Minerals Management Service of the Department of the Interior. Waters overlying the outer continental shelf provide habitat for fish and other aquatic organisms. The structures authorized by this NWP may attract fish and other marine organisms.

Consultation pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for proposed NWP activities that may adversely affect essential fish habitat. Consultation may occur on a case-by-case or programmatic basis. Division and district engineers can impose regional and special conditions to ensure that activities authorized by this NWP will result in minimal adverse effects on essential fish habitat.

(h) Flood hazards: The activities authorized by this NWP will have no adverse effects on the flood-holding capacity of 100-year floodplains, including surface water flow velocities. This NWP authorizes structures on the outer continental shelf.

(i) Floodplain values: Activities authorized by this NWP will not adversely affect the flood-holding capacity of the floodplain, or other floodplain values. The fish and wildlife habitat values of floodplains will not be adversely affected by activities authorized by this NWP, since the NWP authorizes only structures on the outer continental shelf. The water quality functions of floodplains will not be adversely affected by these structures.

(j) Land use: Activities authorized by this NWP will no adverse effects on land use, since it is limited to structures on the outer continental shelf.

(k) Navigation: Activities authorized by this NWP must comply with general condition 1, which states that no activity may cause more than minimal adverse effects on navigation. The district engineer will review the impacts of the proposed structures on navigation and national security.

(l) Shore erosion and accretion: The activities authorized by this NWP will have no adverse effects on shore erosion and accretion processes, since the NWP is limited to structures on the outer continental shelf.

(m) Recreation: Activities authorized by this NWP are unlikely to change the recreational uses of the area. The NWP authorizes only oil and gas structures on leased areas of the outer continental shelf.

(n) Water supply and conservation: Activities authorized by this NWP will have no adverse effects on water supply and conservation, since it is limited to oil and gas structures installed on the outer continental shelf. The oceanic waters of the outer continental shelf are not potable.

(o) Water quality: The installation of oil and gas structures on the outer continental shelf will have negligible adverse effects on water quality. During construction, small amounts of oil and grease from construction equipment may be discharged into oceanic waters. Because most of the construction will occur during a relatively short period of time, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality.

(p) Energy needs: The activities authorized by this NWP will satisfy energy needs, through the exploration, production, and transportation or oil, gas, and minerals.

(q) Safety: The activities authorized by this NWP will be subject to Federal safety laws and regulations. Therefore, this NWP will not adversely affect the safety of the project area.

(r) Food and fiber production: Activities authorized by this NWP will have negligible adverse effects on food and fiber production. Some fish species may be attracted to oil and gas structures on the outer continental shelf, which may enhance fishing opportunities.

(s) Mineral needs: Activities authorized by this NWP may help mineral exploration, production, and transportation companies satisfy demand for minerals. The facilities authorized by this NWP will help companies extract mineral deposits located on the outer continental shelf.

(t) Considerations of property ownership: The NWP complies with 33 CFR 320.4(g), which states that an inherent aspect of property ownership is a right to reasonable private use. The NWP provides expedited DA authorization for oil and gas structures constructed on the outer continental shelf.

5.2 Additional Public Interest Review Factors (33 CFR 320.4(a)(2))

5.2.1 Relative extent of the public and private need for the proposed structure or work

This NWP authorizes structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf that have minimal adverse effects on the aquatic environment, individually and cumulatively. These activities satisfy public and private needs for oil, gas, and mineral products. The need for this NWP is based upon the number of these activities that occur annually with minimal adverse effects on the aquatic environment.

5.2.2 Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work

Most situations in which there are unresolved conflicts concerning resource use arise when environmentally sensitive areas are involved (e.g., special aquatic sites, including wetlands) or where there are competing uses of a resource. The nature and scope of the activity, when planned and constructed in accordance with the terms and conditions of this NWP, reduce the likelihood of such conflict. In the event that there is a conflict, the NWP contains provisions that are capable of resolving the matter (see Section 1.2 of this document).

General condition 20 requires permittees to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable on the project site. Consideration of

off-site alternative locations is not required for activities that are authorized by general permits. General permits authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment and overall public interest. District engineers will exercise discretionary authority and require an individual permit if the proposed work will result in more than minimal adverse environmental effects on the project site. The consideration of off-site alternatives can be required during the individual permit process.

5.2.3 The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited

The nature and scope of the work authorized by the NWP will most likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding these structures. Activities authorized by this NWP will have minimal adverse effects on the aquatic environment.

The terms, conditions, and provisions of the NWP were developed to ensure that individual and cumulative adverse environmental effects are minimal. Specifically, NWPs do not obviate the need for the permittee to obtain other Federal, state, or local authorizations required by law. The NWPs do not grant any property rights or exclusive privileges (see 33 CFR 330.4(b) for further information). Additional conditions, limitations, restrictions, and provisions for discretionary authority, as well as the ability to add activity-specific or regional conditions to this NWP, will provide further safeguards to the aquatic environment and the overall public interest. There are also provisions to allow suspension, modification, or revocation of the NWP.

5.2.4 Endangered and threatened species.

The Corps believes that the procedures currently in place result in proper coordination under Section 7 of the Endangered Species Act (ESA) and ensure that activities authorized by this NWP will not jeopardize the continued existence or any listed threatened and endangered species or result in the destruction or adverse modification of critical habitat. The Corps also believes that current local procedures in Corps districts are effective in ensuring compliance with ESA.

Under general condition 17, no activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

Each activity authorized by an NWP is subject to general condition 17, which states that "[n]o activity is authorized under any NWP which is likely to 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 destroy or adversely modify the critical habitat of such species." In addition, general condition 17 explicitly states that the NWP does not authorize the taking of threatened or endangered

species, which will ensure that permittees do not mistake the NWP authorization as a Federal authorization to take threatened or endangered species. General condition 17 also requires non-federal permittees to notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. This general condition also states that, in such cases, non-federal permittees 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.

Under the current Corps regulations (33 CFR 325.2(b)(5)), the district engineer must review all permit applications for potential impacts on threatened and endangered species or critical habitat. For the NWP program, this review occurs when the district engineer evaluates the pre-construction notification or request for verification. Based on the evaluation of all available information, the district engineer will initiate consultation with the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), as appropriate, if he or she determines that the regulated activity may affect any threatened and endangered species or critical habitat. Consultation may occur during the NWP authorization process or the district engineer may exercise discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. If ESA consultation is conducted during the NWP authorization process without the district engineer exercising discretionary authority, then the applicant will be notified that he or she cannot proceed with the proposed activity until ESA consultation is complete. If the district engineer determines that the activity will have no effect on any threatened and endangered species or critical habitat, then the district engineer will notify the applicant that he or she may proceed under the NWP authorization.

Corps districts have, in most cases, established informal or formal procedures with local offices of the USFWS and NMFS, through which the agencies share information regarding threatened and endangered species and their critical habitat. This information helps district engineers determine if a proposed activity may affect endangered species or their critical habitat and, if necessary, initiate consultation. Corps districts may utilize maps or databases that identify locations of populations of threatened and endangered species and their critical habitat. Where necessary, regional conditions are added to NWPs to require notification for activities that occur in known locations of threatened and endangered species or critical habitat. For activities that require agency coordination during the pre-construction notification process, the USFWS and NMFS will review the proposed work for potential impacts to threatened and endangered species and their critical habitat. Any information provided by local maps and databases and any comments received during the pre-construction notification review process will be used by the district engineer to make a "no effect" or "may affect" decision.

Based on the safeguards discussed above, especially general condition 17 and the NWP regulations at 33 CFR 330.5(f), the Corps has determined that the activities authorized by this NWP will not jeopardize the continued existence of any listed threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.

Although the Corps continues to believe that these procedures ensure compliance with ESA, the Corps has taken some steps to provide further assurance. Corps district offices have met with local representatives of the USFWS and NMFS to establish or modify existing procedures, where necessary, to ensure that the Corps has the latest information regarding the existence and location of any threatened or endangered species or their critical habitat. Corps districts can also establish, through local procedures or other means, additional safeguards that ensure compliance with ESA. Through formal consultation under Section 7 of the Endangered Species Act, or through other coordination with the USFWS and/or the NMFS, as appropriate, the Corps will establish procedures to ensure that the NWP will not jeopardize any threatened and endangered species or result in the destruction or adverse modification of designated critical habitat. Such procedures may result in the development of regional conditions added to the NWP by the division engineer, or in special conditions to be added to an NWP authorization by the district engineer.

6.0 Determinations

6.1 Finding of No Significant Impact

Based on the information in this document, the Corps has determined that the issuance of this NWP will not have a significant impact on the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not required.

6.2 Public Interest Determination

In accordance with the requirements of 33 CFR 320.4, the Corps has determined, based on the information in this document, that the issuance of this NWP is not contrary to the public interest.

6.3 Section 176(c) of the Clean Air Act General Conformity Rule Review

This NWP has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities authorized by this permit will not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be

practicably controlled by the Corps. For these reasons, a conformity determination is not required for this NWP.

FOR THE COMMANDER

Dated: MAR - 1 2007

DON T. RILEY
Major General, U.S. Army
Director of Civil Works

7.0 Literature Cited

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