DECISION DOCUMENT
NATIONWIDE PERMIT 3

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); (2) a discussion of the environmental considerations necessary to comply with the National Environmental Policy Act; and (3) the impact analysis specified in Subparts C through F of the 404(b)(1) Guidelines (40 CFR Part 230). 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

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

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

United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

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

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

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

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

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)
- Section 404 of the Clean Water Act (33 U.S.C. 1344)

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 individual and cumulative 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 individual and cumulative adverse effects on the aquatic environment cannot be authorized by NWPs. Individual review of each activity authorized by an NWP will not normally be performed, except when pre-construction 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; the Magnuson-Stevens Fishery and Conservation and Management Act, the Bald and Golden Eagle Protection Act; and the Migratory Bird Treaty 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 pre-construction 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 18 and 20). General condition 16 restricts the use of NWPs for activities that are located in Federally-designated wild and scenic rivers. None of the NWPs the construction of authorize artificial reefs. General condition 28 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 that may result in discharges 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 February 16, 2011, 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 February 16, 2011, Federal Register notice were used to improve the NWP by changing NWP terms and limits, pre-construction notification requirements, and/or NWP general conditions, as necessary.

The Corps proposed to modify this NWP to clarify that stream channel excavation immediately adjacent to the structure or fill being maintained is authorized under paragraph (a) and does not require a PCN. We also proposed to replace the word "and" with "and/or" in paragraph (b) to indicate that the activity does not need to include the placement of new or additional riprap to qualify for this NWP.

Several commenters supported the change to paragraph (a) to allow excavation in a stream channel immediately adjacent to a structure or fill as part of the maintenance activity, without requiring pre-construction notification. Some commenters specifically supported the ability to do minor excavation within stream channels to install a larger culvert or bridge that would improve fish passage without a pre-construction notification. Two commenters asked which types of stream channel modifications could be authorized under paragraph (a). Another commenter said that the proposed modification does not adequately clarify that a pre-construction notification is not required for stream channel modification as discussed in the proposed rule. This commenter recommended that paragraph (a) state that stream channel modification immediately adjacent to the structure or fill being maintained is authorized without pre-construction notification. One commenter suggested that paragraph (a) include the removal of material from within existing structures. One commenter indicated that the scope of activities considered as stream channel modifications should be clarified, because certain stream channel modifications such as sediment or debris removal and reestablishment of the original bridge-stream alignment are needed to maintain a safe crossing with sufficient hydraulic capacity. Another commenter indicated that while stream channel modification is restricted to the minimum necessary, there should be a 300 linear foot impact limit. One commenter did not support the proposed modification, stating that pre-construction notification should be required for stream channel excavation near a structure because excavation has the potential to uncover unknown archeological resources.

We have changed the text of paragraphs (a) and (b) to clarify which stream modifications fall under paragraph (a) and which fall under paragraph (b). The removal of material from waters within, or immediately adjacent to, the structure or fill are authorized under paragraph (a) and do not require pre-construction notification. The removal of material from waters that are not immediately adjacent to the structure or fill, but within the limits in paragraph (b), may be authorized under paragraph (b). This NWP authorizes only activities that repair or return an activity to previously existing conditions. We do not believe it is necessary to place additional limits on this NWP because the current limits are sufficient to ensure minimal effects. Paragraph (a) only authorizes minor stream channel modifications necessary to repair, replace, or rehabilitate the structure or fill, which may include minor deviations to account for changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards. Such minor deviations could be done to improve conditions to facilitate aquatic species movements. General conditions 20 and 21 address the protection of historic properties and actions to be taken if previously unknown remains or artifacts are discovered during the maintenance activity.

Several commenters recommended adding the word "or stabilization" after "repair, rehabilitation, replacement" in paragraph (a) to clarify that stabilization activities are included in paragraph (a). Two commenters requested that practicability be considered with the "minimum necessary." One commenter requested that the NWP include the requirements of other regulatory agencies as a reason for allowing minor deviations in a structure's configuration or filled area.

We do not believe it would be appropriate to include stabilization activities under paragraph (a) since some stabilization activities may result in more than a minor deviation in the structure's configuration or filled area. District engineers already consider what is practicable when reviewing proposed NWP 3 activities, and we do not believe it is necessary to provide additional clarification. We agree that the requirements of other regulatory agencies is an appropriate basis for making minor changes in a structure or filled area during maintenance, especially if those regulatory requirements help protect aquatic resources.

Several commenters stated that the placement of new or additional riprap to protect small structures be included in paragraph (a). A commenter requested clarification that the placement of pipe liners and concrete repairs to flow lines of pipes are examples of maintenance activities authorized by this NWP. One commenter expressed concern that authorizing the expansion of existing projects into waters of the United States discourages avoidance and minimization of adverse impacts and violates the 404(b)(1) Guidelines. Another commenter indicated that work that is immediately adjacent to the project is not maintenance and that the work should be limited to the extent of the original project.

The placement of riprap to protect a structure or fill is more appropriately authorized by paragraph (b) of this NWP, after the district engineer reviews the pre-construction notification. If the installation of pipe liners or concrete repairs to flow lines are necessary and result only in a minor deviation to the structure's configuration or filled area, it may be authorized under paragraph (a). Paragraph (a) only authorizes minor deviations to the structure or filled area that are necessary to conduct the repair, rehabilitation, or replacement activity, and complies with the general condition requiring on-site avoidance and minimization.

One commenter said that the permit should require that the Corps be notified, within 12 months of the date of the damage, for activities involving the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events.

The repair, rehabilitation, or replacement of structures or fills destroyed or damaged by these types of events does not require pre-construction notification. This is because restoring a structure or fill to its pre-event configuration will not result in more than minimal adverse effects relative to the pre-event status quo. If a project proponent wants a waiver of the two-year limit, the district engineer can issue a waiver if warranted, without reviewing a pre-construction notification.

Some commenters expressed opposition over the proposed change from "and" to "and/or" under paragraph (b). They recommended retaining the current language because they indicated that making the change to "and/or" would cause confusion as to which provision of this NWP would be used to authorize riprap placement. The commenters also said that this change would result in the regulation of excavation activities that do not result in more than

incidental fallback. Another commenter was concerned that the change to "and/or" suggested that the addition of riprap triggered pre-construction notification.

The use of the term "and/or" means that paragraph (b) authorizes the removal of accumulated sediments or debris, the placement of new or additional riprap to protect the structure, or both activities. This NWP authorizes the removal of accumulated sediment and debris if that activity involves a regulated discharge of dredged or fill material. This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures from section 10 waters. If a project proponent seeks authorization to place new or additional riprap near the structure, then pre-construction notification is required in accordance with paragraph (b) of this NWP.

One commenter said that the use of riprap should be discouraged and only authorized if other options are not possible. Another commenter suggested placing a limit on the amount of riprap that can be placed under paragraph (b). One commenter stated that the placement of new or additional riprap is not maintenance and should not be authorized by NWP 3. One commenter recommended requiring mitigation techniques, such as weep holes, when steel sheet piling is used for the maintenance activity.

Riprap may be necessary to protect the integrity of these structures. We have modified the next to last sentence of paragraph (b) to clarify that new or additional riprap may be placed to protect the structure or ensure the safety of the structure. In response to a pre-construction notification (which is required for all placement of new or additional riprap under paragraph (b) of this NWP), best management practices or other mitigation measures may be required by the district engineer to minimize adverse effect to the aquatic environment.

One commenter said that this NWP should not authorize maintenance dredging and that NWP 19 should be used instead. This commenter also recommended adding a cubic yard limit for the amount of dredging that is authorized. Another commenter recommended that the removal of sediment should be limited to 100 feet instead of 200 feet. One commenter suggested increasing the linear foot limit to 500 feet. One commenter also suggested that the applicant be required to provide information to ensure that sediments proposed to be removed are not contaminated.

Paragraph (b) may be used to authorize the removal of accumulated sediment and debris from section 10 waters, and the 200 linear foot limit is appropriate to ensure minimal adverse effects. District and division engineers can condition this NWP to reduce the limit to less than 200 linear feet. Maintenance dredging for the purposes of navigation may be authorized by NWP 19 and may not be authorized by this NWP. The only excavation authorized by this NWP is excavation necessary for the maintenance, repair, rehabilitation, or replacement of the structure, and then only within the limits established in the permit. It is not necessary to require contaminant testing for the sediments to be removed as a general condition of the permit, because for many cases there is reason to believe that no contaminants are present in the material. If there is reason to believe that contaminants are

present, the district engineer may require contaminant testing and/or best management practices to control the release of contaminants on a case-specific basis.

One commenter objected to the proposed removal of the words "[w]here maintenance dredging is proposed" from the "Notification" paragraph. Another commenter said that pre-construction notification should only be required when maintenance dredging is contemplated.

Pre-construction notification is required for all activities covered under paragraph (b). When a permittee submits the pre-construction notification for activities covered under paragraph (b), they also must submit information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. The deleted phrase is meant to clarify the "Notification" provision.

A commenter asked if the term "upland" means "above the ordinary high water mark." That commenter also requested clarification as to what constitutes "temporary" in terms of how long temporary fills can be kept in place. Another commenter asked for a definition of "minor deviations" and two commenters recommended that "immediately adjacent" be defined.

There may be wetlands landward of the ordinary high water mark of a river or other water of the United States, so it would not be appropriate to define "uplands" as suggested in the previous paragraph. Since some waters and wetlands are not subject to Clean Water Act jurisdiction, we have changed the text of paragraph (b) to require all dredged or excavated materials to be deposited and retained in an area that has no waters of the United States, unless otherwise specifically approved by the district engineer under separate authorization. Waters of the United States will be identified in accordance with applicable laws, regulations, and guidance, as discussed above, and is not affected by the issuance of these NWPs. What constitutes a temporary fill is at the discretion of the district engineer. Determining what is a minor deviation and immediately adjacent is also at the discretion of the district engineer. The Corps believes this is appropriate because it is difficult to identify bright line definitions for these terms that are applicable in all circumstances. If an applicant is unsure whether a specific activity qualifies, he or she should consult the appropriate Corps district office.

Several commenters said that pre-construction notification should not be required for activities authorized by paragraph (b), to reduce delays. Other commenters requested removal of the pre-construction notification requirements for sediment and debris removal, because the work is often conducted immediately after storm events when a timely response is critical to public safety. Another commenter also requested that no pre-construction notification be required for activities under paragraph (b), if the waters are ephemeral or intermittent streams. Other commenters said that pre-construction notification should be required for all activities authorized by this NWP.

We believe that the pre-construction notification requirements for this NWP are appropriate. Pre-construction notification is required for those activities that may have the potential to cause more than minimal adverse effects on the aquatic environment. Activities authorized by paragraph (b) usually involve larger impacts than those authorized by paragraph (a) and therefore warrant pre-construction notification to ensure that those activities will result in minimal adverse effects on the aquatic environment.

One commenter suggested that this NWP should require the use of best management practices to avoid sediment loading of waters. One commenter suggested that paragraph (c) should be conditioned to protect downstream water quality and prohibit sediment discharges. Two commenters said that general condition 2 should not apply to NWP 3 activities.

General condition 12 requires the use of sediment and erosion controls to minimize sediment inputs during construction. General condition 2 does apply to this NWP, to ensure that aquatic life movements can continue after the maintenance activity is conducted.

One commenter said that Tribes should be notified to avoid impacts to tribal treaty natural resources and cultural resources. Two commenters said that this NWP should be conditioned to allow fish migration to continue. One of these commenters also stated that these activities should not restrict water flows or constrict channels. One commenter said that this NWP should be conditioned to address slope stability to prevent overburden material from going into the water. Another commenter recommended that all stream crossings span the bankfull width and in, cases where the structures have a bottom, the structure bottom shall match stream slope.

District engineers have conducted government-to-government consultation with Tribes to determine which NWP activities should be subject to project-specific consultation to protect Tribal treaty natural resources and cultural resources. General Condition 18 specifies that no activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. General condition 2 requires that NWP activities be constructed to maintain aquatic life movements, and general condition 9 requires that water flows be maintained to the maximum extent practicable. The appropriate size for stream crossings will be determined on a case-by-case basis, to comply with the applicable general conditions.

A commenter recommended an addition to the "Note", which references the section 404(f) exemption for maintenance. This commenter suggested that the note include clarification as to who can use the exemption for maintenance of irrigation and drainage ditches.

The section 404(f) exemption for maintenance of irrigation ditches and drainage ditches can be used by anyone that qualifies for the exemption. If a particular activity does not qualify for the exemption because of the recapture provision in section 404(f)(2) or for any other reason, NWP 3 may be used to authorize the maintenance activity, if it meets the terms and conditions of the NWP.

2.0 Alternatives

This evaluation includes an analysis of alternatives based on the requirements of NEPA, which requires a more expansive review than the Clean Water Act Section 404(b)(1) Guidelines. The alternatives discussed below are based on an analysis of the potential environmental impacts and impacts to the Corps, Federal, Tribal, and state resource agencies, general public, and prospective permittees. Since the consideration of off-site alternatives under the 404(b)(1) Guidelines does not apply to specific projects authorized by general permits, the alternatives analysis discussed below consists of a general NEPA alternatives analysis for the NWP.

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 individual and cumulative adverse effects on the aquatic environment. 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 activities 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 individual and cumulative adverse effects on the aquatic environment. 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 maintenance activities and the removal of accumulated sediments and debris in the vicinity of existing structures that have minimal individual and cumulative adverse effects on the aquatic environment. The Corps has considered suggested changes to the terms and conditions of this NWP, as well as modifying or adding NWP general conditions, as discussed in the preamble of the Federal Register notice announcing the reissuance of this NWP.

In the February 16, 2011, Federal Register notice, the Corps requested comments on the proposed reissuance of this NWP. The Corps proposed to modify this NWP to clarify that any stream channel modification is limited to the minimum necessary to repair, rehabilitate, or replace the structure or fill, and must be immediately adjacent to that structure or fill. The Corps also proposed to clarify that this NWP does not authorize beach restoration.

2.3 Regional Modification Alternatives

An important aspect for the NWPs is the emphasis on regional conditions to address differences in aquatic resource functions, services, 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 individual and cumulative 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 individual and cumulative 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.

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 individual and cumulative adverse effects on the aquatic environment, division and district engineers have the authority to impose case-specific special conditions on NWP authorizations to ensure that the authorized activities will result in minimal individual and cumulative adverse effects.

General condition 23 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 activity during specific times of the year to protect spawning fish and shellfish. If the proposed activity 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 terrestrial and aquatic ecosystems. The total land area in the United States is approximately 2,300,000,000 acres, and the total land area in the contiguous United States is approximately 1,894,000,000 acres (Lubowski et al. 2006) . Land uses in 48 states of the contiguous United States as of 2002 is provided in Table 3.1 (Lubowski et al. 2006). In the contiguous United States, approximately 67 percent of the land is privately owned, 31 percent is held by the United States government, and two percent is owned by state or local governments (Dale et al. 2000). Developed non-federal lands comprise 4.4 percent of the total land area of the contiguous United States (Dale et al. 2000).

Table 3.1. Agricultural and non-agricultural land uses in the 48 states (Lubowski et al. 2006).

Land Use	Acres	Percent of Total
Agriculture	1,171,000,000	61.8
Forest land	425,000,000	22.4
Transportation use	27,000,000	1.4
Recreation and wildlife areas	100,000,000	5.3
National defense areas	15,000,000	0.8
Urban land	59,000,000	3.1
Miscellaneous use	97,000,000	5.1
Total land area	**1,894,000,000**	**100.0**

The Federal Geographic Data Committee has established the Cowardin system developed by the U.S. Fish and Wildlife Service (USFWS) (Cowardin et al. 1979) as the national standard for wetland mapping, monitoring, and data reporting (Dahl 2011) (see also http://www.fgdc.gov/standards/projects/FGDC-standards-projects/wetlands/fgdc-announce , accessed December 12, 2011). The Cowardin system is a hierarchical system which describes various wetland and deepwater habitats, using structural characteristics such as vegetation, substrate, and water regime as defining characteristics. Wetlands are defined by plant communities, soils, or inundation or flooding frequency. Deepwater habitats are permanently flooded areas located below the wetland boundary. In rivers and lakes, deepwater habitats are usually more than two meters deep.

There are five major systems in the Cowardin classification scheme: marine, estuarine, riverine, lacustrine, and palustrine (Cowardin et al. 1979). The marine system consists of open ocean on the continental shelf and its high energy coastline. The estuarine system consists of tidal deepwater habitats and adjacent tidal wetlands that are usually partially enclosed by land, but may have open connections to open ocean waters. The riverine system generally consists of all wetland and deepwater habitats located within a river channel. The lacustrine system generally consists of wetland and deepwater habitats located within a topographic depression or dammed river channel, with a total area greater than 20 acres. The palustrine system generally includes all non-tidal wetlands and wetlands located in tidal areas with salinities less than 0.5 parts per thousand; it also includes ponds less than 20 acres in size. Approximately 95 percent of wetlands in the conterminous United States are freshwater wetlands, and the remaining 5 percent are estuarine or marine wetlands (Dahl 2011).

The Emergency Wetlands Resources Act of 1986 (Public Law 99-645) requires the USFWS to submit wetland status and trends reports to Congress (Dahl 2011). The latest status and trends report, which covers the period of 2004 to 2009, is summarized in Table 3.2.

Table 3.2. Estimated aquatic resource acreages in the conterminous United States in 2009 (Dahl 2011).

Aquatic Habitat Category	Estimated Area in 2009 (acres)
Marine intertidal	227,800
Estuarine intertidal non-vegetated	1,017,700
Estuarine intertidal vegetated	4,539,700
All intertidal waters and wetlands	5,785,200
Freshwater ponds	6,709,300
Freshwater vegetated	97,565,300
• Freshwater emergent wetlands	27,430,500
• Freshwater shrub wetlands	18,511,500
• Freshwater forested wetlands	51,623,300
All freshwater wetlands	104,274,600
Lacustrine deepwater habitats	16,859,600
Riverine deepwater habitats	7,510,500
Estuarine subtidal habitats	18,776,500
All wetlands and deepwater habitats	153,206,400

The acreage of lacustrine deepwater habitats does not include the open waters of Great Lakes (Dahl 2011).

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994).

The National Resources Inventory (NRI) is a statistical survey conducted by the Natural Resources Conservation Service (NRCS) (USDA 2009) of natural resources on non-federal land in the United States. The NRCS defines non-federal land as privately owned lands, tribal and trust lands, and lands under the control of local and State governments. The land use determined by 2007 NRI is summarized in Table 3.3. The 2007 NRI estimates that there are 110,671,500 acres of palustrine and estuarine wetlands on non-Federal land and water areas in the United States (USDA 2009). The 2007 NRI estimates that there are 48,471,100 acres of open waters on non-Federal land in the United States, including lacustrine, riverine, and marine habitats, as well as estuarine deepwater habitats.

Table 3.3. The 2007 National Resources Inventory acreages for palustrine and estuarine wetlands on non-federal land, by land cover/use category (USDA 2009).

National Resources Inventory Land Cover/Use Category	Area of Palustrine and Estuarine Wetlands (acres)
cropland, pastureland, and Conservation Reserve Program land	16,790,300
forest land	66,043,100
rangeland	7,940,300
other rural land	14,744,800
developed land	1,571,900
water area	3,581,100
Total	110,671,500

The land cover/use categories used by the 2007 NRI are defined below (USDA 2009). Croplands are areas used to produce crops adapted for harvest. Pastureland is land managed for livestock grazing, through the production of introduced forage plants. Conservation Reserve Program land is under a Conservation Reserve Program contract. Forest land is comprised of at least 10 percent single stem woody plant species that will be at least 13 feet tall at maturity. Rangeland is land on which plant cover consists mostly of native grasses, herbaceous plants, or shrubs suitable for grazing or browsing, and introduced forage plant species. Other rural land consists of farmsteads and other farm structures, field windbreaks, marshland, and barren land. Developed land is comprised of large urban and built-up areas (i.e., urban and built-up areas 10 acres or more in size), small built-up areas (i.e., developed lands 0.25 to 10 acres in size) , and rural transportation land (e.g., roads, railroads, and associated rights-of-way outside urban and built-up areas). Water areas are comprised of waterbodies and streams that are permanent open waters.

The wetlands data from the Fish and Wildlife Service's Status and Trends study and the Natural Resources Conservation Service's National Resources Inventory should not be compared, because they use different methods and analyses to produce their results (Dahl 2011).

Leopold, Wolman, and Miller (1964) estimated that there are approximately 3,250,000 miles of river and stream channels in the United States. This estimate is based on an analysis of 1:24,000 scale topographic maps, by stream order. This estimate does not include many small streams. Many small streams are not mapped on 1:24,000 scale U.S. Geological Survey topographic maps (Leopold 1994) or included in other analyses (Meyer and Wallace 2001). In a study of stream mapping in the southeastern United States, only 20% of the stream network was mapped on 1:24,000 scale topographic maps, and nearly none of the observed intermittent or ephemeral streams were indicated on those maps (Hansen 2001). For a 1:24,000 scale topographic map, the smallest tributary found by using 10-foot contour

interval has drainage area of 0.7 square mile and length of 1,500 feet, and smaller channels are common throughout the United States (Leopold 1994). Due to the difficulty in mapping small streams, there are no accurate estimates of the total number of river or stream miles in the conterminous United States that may be classified as "waters of the United States."

The USFWS status and trends study does not assess the condition or quality of wetlands and deepwater habitats (Dahl 2011). The Nation's aquatic resource base is underestimated by the USFWS status and trends study, the National Wetland Inventory (NWI), and studies that estimate the length or number of stream channels within watersheds (see above). The 2011 status and trends study does not include Alaska and Hawaii. The underestimate by the status and trends study and the NWI results from the minimum size of wetlands detected through remote sensing techniques and the difficulty of identifying certain wetland types through those remote sensing techniques. The NWI maps do not show small or linear wetlands (Tiner 1997) that may be directly impacted by activities authorized by NWPs. For the latest USFWS status and trends study, most of the wetlands identified are larger than 1 acre, but the minimum size of detectable wetlands varies by wetland type (Dahl 2011). Some wetland types less than one acre in size can be identified; the smallest wetland detected for the most recent status and trends report was 0.1 acre (Dahl 2011). Because of the limitations of remote sensing techniques, certain wetland types are not included in the USFWS status and trends study: seagrass beds, submerged aquatic vegetation, submerged reefs, and certain types of forested wetlands (Dahl 2011). Therefore, activities authorized by NWPs will adversely affect a smaller proportion of the Nation's wetland base than indicated by the wetlands acreage estimates provided in the most recent status and trends report, or the NWI maps for a particular region.

Information on water quality in waters and wetlands, as well as the causes of water quality impairment, is collected by the U.S. Environmental Protection Agency (U.S.EPA) under sections 305(b) and 303(d) of the Clean Water Act. Table 3.4 provides U.S. EPA's most recent national summary of water quality in the Nation's waters and wetlands.

Table 3.4. The 2010 national summary of water quality data (U.S. EPA 2012).

Category of water	Total waters	Total waters assessed	Percent of waters assessed	Good waters	Threatened waters	Impaired waters
Rivers and streams	3,533,205 miles	965,693 miles	27.3	445,079 miles	6,369 miles	514,246 miles
Lakes, reservoirs and ponds	41,666,049 acres	18,796,765 acres	45.1	5,833,964 acres	38,681 acres	12,924,120 acres
Bays and estuaries	87,791 square miles	32,830 square miles	37.4	11,045 square miles	17 square miles	21,768 square miles
Coastal shoreline	58,618 miles	9,143 miles	15.6	1,746 miles	0 miles	7,396 miles
Ocean and near coastal waters	54,120 square miles	1,275 square miles	2.4	968 square miles	0 square miles	307 square miles
Wetlands	107,700,000 acres	1,311,645 acres	1.2	208,944 acres	805 acres	1,101,895 acres
Great Lakes shoreline	5,202 miles	4,431 miles	85.2	78 miles	0 miles	4,353 miles
Great Lakes open waters	60,546 square miles	53,332 square miles	88.1	62 square miles	0 square miles	53,270 square miles

According to the 2010 national summary (U.S. EPA 2012), 53% of assessed rivers and streams, 66% of assessed bays and estuaries, 81% of assessed coastal shoreline, 24% of assessed ocean and near coastal waters, and 84% of assessed wetlands are impaired.

For rivers and streams, 34 causes of impairment were identified, and the top 10 causes were pathogens, sediment, nutrients, organic enrichment/oxygen depletion, polychlorinated biphenyls, habitat alterations, metals (excluding mercury), mercury, flow alterations, and temperature. The primary sources of impairment for the assessed rivers and streams were agriculture, atmospheric deposition, unknown sources, hydrology modification, urban-related runoff/stormwater, wildlife, municipal discharges/sewage, unspecified non-point sources, habitat alterations, and resource extraction.

For bays and estuaries, 28 causes of impairment were identified, and the top 10 causes of impairment were mercury, pathogens, polychlorinated biphenyls, organic enrichment/oxygen depletion, dioxins, metals (excluding mercury), noxious aquatic plants, pesticides, algal growth, and unknown causes of impaired biota. The primary sources of impairment of bays and estuaries were atmospheric deposition, "unknown," municipal discharges/sewage, wildlife, industrial, other sources, agriculture, unspecified non-point sources, hydrologic modifications, and habitat alterations.

For coastal shorelines, 17 causes of impairment were listed, led by mercury, pathogens,

organic enrichment/oxygen depletion, metals (excluding mercury), pesticides, polychlorinated biphenyls, turbidity, nutrients, algal growth, and unknown causes of impaired biota. The top 10 sources of impairment for coastal shorelines were "unknown," atmospheric deposition, urban-related runoff/stormwater, municipal discharges/sewage, agriculture, hydrologic modifications, industrial, unspecified non-point sources, wildlife, and recreational boating and marinas.

For ocean and near coastal waters, 16 causes of impairment were identified, and the top 10 causes of impairment were mercury, pathogens, organic enrichment/oxygen depletion, nuisance exotic species, toxics, polychlorinated biphenyls, turbidity, pesticides, metals, and toxic organics. Habitat alterations were ranked eleventh. The primary sources of impairment of ocean and near coastal waters were "unknown," atmospheric deposition, recreational boating and marinas, municipal discharges/sewage, unspecified non-point sources, urban-related runoff/stormwater, recreation and tourism (non-boating), industrial, hydrologic modifications, and construction.

For wetlands, 27 causes of impairment were identified, and the top 10 causes were organic enrichment/oxygen depletion, pathogens, mercury, metals (excluding mercury), habitat alterations, nutrients, flow alterations, toxic inorganics, total toxics, and sediment. The primary sources for wetland impairment were "unknown," wildlife, municipal discharges/sewage, agriculture, atmospheric deposition, industrial, hydrology modifications, resource extraction, other, and unspecified non-point sources.

Most causes and sources of impairment are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Habitat alterations as a cause or source of impairment may be the result of activities regulated under section 404 and section 10 because they involve discharges of dredged or fill material or structures or work in navigable waters, but habitat alterations may also occur as a result of activities not regulated under those two statutes, such as the removal of vegetation from upland riparian areas. Hydrologic modifications may or may not be regulated under section 404 or section 10.

Not all of the Nation's aquatic resources are subject to regulatory jurisdiction under Section 404 of the Clean Water Act. Waters of the United States subject to Section 404 of the Clean Water Act are defined at 33 CFR part 328. Some wetlands are not subject to Clean Water Act jurisdiction because they do not meet the criteria at Part 328. In its decision in *Solid Waste County of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), the U.S. Supreme Court ruled that Clean Water Act jurisdiction does not apply to isolated, intrastate, non-navigable waters based on their use as habitat for migratory birds. Tiner (2003) estimated that in some areas of the country, the proportion of wetlands that are geographically isolated, and may not be subject to Clean Water Act jurisdiction is approximately 20 to 50 percent of the wetland area, and there are other areas where more than 50 percent of the wetlands are geographically isolated. Geographically isolated wetlands comprise a substantial proportion of the wetlands found in regions with arid, semi-arid, and semi-humid climates, as well as areas with karst topography (Tiner 2003).

However, it is difficult to determine from maps or aerial photographs whether wetlands are hydrologically isolated from other waters, because there may be small surface hydrologic connections that are not included on those maps or detected by those photographs (Tiner 2003). The scope of waters subject to Clean Water Act jurisdiction has also been affected by the U.S. Supreme Court decision in the consolidated cases of *Rapanos v. U.S.* and *Carabell v. U.S.*, but there have been no formal studies to estimate the proportion of wetlands, streams, and other aquatic resources that may have been affected by that decision.

This NWP authorizes structures or work in navigable waters of the United States, as well as discharges of dredged or fill material into all waters of the United States. These waters include in the marine, estuarine, palustrine, lacustrine, and riverine systems of the Cowardin classification system.

Wetland functions are the biophysical processes that occur within a wetland (King et al. 2000). Wetlands provide many functions, such as habitat for fish and shellfish, habitat for waterfowl and other wildlife, habitat for rare and endangered species, food production, plant production, flood conveyance, flood-peak reduction, flood storage, shoreline stabilization, water supply, ground water recharge, pollutant removal, sediment accretion, and nutrient uptake (NRC 1992).

Functions provided by streams include sediment transport, water transport, transport of nutrients and detritus, habitat for many species of plants and animals (including endangered or threatened species), and maintenance of biodiversity (NRC 1992). Streams also provide hydrologic functions, nutrient cycling functions, food web support, and corridors for movement of aquatic organisms (Allan and Castillo 2007).

Freshwater ecosystems provide services such as water for drinking, household uses, manufacturing, thermoelectric power generation, irrigation, and aquaculture; production of finfish, waterfowl, and shellfish; and non-extractive services, such as flood control, transportation, recreation (e.g., swimming and boating), pollution dilution, hydroelectric generation, wildlife habitat, soil fertilization, and enhancement of property values (Postel and Carpenter 1997).

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 help sustain existing structures, fills, and other work that are valued by society, including buildings and infrastructure. For example, maintenance activities are conducted to repair existing structures. This NWP may also be used to authorize the removal of accumulated sediments in the vicinity of existing structures, which will help those structures and their associated facilities to function efficiently.

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 and the anticipated cumulative effects of those activities. 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, the public interest review specified in 33 CFR 320.4(a)(1) and (2), and the impact analysis specified in Subparts C through F of the 404(b)(1) Guidelines (40 CFR Part 230).

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 and work in navigable waters of the United States, as well as discharges of dredged or fill material into all waters of the United States, for the repair, rehabilitation, or replacement of any currently serviceable structure or fill. This NWP authorizes minor deviations in the structure's configuration or filled area, to account for

changes in materials, construction techniques, or current construction codes or safety standards. This NWP also authorizes the removal of accumulated sediments in the vicinity of existing structures, as well as the placement of new or additional rip rap to protect the structure. Please see the text of the NWP for a more complete description of authorized activities.

Pre-construction notification is required for all activities authorized by paragraph (b) of this NWP. The pre-construction notification requirement allows district engineers to review proposed activities on a case-by-case basis to ensure that the adverse effects of those activities on the aquatic environment are minimal. 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 activities have minimal individual and cumulative 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 and 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 pre-construction notification thresholds, or require pre-construction notification for some or all NWP activities in certain watersheds or types of waters. Specific NWPs can also be revoked on a geographic or watershed basis where the individual and cumulative 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) impose an acreage limit on the NWP; 3) require pre-construction notification for some or all NWP activities in those waters; 4) add regional conditions to the NWP to ensure that the individual and cumulative adverse environmental effects are minimal; or 5) for those NWP activities that require pre-construction notification, add special conditions to NWP authorizations, such as compensatory mitigation requirements, to ensure that the individual and cumulative 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.

The construction and use of fills for temporary access for construction may be authorized by NWP 33 or regional general permits issued by division or district engineers. The related activity must meet the terms and conditions of the specified permit(s). If the discharge is dependent on portions of a larger project that require an individual permit, this NWP will not apply. [See 33 CFR 330.6(c) and (d)]

4.3 Cumulative Effects

The Council on Environmental Quality's NEPA regulations define cumulative effects as: "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." [40 CFR 1508.7.] Therefore, the NEPA cumulative effects analysis for an NWP is not limited to activities authorized by the NWP or other DA permits and includes Federal and non-Federal activities that affect the Nation's wetlands, streams, and other aquatic resources. The cumulative effects analysis should focus on specific categories of resources instead of the environmental effects caused by a particular action, and it requires identification of the stressors that cause degradation of those resources, including those caused by actions unrelated to the proposed action (CEQ 1997). The geographic scope of the cumulative impacts analysis is the United States and its territories, where the NWP may be used to authorize specific activities that require DA authorization. The temporal scope of the cumulative effects analysis includes past actions that have affected the Nation's wetlands, streams, and other aquatic resources, as well as present actions and reasonably foreseeable future actions that are affecting, or will affect, wetlands, streams, and other aquatic resources. The present effects of past federal, non-federal, and private actions are included in the affected environment, which is described in Section 3.0. The affected environment includes current aggregate effects of past actions, which are captured in recent national information on the quantity and quality of wetlands, streams, and other aquatic resources that is summarized in Section 3.0.

In addition to the activities authorized by this NWP, there are many activities that contribute to cumulative effects on wetlands, streams, and other aquatic resources in the United States, and alter the quantity of those resources and the functions they provide. Activities authorized by past versions of NWP 3, as well as other NWPs, individual permits, letters of permission, and regional general permits have resulted in direct and indirect impacts to wetlands, streams, and other aquatic resources. Those activities may have legacy effects that have added to the cumulative effects and affected the quantity of those resources and the functions they provide. Discharges of dredged or fill material that do not require DA permits because they are exempt from section 404 permit requirements can also adversely affect the quantity of the Nation's wetlands, streams, and other aquatic resources and the functions they provide. Discharges of dredged or fill material that convert wetlands, streams, and other aquatic resources to upland areas result in permanent losses of aquatic resource functions. Temporary fills and fills that do not convert waters or wetlands to dry land may cause short-term or partial losses of aquatic resource functions.

Cumulative effects to wetlands, streams, and other aquatic resources in the United States are not limited to the effects caused by activities regulated and authorized by the Corps under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. Other federal, non-federal, and private activities also contribute to the cumulative effects to

wetlands, streams, and other aquatic resources, by changing the quantity of those resources and the functions they provide. Cumulative effects to wetlands, streams, and other aquatic resources are the result of landscape-level processes (Gosselink and Lee 1989). As discussed in more detail below, cumulative effects to aquatic resources are caused by a variety of activities (including activities that occur entirely in uplands) that take place within a landscape unit, such as the watershed for a river or stream (e.g., Allan 2004, Paul and Meyer 2001, Leopold 1968) or the contributing drainage area for a wetland (e.g., Wright et al. 2006, Brinson and Malvárez 2002, Zedler and Kercher 2005).

The ecological condition of rivers and streams is dependent on the state of their watersheds (NRC 1992), because they are affected by activities that occur in those watersheds, including agriculture, urban development, deforestation, mining, water removal, flow alteration, and invasive species (Palmer et al. 2010). Land use changes affect rivers and streams through increased sedimentation, larger inputs of nutrients (e.g., nitrogen, phosphorous) and pollutants (e.g., heavy metals, synthetic chemicals, toxic organics), altered stream hydrology, the alteration or removal of riparian vegetation, and the reduction or elimination of inputs of large woody debris (Allen 2004). Agriculture is the primary cause of stream impairment, followed by urbanization (Paul and Meyer 2001). Agricultural land use adversely affects stream water quality, habitat, and biological communities (Allan 2004). Urbanization causes changes to stream hydrology (e.g., higher flood peaks, lower base flows), sediment supply and transport, water chemistry, and aquatic organisms (Paul and Meyer 2001). Leopold (1968) found that land use changes affect the hydrology of an area by altering stream flow patterns, total runoff, water quality, and stream structure. Changes in peak flow patterns and runoff affect stream channel stability. Stream water quality is adversely affected by increased inputs of sediments, nutrients, and pollutants, many of which come from non-point sources (Paul and Meyer 2001, Allan and Castillo 2007).

The construction and operation of water-powered mills in the 17th to 19th centuries substantially altered the structure and function of streams in the eastern United States (Walter and Merritts 2008) and those effects have persisted to the present time. In urbanized and agricultural watersheds, the number of small streams has been substantially reduced, in part by activities that occurred between the 19th and mid-20th centuries (Meyer and Wallace 2001). Activities that affect the quantity and quality of small streams include residential, commercial, and industrial development, mining, agricultural activities, forestry activities, and road construction (Meyer and Wallace 2001), even if those activities are located entirely in uplands.

Activities that affect wetland quantity and quality include: land use changes that alter local hydrology (including water withdrawal), clearing and draining wetlands, constructing levees that sever hydrologic connections between rivers and floodplain wetlands, constructing other obstructions to water flow (e.g., dams, locks), constructing water diversions, inputs of nutrients and contaminants, and fire suppression (Brinson and Malvárez 2002). Upland development adversely affects wetlands and reduces wetland functionality because those activities change surface water flows and alter wetland hydrology, contribute stormwater and associated sediments, nutrients, and pollutants, cause increases in invasive plant species

abundance, and decrease the diversity of native plants and animals (Wright et al. 2006). Many of the remaining wetlands in the United States are degraded (Zedler and Kercher 2005). Wetland degradation and losses are caused by changes in water movement and volume within a watershed or contributing drainage area, altered sediment transport, drainage, inputs of nutrients from non-point sources, water diversions, fill activities, excavation activities, invasion by non-native species, land subsidence, and pollutants (Zedler and Kercher 2005).

Coastal waters are also affected by a wide variety of activities. Most inland waters in the United States drain to coastal areas, and therefore activities that occur in inland watersheds affect coastal waters (NRC 1994). Adverse effects to coastal waters are caused by habitat modifications, point source pollution, non-point source pollution, changes to hydrology and hydrodynamics, exploitation of coastal resources, introduction of non-native species, global climate change, shoreline erosion, and pathogens and toxins (NRC 1994). Eutrophication of coastal waters is caused by nutrients contributed by waste treatment systems, non-point sources, and the atmosphere, and may cause hypoxia or anoxia in coastal waters (NRC 1994). Inland land uses, such as agriculture, urban development, and forestry, adversely affect coastal waters by diverting fresh water from estuaries and by acting as sources of nutrients and pollutants to coastal waters (Millennium Ecosystem Assessment 2005). Habitat modifications are the result of dredging or filling coastal waters, inputs of sediment via non-point sources, changes in water quality, or alteration of coastal hydrodynamics (NRC 1994). Coastal development activities, including those that occur in uplands, affect marine and estuarine habitats (Millennium Ecosystem Assessment 2005). The introduction of non-native species may change the functions and structure of coastal wetlands and other habitats (Millennium Ecosystem Assessment 2005). Substantial alterations of coastal hydrology and hydrodynamics are caused by land use changes in watersheds draining to coastal waters, the channelization or damming of streams and rivers, water consumption, and water diversions (NRC 1994). Changes in water movement through watersheds may also alter sediment delivery to coastal areas, which affects the sustainability of wetlands and intertidal habitats and the functions they provide (NRC 1994). Fishing activities may also modify coastal habitats by changing habitat structure and the biological communities that inhabit those areas (NRC 1994).

There is also little information on the ecological condition or the Nation's wetlands, streams, and other aquatic resources, or the amounts of functions they provide, although reviews have acknowledged that most of these resources are degraded (Zedler and Kercher 2005, Allan 2004) or impaired (U.S. EPA 2012) because of various activities and other stressors. These data deficiencies make it more difficult to characterize the affected environment to assess cumulative effects.

As discussed in Section 3.0 of this document there is a wide variety of causes and sources of impairment of the Nation's rivers, streams, wetlands, lakes, estuarine waters, and marine waters (U.S. EPA 2012), which also contribute to cumulative effects to aquatic resources. Many of those causes of impairment are point and non-point sources of pollutants that are not regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and

Harbors Act of 1899. Two common causes of impairment for rivers and streams, habitat alterations and flow alterations, may be due in part to activities regulated by the Corps under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. Habitat and flow alterations may also be the caused by activities that do not involve discharges of dredged or fill material or structures or work in navigable waters. For wetlands, impairment due to habitat alterations, flow alterations, and hydrology modifications may involve activities regulated under section 404, but these causes of impairment may also be due to unregulated activities, such as changes in upland land use that affects the movement of water through a watershed or contributing drainage area or the removal of vegetation.

Many of the activities discussed in this cumulative effects section that affect wetlands, streams, and other aquatic resources are not subject to regulation under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899.

Dahl (1990) estimates that approximately 53 percent of the wetlands in the conterminous United States were lost in the 200-year period covering the 1780s to 1980s. The annual rate of wetland loss has decreased substantially since the 1970s (Dahl 2011), when wetland regulation became more prevalent (Brinson and Malvárez 2002). Between 2004 and 2009, there was no statistically significant difference in wetland acreage in the conterminous United States (Dahl 2011). According to the 2011 wetland status and trends report, during the period of 2004 to 2009 urban development accounted for 11% of wetland losses (61,630 acres), rural development resulted in 12% of wetland losses (66,940 acres), silviculture accounted for 56% of wetland losses (307,340 acres), and wetland conversion to deepwater habitats caused 21% of the loss in wetland area (115,960 acres) (Dahl 2011). Some of the losses occurred to wetlands that are not subject to Clean Water Act jurisdiction and some losses are due to activities not regulated under Section 404 of the Clean Water Act, such as unregulated drainage activities, exempt forestry activities, or water withdrawals. From 2004 to 2009, approximately 100,020 acres of wetlands were gained as a result of wetland restoration and conservation programs on agricultural land (Dahl 2011). Another source of wetland gain is conversion of other uplands to wetlands (389,600 acres during 2004 to 2009) (Dahl 2011). Inventories of wetlands, streams, and other aquatic resources are incomplete because the techniques used cannot identify some of those resources (e.g., Dahl (2011) for wetlands; Meyer and Wallace (2001) for streams).

Compensatory mitigation required by district engineers for specific activities authorized by this NWP will help reduce the contribution of those activities to the cumulative effects on the Nation's wetlands, streams, and other aquatic resources, by providing ecological functions to partially or fully replace some or all of the aquatic resource functions lost as a result of those activities. Compensatory mitigation requirements for the NWPs are described in general condition 23 and compensatory mitigation projects must also comply with the applicable provisions of 33 CFR part 332. District engineers will establish compensatory mitigation requirements on a case-by-case basis, after evaluating pre-construction notifications. Compensatory mitigation requirements for individual NWP activities will be specified through permit conditions added to NWP authorizations. When compensatory

mitigation is required, the permittee is required to submit a mitigation plan prepared in accordance with the requirements of 33 CFR 332.4(c). Credits from approved mitigation banks or in-lieu fee programs may also be used to satisfy compensatory mitigation requirements for NWP authorizations. Monitoring is required to demonstrate whether the permittee-responsible mitigation project, mitigation bank, or in-lieu fee project is meeting its objectives and providing the intended aquatic resource structure and functions. If the compensatory mitigation project is not meeting its objectives, adaptive management will be required. Adaptive management may involve taking actions, such as site modifications, remediation, or design changes, to ensure the compensatory mitigation project meets its objectives (see 33 CFR 332.7(c)).

The estimated contribution of this NWP to the cumulative effects to aquatic resources in the United States during the five year period that the NWP would be in effect, in terms of the estimated number of time this NWP would be used until it expires and the projected impacts and compensatory mitigation, is provided in Section 6.2.2. The activities authorized by this NWP will result in minor contributions to the cumulative effects that have occurred to wetlands, streams, and other aquatic resources in the United States because, as discussed in this section, they are one of many activities that affect those resources. The causes of cumulative effects discussed in this section include past, present, and reasonably foreseeable future federal, non-federal, and private activities. For the national-scale cumulative effects analysis presented in this section, it is not possible to quantify the relative contributions of the various activities that affect the quantity of wetlands, streams, and other aquatic resources and the functions they provide, because such data are not available at the national scale.

In a specific watershed, division or district engineers may determine that the cumulative adverse effects of activities authorized by this NWP 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 in watersheds or other geographic areas where the cumulative adverse effects are determined to be more than minimal, or add conditions to the NWP either on a case-by-case or regional basis to require mitigation measures to ensure that the cumulative adverse effects are minimal. When a division or district engineer determines, using local or regional information, that a watershed or other geographic area is subject to more than minimal cumulative adverse effects due to the use of this NWP, he or she will use the revocation and modification procedure at 33 CFR 330.5. In reaching the final decision, the division or district engineer will compile information on the cumulative adverse effects and supplement this document.

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. The minimization encouraged by the issuance of this NWP, as well as compensatory mitigation that may be required for specific activities authorized by this NWP, will help reduce cumulative effects to the Nation's wetlands, streams, and other

aquatic resources.

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-making 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 will have negligible effects on the natural resource characteristics of the project area, because the NWP is limited to maintenance activities. The adverse effects of activities authorized by this NWP on conservation will be minor.

(b) Economics: The maintenance of existing, currently serviceable structures or fills 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. The removal of accumulated sediments in the vicinity of existing structures will sustain effective functioning of those structures, and may help minimize operational costs.

(c) Aesthetics: Maintenance activities will cause negligible changes to the visual character of the waters of the United States where the existing structures or fills are located. The placement of rip rap to protect the existing structure will affect the visual character of the waterbody, but these effects are likely to be minor. The extent and perception of these changes will vary, depending on the extent of the maintenance activity, the nature of the surrounding area, and the public uses of the area. Maintenance activities authorized by this NWP can also modify other aesthetic characteristics, such as air quality and noise levels.

(d) General environmental concerns: Activities authorized by this NWP will affect general environmental concerns, such as water, air, noise, and land pollution. The authorized activities 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, since the NWP authorizes only maintenance activities. 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. General condition 23 requires mitigation to minimize adverse effects to the aquatic environment through on-site avoidance and minimization. Compensatory mitigation may be required by district engineers to ensure that the adverse effects on the aquatic environment are minimal. Specific environmental concerns are addressed in other sections of this document.

(e) Wetlands: Activities authorized by this NWP may result in the loss of small amounts of wetlands. Repair, rehabilitation, and replacement activities may result in minor losses of wetlands because of minor deviations due to construction techniques or changes in materials. The removal of accumulated sediments in the vicinity of existing structures may result in losses of wetlands. Wetlands located in temporary access roads or staging areas may be impacted by the activity, but these wetlands will be restored, unless the district engineer authorizes another use for the area.

Wetlands provide habitat, including foraging, nesting, spawning, rearing, and resting sites for aquatic and terrestrial species. The loss or alteration of wetlands may alter natural drainage patterns. Wetlands reduce erosion by stabilizing the substrate. Wetlands also act as storage areas for stormwater and flood waters. Wetlands may act as groundwater discharge or recharge areas. The loss of wetland vegetation will adversely affect water quality because these plants trap sediments, pollutants, and nutrients and transform chemical compounds. Wetland vegetation also provides habitat for microorganisms that remove nutrients and pollutants from water. Wetlands, through the accumulation of organic matter, act as sinks for some nutrients and other chemical compounds, reducing the amounts of these substances in the water.

General condition 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands, at the project site. Compensatory mitigation may be required to offset losses of wetlands so that the net adverse effects on the aquatic environment are minimal. General condition 22 requires submittal of a pre-construction notification prior to use of this NWP in designated critical resource waters and adjacent wetlands, which may include high value wetlands. Division engineers can regionally condition this NWP to restrict or prohibit its use in high value waters. District engineers will also exercise discretionary authority to require an individual permit if the wetlands to be filled are high value and the activity will result in more than minimal adverse effects on the aquatic environment. District engineers can also add case-specific special conditions to the NWP authorization to reduce impacts to wetlands or require compensatory mitigation to offset losses of wetlands.

(f) Historic properties: General condition 20 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 activities in all waters of the United States, which provide habitat to many species of fish and wildlife. Activities authorized by this NWP may cause minor changes to the habitat characteristics of streams and wetlands, but adverse effects to fish and wildlife habitat will be negligible since this NWP only authorizes maintenance activities. Activities authorized by paragraph (b) of this NWP may improve fish passage by authorizing the removal of accumulated sediments in the vicinity of existing structures that impede the movement of fish and other aquatic organisms. Wetland

and riparian vegetation provides food and habitat for many species, including foraging areas, resting areas, corridors for wildlife movement, and nesting and breeding grounds. Open waters provide habitat for fish and other aquatic organisms. Fish and other motile animals will avoid the project site during construction. Woody riparian vegetation shades streams, which reduces water temperature fluctuations and provides habitat for fish and other aquatic animals. Riparian vegetation provides organic matter that is consumed by fish and aquatic invertebrates. Woody riparian vegetation creates habitat diversity in streams when trees and large shrubs fall into the channel, forming snags that provide habitat and shade for fish. The morphology of a stream channel may be altered by activities authorized by this NWP, which can affect fish populations, but these changes will be minor. However, pre-construction notification is required for all activities authorized by paragraph (b) of this NWP, which provides the district engineer with an opportunity to review certain activities, assess potential impacts on fish and wildlife values, and ensure that the authorized activities result in no more than minimal adverse effects on the aquatic environment.

General condition 2 will reduce the adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the movement of indigenous aquatic species. Compliance with general conditions 3 and 5 will ensure that the authorized activity has minimal adverse effects on spawning areas and shellfish beds, respectively. The authorized activity cannot have more than minimal adverse effects on breeding areas for migratory birds, due to the requirements of general condition 4.

Compliance with the Bald and Golden Eagle Protection Act (16 U.S.C. 668(a)-(d)), the Migratory Bird Treaty Act (16 U.S.C. 703; 16 U.S.C. 712), and the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), including any requirements to obtain take permits, is the responsibility of the project proponent undertaking a particular NWP activity. General condition 19 states that the permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act.

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 negligible adverse effects the flood-holding capacity of the 100-year floodplain, since the NWP is limited to maintenance activities. The removal of accumulated sediments in the vicinity of existing structures will reduce flood hazards by restoring the water-holding capacity of the waterbody and reducing hazards to human health, safety, and welfare.

(i) Floodplain values: Activities authorized by NWP 3 will have minor effects on the flood-holding capacity of the floodplain, as well as other floodplain values, since it is limited to

maintenance activities.

(j) Land use: Activities authorized by this NWP will have no adverse effects on land use, because the maintenance of existing structures and fills will not change the existing land use. The removal of accumulated sediments in the vicinity of existing structures will also maintain existing land uses.

(k) Navigation: Activities authorized by this NWP will have minor adverse effects on navigation, because these activities must comply with general condition 1. This NWP authorizes the maintenance, repair, and rehabilitation of structures or fills that may be located in navigable waters. Since the NWP authorizes only minor deviations from the original dimensions or configuration, any adverse effects on navigation will be minimal. The removal of accumulated sediments from the vicinity of existing structures will have no adverse effects on navigation.

(l) Shore erosion and accretion: The activities authorized by this NWP will have minimal adverse effects on shore erosion and accretion processes, since the NWP is limited to maintenance activities. Repair of bank stabilization activities may be authorized by this NWP, provided the structure or fill is currently serviceable. The removal of accumulated sediments in the vicinity of existing structures will have negligible adverse effects on shore erosion and accretion.

(m) Recreation: Activities authorized by this NWP will not affect the recreational uses of the area, since it is limited to maintenance activities.

(n) Water supply and conservation: Activities authorized by this NWP will have negligible effects on surface water and groundwater supplies because this NWP authorizes only maintenance activities.

(o) Water quality: Maintenance activities in wetlands and waterbodies will have minor adverse effects on water quality. During maintenance activities, small amounts of oil and grease from construction equipment may be discharged into the waterway. Because most of these maintenance activities will occur during a relatively short time period, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on water quality. The removal of accumulated sediments in the vicinity of existing structures may result in temporary increases in turbidity. If the proposed activity involves a discharge into waters of the United States, Section 401 water quality certification will be required. The water quality certification will ensure that the authorized activity does not violate applicable water quality standards.

(p) Energy needs: The activities authorized by this NWP will not permanently increase energy consumption in the area, because it is limited to maintenance activities.

(q) Safety: The activities authorized by this NWP will be subject to Federal, state, and local 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 no adverse effects on food and fiber production, since the NWP is limited to maintenance activities.

(s) Mineral needs: Activities authorized by this NWP may increase demand for aggregates and stone, which are used to repair structures or fills. Maintenance activities authorized by this NWP may utilize other building materials, such as steel, aluminum, and copper, which are made from mineral ores.

(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 maintenance activities in waters of the United States that result in minimal adverse effects on the aquatic environment.

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 or work in navigable waters of the United States, as well as discharges of dredged or fill material into all waters of the United States, for maintenance activities that have minimal individual and cumulative adverse effects on the aquatic environment. These activities satisfy public and private needs for continued operation and use of existing structures and/or fills. The need for this NWP is based upon the number of these activities that occur annually with minimal individual and cumulative 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 23 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. The district engineer will exercise discretionary authority and require an individual permit if the proposed activity 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 activities authorized by the NWP will most likely restrict the extent of the beneficial and detrimental effects to the area immediately surrounding the maintenance activity. Activities authorized by this NWP will have minimal individual and cumulative 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.

6.0 Clean Water Act Section 404(b)(1) Guidelines Analysis

The 404(b)(1) compliance criteria for general permits are provided at 40 CFR 230.7.

6.1 Evaluation Process (40 CFR 230.7(b))

6.1.1 Alternatives (40 CFR 230.10(a))

General condition 23 requires permittees to avoid and minimize discharges of dredged or fill material into waters of the United States to the maximum extent practicable on the project site. The consideration of off-site alternatives is not directly applicable to general permits.

6.1.2 Prohibitions (40 CFR 230.10(b))

This NWP authorizes discharges of dredged or fill material into waters of the United States, which require water quality certification. Water quality certification requirements will be met in accordance with the procedures at 33 CFR 330.4(c).

No toxic discharges will be authorized by this NWP. General condition 6 states that the material must be free from toxic pollutants in toxic amounts.

This NWP does not authorize activities that jeopardize the continued existence of any listed threatened or endangered species or result in the destruction or adverse modification of

critical habitat. Reviews of pre-construction notifications, regional conditions, and local operating procedures for endangered species will ensure compliance with the Endangered Species Act. Refer to general condition 18 and to 33 CFR 330.4(f) for information and procedures.

This NWP will not authorize the violation of any requirement to protect any marine sanctuary. Refer to section 6.2.3(j)(1) of this document for further information.

6.1.3 Findings of Significant Degradation (40 CFR 230.10(c))

Potential impact analysis (Subparts C through F): The potential impact analysis specified in Subparts C through F is discussed in section 6.2.3 of this document. Mitigation required by the district engineer will ensure that the adverse effects on the aquatic environment are minimal.

Evaluation and testing (Subpart G): Because the terms and conditions of the NWP specify the types of discharges that are authorized, as well as those that are prohibited, individual evaluation and testing for the presence of contaminants will normally not be required. If a situation warrants, provisions of the NWP allow division or district engineers to further specify authorized or prohibited discharges and/or require testing.

Based upon Subparts B and G, after consideration of Subparts C through F, the discharges authorized by this NWP will not cause or contribute to significant degradation of waters of the United States.

6.1.4 Factual determinations (40 CFR 230.11)

The factual determinations required in 40 CFR 230.11 are discussed in section 6.2.3 of this document.

6.1.5 Appropriate and practicable steps to minimize potential adverse impacts (40 CFR 230.10(d))

As demonstrated by the information in this document, as well as the terms, conditions, and provisions of this NWP, actions to minimize adverse effects (Subpart H) have been thoroughly considered and incorporated into the NWP. General condition 23 requires permittees to avoid and minimize discharges of dredged or fill material into waters of the United States to the maximum extent practicable on the project site. Compensatory mitigation may be required by the district engineer to ensure that the net adverse effects on the aquatic environment are minimal.

6.2 Evaluation Process (40 CFR 230.7(b))

6.2.1 Description of permitted activities (40 CFR 230.7(b)(2))

As indicated by the text of this NWP in section 1.0 of this document, and the discussion of potential impacts in section 4.0, the activities authorized by this NWP are sufficiently similar in nature and environmental impact to warrant authorization under a single general permit. Specifically, the purpose of the NWP is to authorize structures or work, including discharges of dredged or fill material, for maintenance activities. The nature and scope of the impacts are controlled by the terms and conditions of the NWP.

The activities authorized by this NWP are sufficiently similar in nature and environmental impact to warrant authorization by a general permit. The terms of the NWP authorize a specific category of activity (i.e., structures or work, including discharges of dredged or fill material for maintenance activities) in a specific category of waters (i.e., waters of the United States, including navigable waters). The restrictions imposed by the terms and conditions of this NWP will result in the authorization of activities that have similar impacts on the aquatic environment, namely the replacement of aquatic habitats, such as wetlands and open waters, with structures or fills that are part of maintaining an existing, currently serviceable, structure or fill, including the removal of accumulated sediment from canals associated with intake and outfall structures.

If a situation arises in which the activity requires further review, or is more appropriately reviewed under the individual permit process, provisions of the NWPs allow division and/or district engineers to take such action.

6.2.2 Cumulative effects (40 CFR 230.7(b)(3))

The 404(b)(1) Guidelines at 40 CFR 230.11(a) define cumulative effects as "...the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material." For the issuance of general permits, such as this NWP, the 404(b)(1) Guidelines require the permitting authority to "set forth in writing an evaluation of the potential individual and cumulative impacts of the categories of activities to be regulated under the general permit." [40 CFR 230.7(b)] If a situation arises in which cumulative effects are likely to be more than minimal and the proposed activity requires further review, or is more appropriately reviewed under the individual permit process, provisions of the NWPs allow division and/or district engineers to take such action.

Based on reported use of this NWP during the period of August 1, 2009, to July 31, 2010, the Corps estimates that this NWP will be used approximately 5,300 times per year on a national basis, resulting in impacts to approximately 325 acres of waters of the United States, including jurisdictional wetlands. The Corps estimates that approximately 150 acres of compensatory mitigation will be required to offset these impacts. The demand for these types of activities could increase or decrease over the five-year duration of this NWP. Using the current trend, approximately 26,500 activities could be authorized over a five year period

until this NWP expires, resulting in impacts to approximately 1,625 acres of waters of the United States, including jurisdictional wetlands. Approximately 750 acres of compensatory mitigation would be required to offset those impacts. Compensatory mitigation is the restoration (re-establishment or rehabilitation), establishment, 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. [33 CFR 332.2]

Wetland restoration, enhancement, and establishment projects can provide wetland functions, as long as the wetland compensatory mitigation project is placed in an appropriate landscape position, has appropriate hydrology for the desired wetland type, and the watershed condition will support the desired wetland type (NRC 2001). The success of wetland restoration, enhancement, and establishment is dependent on the technical expertise of the mitigation provider, allowing sufficient time for wetland structure and functions to develop, and recognizing the ability for ecosystems to undergo self-design during their development (Mitsch and Gosselink 2007). Most studies of compensatory mitigation success have focused solely on the ecological attributes of the compensatory mitigation projects, and few studies have also evaluated the aquatic resources impacted by permitted activities (Kettlewell et al. 2008), so it is difficult to assess whether compensatory mitigation has fully or partially offset the lost functions provided by the aquatic resources that are impacted by permitted activities. In its review, the NRC (2001) concluded that some wetland types can be successfully restored or established (e.g., non-tidal emergent wetlands, some forested and scrub-shrub wetlands, sea grasses, and coastal marshes), while other wetland types (e.g., vernal pools, bogs, and fens) are difficult to restore and should be avoided where possible. Because of its greater potential to successfully provide wetland functions, restoration is the preferred compensatory mitigation mechanism (33 CFR 332.3(a)(2)). Bogs, fens, and springs are considered to be difficult-to-replace resources and compensatory mitigation should be provided through in-kind rehabilitation, enhancement, or preservation of these wetlands types (33 CFR 332.3(e)(3)).

In its review of outcomes of wetland compensatory mitigation activities, the NRC (2001) stated that wetland functions can be replaced by wetland restoration and establishment activities. They discussed five categories of wetland functions: hydrology, water quality, maintenance of plant communities, maintenance of animal communities, and soil functions. Wetland functions develop at different rates in wetland restoration and establishment projects (NRC 2001). It is difficult to restore or establish natural wetland hydrology, and water quality functions are likely to be different than the functions provided at wetland impact sites (NRC 2001). Reestablishing or establishing the desired plant community may be difficult because of invasive species colonizing the mitigation project site (NRC 2001). The committee also found that establishing and maintaining animal communities depends on the surrounding landscape. Soil functions can take a substantial amount of time to develop, because they are dependent on soil organic matter and other soil properties (NRC 2001). The NRC (2001) concluded that the success of replacing wetland functions depends on the particular function of interest, the restoration or establishment techniques used, and the extent of degradation of the compensatory mitigation project site and its watershed.

The ecological success of wetland restoration and enhancement activities is affected by the amount of changes to hydrology and inputs of pollutants, nutrients, and sediments within the watershed or contributing drainage area (Wright et al. 2006). Wetland restoration is becoming more successful, especially in cases where monitoring and adaptive management are used to correct deficiencies in these efforts (Zedler and Kercher 2005). Irreversible changes to landscapes, especially those that affect hydrology within contributing drainage areas or watersheds , cause wetland degradation and impede the success of wetland restoration efforts (Zedler and Kercher 2005).

Streams are difficult-to-replace resources and compensatory mitigation should be provided through stream rehabilitation, enhancement, and preservation since those techniques are most likely to be successful (see 33 CFR 332.3(e)(3)). Stream rehabilitation is usually the most effective compensatory mitigation mechanism since restoring a stream to a historic state is not possible because of changes in land use and other activities in a watershed (Roni et al. 2008). Stream rehabilitation and enhancement projects, including the restoration and preservation of riparian areas, provide riverine functions (e.g., Allan and Castillo (2007) for rivers and streams, NRC (2002) for riparian areas). Non-structural and structural techniques can be used to rehabilitate and enhance streams, and restore riparian areas (NRC 1992). Non-structural practices include removing disturbances to allow passive recovery of streams and riparian areas, reducing or eliminating activities that have altered stream flows to restore natural flows, preserving or restoring floodplains, and restoring and protecting riparian areas, including fencing those areas to exclude livestock and people (NRC 1992). Structural rehabilitation and enhancement techniques include channel, bank, and/or riparian area modifications to improve habitat and dam removal (NRC 1992). Road improvements, riparian rehabilitation, reconnecting floodplains to their rivers, and installing in-stream habitat structures have had varying degrees of success in stream rehabilitation activities (Roni et al. 2008). Success of these rehabilitation activities is strongly dependent on addressing impaired water quality and insufficient water quantity, since those factors usually limit the biological response to stream rehabilitation efforts (Roni et al. 2008). Ecologically successful stream rehabilitation and enhancement activities depend on addressing the factors that most strongly affect stream functions, especially water quality, water flow, and riparian quality, and not focusing solely on rehabilitating or enhancing the physical habitat of streams (Palmer et al. 2010).

The compensatory mitigation required by district engineers in accordance with general condition 23 and activity-specific conditions will provide aquatic resource functions and services to offset some or all of the losses of aquatic resource functions caused by the activities authorized by this NWP, and reduce the contribution of those activities to the cumulative effects on the Nation's wetlands, streams, and other aquatic resources. The required compensatory mitigation must be conducted in accordance with the applicable provisions of 33 CFR part 332, which requires development and implementation of approved mitigation plans, as well as monitoring to assess success in accordance with ecological performance standards established for the compensatory mitigation project. The district engineer will evaluate monitoring reports to determine if the compensatory

mitigation project has fulfilled its objectives and is ecological successful. [33 CFR 332.6] If the monitoring efforts indicate that the compensatory mitigation project is failing to meet its objectives, the district engineer may require additional measures, such as adaptive management or alternative compensatory mitigation, to address the compensatory mitigation project's deficiencies. [33 CFR 332.7(c)]

According to Dahl (2011), during the period of 2004 to 2009 approximately 489,620 acres of former upland were converted to wetlands as a result of wetland reestablishment and establishment activities. Efforts to reestablish or establish wetlands have been successful in increasing wetland acreage in the United States.

The individual and cumulative adverse 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, including its limits, rather than request individual permits for projects that could result in greater adverse impacts to the aquatic environment. Division and district engineers will restrict or prohibit this NWP on a regional or case-specific basis if they determine that these activities will result in more than minimal individual and cumulative adverse effects on the aquatic environment.

6.2.3 Section 404(b)(1) Guidelines Impact Analysis, Subparts C through F

(a) Substrate: Discharges of dredged or fill material into waters of the United States will alter the substrate of those waters, usually replacing the aquatic area with dry land, and changing the physical, chemical, and biological characteristics of the substrate. The original substrate will be removed or covered by other material, such as concrete, asphalt, soil, gravel, etc. Temporary fills may be placed upon the substrate, but must be removed upon completion of the activity (see general condition 13). Higher rates of erosion may result during construction, but general condition 12 requires the use of appropriate measures to control soil erosion and sediment.

(b) Suspended particulates/turbidity: Depending on the method of construction, soil erosion and sediment control measures, equipment, composition of the bottom substrate, and wind and current conditions during construction, fill material placed in open waters will temporarily increase water turbidity. Pre-construction notification is required for all NWP activities involving the removal of accumulated sediments from the vicinity of existing structures, or the removal of accumulated sediments from canals associated with outfall and intake structures. The pre-construction notification will allow the district engineer to review each activity and ensure that adverse effects on the aquatic environment are minimal. Particulates will be resuspended in the water column during removal of temporary fills. The turbidity plume will normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the construction activity. General condition 12 requires the permittee to stabilize exposed soils and other fills, which will reduce turbidity. In many localities, developers are required to develop and implement sediment and erosion control plans to minimize the entry of soil into the aquatic environment. NWP activities

cannot create turbidity plumes that smother important spawning areas downstream (see general condition 3).

(c) Water: Maintenance activities can affect some characteristics of water, such as water clarity, chemical content, dissolved gas concentrations, pH, and temperature. In addition, maintenance activities may change the chemical and physical characteristics of the waterbody by introducing suspended or dissolved chemical compounds or sediments into the water. Changes in water quality can affect the species and quantities of organisms inhabiting the aquatic area. Water quality certification is required for activities authorized by this NWP that result in discharges of dredged or fill material into waters of the United States, which will ensure that the activity does not violate applicable water quality standards. Permittees may be required to implement water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality. Storm water management facilities may be required to prevent or reduce the input of harmful chemical compounds into the waterbody. The district engineer may require the establishment and maintenance of riparian areas next to open waters, such as streams. Riparian areas help improve or maintain water quality, by removing nutrients, moderating water temperature changes, and trapping sediments.

(d) Current patterns and water circulation: Activities authorized by this NWP may adversely affect the movement of water in the aquatic environment. All activities authorized by paragraph (b) of this NWP require pre-construction notification to the district engineer, which will help ensure that adverse effects to current patterns and water circulation are minimal. General condition 9 requires the authorized activity to be designed to withstand expected high flows and to maintain the course, condition, capacity, and location of open waters to the maximum extent practicable. General condition 10 requires activities to comply with applicable FEMA-approved state or local floodplain management requirements, which will reduce adverse effects to surface water flows.

(e) Normal water level fluctuations: The activities authorized by this NWP will not adversely affect normal patterns of water level fluctuations due to tides and flooding, since it is limited to maintenance activities. To ensure that the NWP does not authorize activities that adversely affect normal flooding patterns, general condition 10 requires NWP activities to comply with applicable FEMA-approved state or local floodplain management requirements. General condition 9 requires the permittee to maintain the pre-construction course, condition, capacity, and location of open waters, to the maximum extent practicable.

(f) Salinity gradients: The activities authorized by this NWP are unlikely to adversely affect salinity gradients, since the NWP is restricted to maintenance activities.

(g) Threatened and endangered 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 18, 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 18, which states that "[n]o activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species." In addition, general condition 18 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 18 also requires a non-federal permittee to submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the 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 proposed 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 listed species or their critical habitat and, if necessary, initiate ESA 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 pre-

construction notification for NWP 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 activities 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 18 and the NWP regulations at 33 CFR 330.4(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 the ESA, the Corps has taken some steps to provide further assurance. Corps district offices meet 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 the 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.

(h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web. All activities authorized by paragraph (b) of this NWP require pre-construction notification to the district engineer, which will allow review of each proposal to remove accumulated sediments, to ensure that adverse effects to fish and other aquatic organisms in the food web are minimal. Fish and other motile animals will avoid the project site during construction. Sessile or slow-moving animals in the path of discharges, equipment, and building materials will be destroyed. Some aquatic animals may be smothered by the placement of fill material. Motile animals will return to those areas that are temporarily impacted by the activity and restored or allowed to revert back to preconstruction conditions. Aquatic animals will not return to sites of permanent fills. Benthic and sessile animals are expected to recolonize sites temporarily impacted by the activity, after those areas are restored. Activities that alter the riparian zone, especially floodplains, may adversely affect populations of fish and other aquatic animals, by altering stream flow, flooding patterns, and surface and groundwater hydrology.

Division and district engineers can place conditions on this NWP to prohibit discharges during important stages of the life cycles of certain aquatic organisms. Such time of year restrictions can prevent adverse effects to these aquatic organisms during reproduction and development periods. General conditions 3 and 5 address protection of spawning areas and

shellfish beds, respectively. General condition 3 states that activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. In addition, general condition 3 also prohibits activities that result in the physical destruction of important spawning areas. General condition 5 prohibits activities in areas of concentrated shellfish populations. General condition 9 requires the maintenance of pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable, which will help minimize adverse impacts to fish, shellfish, and other aquatic organisms in the food web.

(i) Other wildlife: Activities authorized by this NWP will result in adverse effects on other wildlife associated with aquatic ecosystems, such as resident and transient mammals, birds, reptiles, and amphibians, through the destruction of aquatic habitat, including breeding and nesting areas, escape cover, travel corridors, and preferred food sources. This NWP does not authorize activities that jeopardize the continued existence of Federally-listed endangered and threatened species or result in the destruction or adverse modification of critical habitat. Compensatory mitigation, including the establishment and maintenance of riparian areas next to open waters, may be required for activities authorized by this NWP, which will help offset losses of aquatic habitat for wildlife. General condition 4 states that activities in breeding areas for migratory birds must be avoided to the maximum extent practicable.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:

(1) Sanctuaries and refuges: The activities authorized by this NWP will have minimal adverse effects on waters of the United States within sanctuaries or refuges designated by Federal or state laws or local ordinances. General condition 22 requires submittal of a pre-construction notification prior to the use of this NWP in NOAA-designated marine sanctuaries and marine monuments and National Estuarine Research Reserves. District engineers will exercise discretionary authority and require individual permits for specific projects in waters of the United States in sanctuaries and refuges if those activities will result in more than minimal adverse effects on the aquatic environment.

(2) Wetlands: The activities authorized by this NWP will have minimal adverse effects on wetlands. District engineers will review pre-construction notifications to ensure that the adverse effects on the aquatic environment are minimal. Division engineers can regionally condition this NWP to restrict or prohibit its use in certain high value wetlands. See paragraph (e) of section 5.1 for a more detailed discussion of impacts to wetlands.

(3) Mud flats: The activities authorized by this NWP will have minimal adverse effects on mud flats, since it is limited to maintenance activities.

(4) Vegetated shallows: The activities authorized by this NWP will have minimal adverse effects on vegetated shallows in tidal waters, since it is limited to maintenance activities. Activities involving the removal of accumulated sediments are authorized by this NWP, but district engineers will review those proposed activities to determine if they will

result in minimal adverse effects on the aquatic environment. If the vegetated shallows are high value and the proposed activity will result in more than minimal adverse effects on the aquatic environment, the district engineer will exercise discretionary authority to require the project proponent to obtain an individual permit.

(5) Coral reefs: The activities authorized by this NWP will have minimal adverse effects on coral reefs, since it authorizes maintenance activities.

(6) Riffle and pool complexes: Activities in riffle and pool complexes may be authorized by this NWP, but district engineers will review proposed removals of accumulated sediments to determine if activities authorized by paragraph (b) will result in minimal adverse effects on the aquatic environment. If the riffle and pool complexes are high value and the proposed activity will result in more than minimal adverse effects on the aquatic environment, the district engineer will exercise discretionary authority to require the project proponent to obtain an individual permit.

(k) Municipal and private water supplies: See paragraph (n) of section 5.1 for a discussion of potential impacts to water supplies.

(l) Recreational and commercial fisheries, including essential fish habitat: The activities authorized by this NWP may adversely affect waters of the United States that act as habitat for populations of economically important fish and shellfish species. Division and district engineers can condition this NWP to prohibit discharges during important life cycle stages, such as spawning or development periods, of economically valuable fish and shellfish. All activities authorized by paragraph (b) require pre-construction notification to the district engineer, which will allow review of each activity in open waters to ensure that adverse effects to economically important fish and shellfish are minimal. Compliance with general conditions 3 and 5 will ensure that the authorized activity does not adversely affect important spawning areas or concentrated shellfish populations. As discussed in paragraph (g) of section 5.1, there are procedures to help ensure that impacts to essential fish habitat are minimal, individually or cumulatively. For example, 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.

(m) Water-related recreation: See paragraph (m) of section 5.1 above.

(n) Aesthetics: See paragraph (c) of section 5.1 above.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: General condition 22 requires submittal of a pre-construction notification prior to the use of this NWP in designated critical resource waters and adjacent wetlands, which may be located in parks, national and historical monuments, national seashores, wilderness areas, and research sites. This NWP can be used to authorize activities in parks, national and historical monuments, national seashores, wilderness areas, and research sites if the manager or caretaker wants to conduct activities in waters of the United

States and those activities result in minimal adverse effects on the aquatic environment. Division engineers can regionally condition the NWP to prohibit its use in designated areas, such as national wildlife refuges or wilderness areas.

7.0 Determinations

7.1 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.

7.2 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.

7.3 Section 404(b)(1) Guidelines Compliance

This NWP has been evaluated for compliance with the 404(b)(1) Guidelines, including Subparts C through G. Based on the information in this document, the Corps has determined that the discharges authorized by this NWP comply with the 404(b)(1) Guidelines, with the inclusion of appropriate and practicable conditions, including mitigation, necessary to minimize adverse effects on affected aquatic ecosystems. The activities authorized by this NWP will result in minimal individual and cumulative adverse effects on the aquatic environment.

7.4 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:

13 Feb 2012

Michael J. Walsh
Major General, US Army
Deputy Commanding General
for Civil and Emergency Operations

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