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DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Chapter II

[Docket Number: COE-2025-0002]

RIN 0710-AB56

Proposal to Reissue and Modify Nationwide Permits

AGENCY: Corps of Engineers, Army, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY:
Nationwide Permits (NWPs) are issued by the U.S. Army Corps of Engineers (Corps) to authorize categories of activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects. The Corps is proposing to reissue its existing NWPs and associated general conditions and definitions, with some modifications. The Corps is proposing to issue one new NWP. The proposed new NWP would authorize activities to improve the passage of fish and other aquatic organisms through aquatic ecosystems. In addition, the Corps is proposing to modify some other NWPs to simplify and clarify those NWPs. The proposed modifications to the NWPs general conditions, and definitions are intended to reduce burdens on the regulated public and continue to comply with the statutory requirement that NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects. The Corps is proposing to modify two of the 2021 NWPs (i.e., NWP 48 for commercial shellfish mariculture activities and NWP 56 for finfish mariculture activities) to address litigation on those NWPs. The Corps is requesting comment on all aspects of these proposed NWPs.

DATES: Submit comments on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2025-0002 and/or RIN 0710-AB56, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: 2026nationwidepermits@usace.army.mil. Include the docket number, COE-2025-0002, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R, 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: If submitting comments through the Federal eRulemaking Portal, please direct your comments to docket number COE-2025-0002. All comments received will be included in the public docket without change and may be made available on-line at http://www.regulations.gov, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet.

Docket: For access to the docket to read background documents or comments received, go to regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at www.regulations.gov, in docket number COE-2025-0002.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine McCafferty at 513-310-4196 or access the U.S. Army Corps of Engineers Regulatory Home Page at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/

SUPPLEMENTARY INFORMATION:

Table of Contents:

List of Acronyms

CWA	Clean Water Act
DA	Department of the Army
EFH	Essential Fish Habitat
ESA	Endangered Species Act

FWS	U.S. Fish and Wildlife Service
FY	Fiscal Year
GC	General Condition
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NWP	Nationwide Permit
PCN	Pre-construction Notification
USCG	U.S. Coast Guard

List of Proposed Nationwide Permits and General Conditions

Nationwide Permits (NWPs)

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments

40. Agricultural Activities
41. Reshaping Existing Drainage and Irrigation Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
A. Activities to Improve Passage of Fish and Other Aquatic Organisms

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles

I. Background

A. General

The U.S. Army Corps of Engineers (Corps) issues nationwide permits (NWPs) to authorize activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that will result in no more than minimal individual and cumulative adverse environmental effects. Under Section 404 of the Clean Water Act (33 U.S.C. §1344), Department of the Army (DA) authorization is required for discharges of dredged or fill material into waters of the United States. Under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403), DA authorization is required for any construction of any structure in or over any navigable water of the United States; the excavating from or depositing of material in navigable waters of the United States; or the accomplishment of any other work affecting the course, location, condition, or capacity of navigable waters of the United States.

NWPs were first issued by the Corps in 1977 (42 FR 37122) to authorize categories of activities that have minimal adverse effects on the aquatic environment and streamline the authorization process for those minor activities. After 1977, NWPs have been issued or reissued in 1982 (47 FR 31794), 1984 (49 FR 39478), 1986 (51 FR 41206), 1991 (56 FR 59110), 1995 (60 FR 38650), 1996 (61 FR 65874), 2000 (65 FR 12818), 2002 (67 FR 2020), 2007 (72 FR 11092), 2012 (77 FR 10184), 2017 (82 FR 1860), and 2021 (86 FR 2744 and 86 FR 73522).

Section 404(e) of the Clean Water Act provides the statutory authority for the Secretary of the Army, after notice and opportunity for public hearing, to issue general permits on a nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States for a period

of no more than five years after the date of issuance (33 U.S.C. § 1344 (e)). The Secretary's authority to issue individual permits and general permits has been delegated to the Chief of Engineers and his or her designated representatives. NWPs are a type of general permit issued by the Chief of Engineers and are designed to regulate activities in federally jurisdictional waters and wetlands that have no more than minimal adverse environmental impacts (see 33 CFR 330.1(b)). The categories of activities authorized by NWPs must be similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effect on the environment (33 U.S.C. § 1344(e)(1)). The Corps has the authority to modify or revoke the NWPs before they expire. NWPs and other general permits can also be issued to authorize activities pursuant to Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(f) and 330.1(g)). The NWP program is designed to provide timely authorizations for the regulated public while protecting the Nation's aquatic resources.

Under section 10 of the Rivers and Harbors Act of 1899, the Corps has the authority to issue general permits and after-the-fact permits for structures and work in navigable waters of the United States. The text of section 10 (33 U.S.C. 403) prohibits any obstructions to the navigable capacity of any waters of the United States "unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same." The text of section 10 does not require that the Corps specify what form those authorizations should take and does not limit authorization to permits, either individual permits or general permits. By using the word "authorized," a term that is broad in scope, section 10 gives the Corps the authority use different types of permits to give its approval for structures and work in navigable waters of the United States. Since 1975, the Corps has issued general permits under section 10 of the Rivers and Harbors Act of 1899 (see 40 FR 31335). The Corps has issued NWPs under the authority of section 10 of the Rivers and Harbors Act since 1977 (see 42 FR 37140).

Like general permits, the Corps has been issuing after-the-fact permits for decades and that practice is consistent with section 10 of the Rivers and Harbors Act of 1899. In its July 25, 1975, final rule, at 40 FR 31330, the Corps' regulations address the use of after-the-fact authorizations for activities that require DA authorization. Under the Rivers and Harbors Act of 1899, the Corps' authority to issue after-the-fact permits is derived from its discretionary enforcement authority under section 12 of that Act, rather than section 10. Under section 12, the removal of any unauthorized structures "may" be enforced and proper proceedings "may" be instituted under the direction of the Attorney General of the United States. Inherent in the Corps' authority to enforce the Rivers and Harbors Act of 1899 is the Corps' discretion to design and impose corrective actions to address a violation if the impact on navigation is negligible

and the Corps determines it is not necessary to require removal of the obstruction. The Corps exercises this discretion when it issues an after-the-fact permit for an activity that did not receive prior approval from the Corps.

There are currently 57 NWPs. These NWPs were published in the January 13, 2021, issue of the Federal Register (86 FR 2744), in which the Corps reissued 12 existing NWPs and issued four new NWPs, and the December 27, 2021, issue of the Federal Register (86 FR 73522), in which the Corps reissued 40 existing NWPs and issued one new NWP. The NWP general conditions and definitions were reissued in the final rule published in the January 13, 2021, edition of the Federal Register and they apply to both final rules. All of the NWPs issued or reissued in 2021 are currently scheduled to expire on March 14, 2026.

Under 33 CFR 330.5(b), anyone may, at any time, suggest to Corps Headquarters that they consider new NWPs or conditions for issuance, or changes to existing NWPs. Independent of receiving suggestions to issue new NWPs or modify existing NWPs, Corps Headquarters has the authority to periodically review the NWPs and their conditions and initiate the process for proposing to modify, reissue, or revoke the NWPs (see 33 CFR 330.5(b) and 330.6(b)).

As an example, in March 2022, the Department of the Army issued a Federal Register notice stating that it would undertake a formal review of NWP 12 (87 FR 17281). This review included a series of virtual meetings with the public, a series of virtual meetings with Tribes, and a docket for receiving written comments which concluded in May 2022. To avoid potential confusion of having two similar actions processing simultaneously, this formal review of NWP 12 was withdrawn to be replaced with the current rulemaking effort to reissue and modify all of the NWPs, including NWP 12.

The Department of the Army's 2022 review of NWP 12 and the Corps' proposed rule to reissue the NWPs, including NWP 12, are separate actions. While not required, the Corps exercised its discretion and considered the comments obtained during the formal review of NWP 12 as part of the development of this proposed rule and is proposing to reissue NWP 12 without modifications. Members of the public and other parties who have interests regarding the Corps' proposal to reissue NWP 12 without modifications are invited to submit their comments on this proposed rule in accordance with the instructions provided in the ADDRESSES section of this proposed rule. The Corps will fully consider all comments received in response to this proposed rule. Comments submitted for the 2022 review of NWP 12 may be resubmitted for consideration for the development of the final rule for the 2026 NWPs. Comments submitted for the 2022 review of NWP 12 that are not resubmitted for

consideration for the development of the final rule for the 2026 NWPs will not be considered during the development of that final rule.

The NWPs provide incentives for project proponents to design activities that require DA authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899 to avoid and minimize impacts to the aquatic environment to qualify for NWP authorization, because in most cases those project proponents can obtain NWP verifications from Corps districts in less time than it takes to receive standard individual permits. For some NWPs, project proponents can proceed with the authorized activities without reporting those activities to Corps district offices as long as those activities comply with all applicable terms and conditions of those NWPs. Other NWPs require project proponents to submit pre-construction notifications (PCNs) to Corps districts prior to proceeding with the authorized activities to give district engineers the opportunity to review those proposed activities and determine whether they are authorized by NWP. The former set of NWPs are called non-reporting NWPs and the latter set of NWPs are called reporting NWPs. Activities not authorized by NWPs, or by regional general permits or programmatic general permits issued by district engineers, require individual permits from the Corps. Individual permits are DA authorizations in the form of standard individual permits or letters of permission, which require an activity-specific public interest review and the preparation of appropriate environmental documentation in support of a permit decisions for a specific activity. In Fiscal Year (FY) 2024, the average processing time for an NWP PCN was 55 days and the average processing time for a standard individual permit was 253 days. The reduction in adverse effects on the aquatic environment incentivized by the NWP Program helps reduce the impacts of activities regulated by the Corps on the Nation's aquatic resources.

Section 404(e)(1) of the Clean Water Act states that general permits may be issued on a state, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material into waters of the United States if the activities in such a category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. The phrase "minimal adverse environmental effects when performed separately" refers to the direct and indirect adverse environmental effects caused by a specific activity authorized by an NWP. The phrase "minimal cumulative adverse effect on the environment" refers to the collective direct and indirect adverse environmental effects caused by all the activities authorized by a particular NWP during the time period when the NWP is in effect (a period of no more than 5 years) in a specific geographic region. These concepts are discussed in paragraph 2 of section D, "District Engineer's Decision" in this proposed rule. The appropriate geographic area for assessing cumulative effects is determined by the decision-making

authority for the general permit (generally, the district engineer, under 33 CFR 330.5(d)(1)).

Some NWPs include PCN requirements. PCNs give the Corps districts the opportunity to evaluate certain proposed NWP activities on a case-by-case basis to ensure that they will cause no more than minimal adverse environmental effects, individually and cumulatively. Except for activities conducted by non-federal permittees that require PCNs under paragraph (c) of the "Endangered Species" and "Historic Properties" general conditions (general conditions 18 and 20, respectively), if the Corps district does not respond to the PCN within 45 days of a receipt of a complete PCN the activity is automatically authorized by the NWP (see 33 CFR 330.1(e)(1)), unless the district engineer takes action under 33 CFR 330.5(d) to modify, suspend, or revoke the NWP authorization.

There are 39 Corps district offices and 8 Corps division offices. The district offices administer the NWP program on a day-to-day basis by reviewing PCNs for proposed NWP activities. The division offices oversee district offices and are managed by division engineers. Division engineers have the authority to modify, suspend, or revoke NWP authorizations on a regional basis to take into account regional differences among aquatic resources and ensure that the NWPs authorize only those activities that result in no more than minimal individual and cumulative adverse environmental effects in a region (see 33 CFR 330.5(c)). When a Corps district receives a PCN, the district engineer reviews the PCN and determines whether the proposed activity will result in no more than minimal individual and cumulative adverse environmental effects, consistent with the criteria in paragraph 2 of section D, "District Engineer's Decision." At this point, the district engineer may add conditions to the NWP authorization to ensure that the verified NWP activity results in no more than minimal individual and cumulative adverse environmental effects consistent with processes and requirements set out in 33 CFR 330.5(d).

For some NWPs, when submitting a PCN an applicant may request a waiver for a particular limit specified in the NWP's terms and conditions. If the applicant requests a waiver of an NWP limit and the district engineer determines, after conducting any coordination with the resource agencies required under paragraph (d) of NWP general condition 32, that the proposed NWP activity will result in no more than minimal adverse environmental effects, the district engineer may grant such a waiver. Following the conclusion of the district engineer's review of the PCN, the district engineer prepares a document explaining the decision on whether to issue a waiver for the proposed NWP activity. This document discusses the district engineer's findings as to whether a proposed NWP activity qualifies for NWP authorization, including compliance with all applicable terms and conditions, and the rationale for any waivers granted, and activity-specific conditions needed to ensure that the NWP activity

will have only minimal individual and cumulative adverse environmental effects and will not be contrary to the public interest (see §330.6(a)(3)(i)).

The case-by-case review of PCNs often results in district engineers adding activity-specific conditions to NWP authorizations to ensure that the adverse environmental effects are no more than minimal. These can include permit conditions such as time-of-year restrictions and use of best management practices or compensatory mitigation requirements to offset authorized losses of jurisdictional waters and wetlands so that the net adverse environmental effects are no more than minimal. Any compensatory mitigation required for NWP activities must comply with the Corps' compensatory mitigation regulations at 33 CFR part 332. Review of a PCN may also result in the district engineer asserting discretionary authority to require an individual permit from the Corps for the proposed activity, if he or she determines, based on the information provided in the PCN and other available information, that adverse environmental effects will be more than minimal, or otherwise determines that "sufficient concerns for the environment or any other factor of the public interest so requires" consistent with 33 CFR 330.4(e)(2)).

During their reviews of PCNs, district engineers use their discretion to determine the appropriate regional scale for evaluating cumulative effects for the purposes of 33 CFR 330.5(d)(1), 33 U.S.C. 1344(e)(1), 33 CFR 322.2(f)(1), and/or 33 CFR 323.2(h)(1). The appropriate regional scale for evaluating cumulative effects may be a waterbody, watershed, seascape, county, state, a Corps district, or other geographic area. The appropriate regional scale is dependent, in part, on what types of NWP activities are occurring, where they are occurring, and what types of adverse environmental effects they might be causing. For example, for NWPs that authorizes structures and/or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899, the appropriate geographic region for assessing cumulative effects may be a specific navigable waterbody (e.g., a lake), or in the case of activities in ocean or estuarine waters, a seascape. For NWPs that authorize discharges of dredged or fill material into non-tidal wetlands and streams, the appropriate geographic region for assessing cumulative effects may be a watershed, county, state, or Corps district. The direct individual adverse environmental effects caused by activities authorized by NWPs are evaluated within the project footprint, and the indirect individual adverse environmental effects caused by activities authorized by NWPs are evaluated within the geographic area to which those indirect effects may extend.

Through the NWPs, the aquatic environment may also receive additional protection through regional conditions imposed by division engineers and activity-specific conditions added to NWPs by district engineers. These regional conditions and activity-specific conditions further minimize adverse

environmental effects, because these conditions can only further restrict use of the NWPs. NWPs also allow Corps district engineers to exercise, on a case-by-case basis, discretionary authority to require individual permits for proposed activities that may result in more than minimal individual and cumulative adverse environmental effects. NWPs help protect the aquatic environment because they provide incentives to permit applicants to reduce impacts to jurisdictional waters and wetlands to meet the restrictive requirements of the NWPs and receive authorization more quickly than they would through the individual permit process. Regional general permits issued by district engineers provide similar environmental protections and incentives to project proponents.

After the NWPs are issued or reissued, division engineers will issue supplemental documents to determine whether regional conditions are necessary to ensure that use of the NWPs on a regional basis (e.g., within a Corps district or state) will authorize only those activities with no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.5(c)(1)). The supplemental documents are prepared by Corps districts, but must be approved and formally issued by the appropriate division engineer, because the NWP regulations at 33 CFR 330.5(c) state that the division engineer has the authority to modify, suspend, or revoke NWP authorizations for any specific geographic area within her or his division. For some Corps districts, their geographic area of responsibility covers an entire state. For other states, there is more than one Corps district responsible for implementing the Corps Regulatory Program, including the NWP program. In those states, there is a lead Corps district responsible for preparing the supplemental documents for all of the NWPs.

When districts prepare supplemental documents for division approval of regional conditions, or imposing no regional conditions, they assess cumulative effects by estimating the number of times a particular NWP might be used in the region (e.g., Corps district or state) covered by the supplemental document, along with estimates of impact acreages and acreages of compensatory mitigation required. When a district engineer issues a verification letter in response to a PCN or a voluntary request for a NWP verification, the district engineer prepares a brief memorandum documenting the issuance of the NWP verification or explaining why discretionary authority was exercised to require an individual permit for the proposed activity. The district engineer's memorandum will also discuss whether the proposed NWP activity, after considering permit conditions added to the NWP authorization, such as mitigation requirements, will result in no more than minimal individual and cumulative adverse environmental effects.

If the NWP is not suspended or revoked in a state or a Corps district, the supplemental document includes a certification that the use of the NWP in that

district, with any applicable regional conditions, will result in no more than minimal cumulative adverse environmental effects. See 33 CFR 330.5(c)(1).

After the NWPs are issued or reissued and go into effect, district engineers will monitor the use of these NWPs on a regional basis (e.g., within a watershed, county, state, Corps district or other appropriate geographic area), to ensure that the use of a particular NWP is not resulting in more than minimal cumulative adverse environmental effects (see 33 CFR 330.5(d)(1)). The Corps staff that evaluate NWP PCNs that are required by the text of the NWP or by NWP general conditions or regional conditions imposed by division engineers, or voluntarily submitted to the Corps district by project proponents to receive written NWP verifications, often work in a particular geographic area and have an understanding of the activities that have been authorized by NWPs, regional general permits, and individual permits over time, as well as the current environmental setting for that geographic area. If Corps district staff believe that the use of an NWP in that geographic region may be approaching a threshold above which the cumulative adverse environmental effects for that category of activities may be more than minimal, the district engineer may either make a recommendation to the division engineer to modify, suspend, or revoke the NWP authorization in that geographic region in accordance with the procedures in 33 CFR 330.5(c). Alternatively, under the procedures at 33 CFR 330.5(d), the district engineer may also modify, suspend, or revoke NWP authorizations on a case-by-case basis to ensure that the NWP does not authorize activities in that region that result in more than minimal cumulative adverse environmental effects.

For the NWPs, the assessment of cumulative effects occurs at three levels: national, regional, and the verification stage. Each national NWP decision document includes a national-scale cumulative effects analysis to evaluate whether the issuance or reissuance of the NWP would result in more than minimal cumulative adverse environmental effects. For all NWPs, an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest is required (see 33 CFR 320.4(a)(1)). For NWPs that authorize discharges of dredged or fill material into waters of the United States, an analysis of cumulative effects conducted in accordance with 40 CFR 230.7(b)(3) is also required.

Cumulative effects are the result of the accumulation of direct and indirect effects caused by multiple activities that persist over time in a particular geographic area (MacDonald 2000), such as a watershed or ecoregion (Gosselink and Lee 1989). For the NWPs, the analysis of cumulative effects would be the accumulation of impacts caused by activities authorized by an NWP during the period it is in effect (i.e., no more than five years) in a watershed, ecoregion, or other appropriate geographic area, and how those accumulated impacts might affect the current environmental setting or environmental baseline

within that geographic area. The current environmental setting includes the present effects of other federal, non-federal, and private actions, including those that do not require DA authorization, as well as the effects of other federal, non-federal, and private actions that are occurring at the same time as the activities authorized by the NWP.

In the context of an NWP issued or reissued by Corps Headquarters, the "incremental effects of the action" would be the direct and indirect effects on the environment caused by activities authorized by the NWP during the period it is in effect. The incremental effects caused by NWP activities are to be added to the effects caused by other past, present, and reasonably foreseeable actions regardless of what agency (federal or non-federal) or person authorizes or undertakes those other past, present, and reasonably foreseeable actions. Oceans, estuaries, lakes, rivers, streams, wetlands, and other aquatic ecosystems are affected by a wide variety of federal, non-federal, and private actions in addition to activities authorized by the Corps under its permitting authorities, including activities authorized by NWPs in the past and activities authorized by other types of DA permits, such as regional general permits, standard individual permits, and letters of permission. Therefore, when evaluating cumulative effects of activities authorized by NWPs, context is important, and the severity of those impacts have to be evaluated against the environmental baseline to determine whether the cumulative adverse environmental effects caused by the issuance or reissuance of an NWP are likely to be no more than minimal, or more than minimal.

For an NWP, the cumulative impacts would be the number of times that NWP is used to authorize activities in that specific geographic area during the 5-year period that NWP is in effect. For the issuance or reissuance of an NWP by Corps Headquarters, the geographic scale of the cumulative effects analysis is the entire United States, including its territories. The cumulative effects likely to be caused by activities authorized by an NWP are evaluated against the environmental baseline, which has been shaped by human activities and natural disturbances and other events over time, including activities authorized by prior versions of that NWP, as well as other federal, non-federal, and private actions that directly or indirectly affect the aquatic environment and contribute to the overall cumulative effects that have influenced the structure and function of that aquatic environment over time.

Under 33 CFR 330.5(d)(1), when a district engineer considers cumulative impacts when reviewing a PCN for a proposed NWP activity, she or he will use a geographic and temporal scale that is larger than the geographic and temporal scales that were used to evaluate the direct and indirect adverse environmental effects caused by the proposed NWP activity. The geographic scope of the district engineer's consideration of cumulative effects would be the seascape,

watershed, or other appropriate geographic region in which the proposed NWP activity is located. The district engineer would also consider other activities that were authorized by that NWP in that geographic area during the period of time that NWP is in effect, as well as the other federal, non-federal, and private actions that shaped the environmental baseline within that geographic region, to determine whether the incremental contribution of activities authorized by that NWP in that geographic region during the time it would be in effect would not be, or would be, more than minimal. The environmental baseline includes activities conducted in the past under authorizations provided by prior issuances of that NWP, activities authorized by other forms of DA authorization, as well as other federal, non-federal, and private actions not regulated by the Corps that directly or indirectly caused changes to, or losses of, waters and wetlands subject to the Corps' jurisdiction under its permitting authorities. In addition, the environmental baseline includes the ecological functions and services the waters and wetlands within that watershed, seascape, or other geographic area provide, as well as the degree to which those waters and wetlands provide those ecological functions and services.

When a district engineer reviews a PCN and determines that the proposed activity qualifies for NWP authorization, he or she will issue a written NWP verification to the permittee (see 33 CFR 330.6(a)(3)). If an NWP verification includes multiple authorizations using a single NWP (e.g., linear projects with crossings of separate and distant waters of the United States authorized by NWPs 12, 14, 57, and 58) or non-linear projects authorized with two or more different NWPs (e.g., an NWP 28 for reconfiguring an existing marina plus an NWP 19 for minor dredging within that marina), the district engineer will evaluate the cumulative effects of the applicable NWP authorizations within the appropriate geographic area. As discussed above, examples of geographic areas that may be used for cumulative effects analyses for specific NWPs may be a waterbody, watershed, county, state, Corps district, or other geographic area, such as a seascape in ocean or estuarine waters.

Because Corps Headquarters conducted the required cumulative effects analyses in the national decision documents for the issuance or reissuance of each of the NWPs, district engineers do not need to do comprehensive cumulative effects analyses for NWP verifications for a specific activity authorized by one or more NWPs. For an NWP verification, the district engineer only needs to include a brief statement in the administrative record documenting the NWP PCN review stating her or his determination whether the proposed NWP activity, plus any required mitigation, will result in no more than minimal individual and cumulative adverse environmental effects for the purposes of 33 CFR 330.5(d)(1), as well as 33 U.S.C. 1344(e)(1), 33 CFR 322.2(f)(1), and/or 33 CFR 323.2(h)(1). If the district engineer determines, after considering mitigation, that a proposed NWP activity will result in more than minimal cumulative adverse

environmental effects, he or she will exercise discretionary authority and require an individual permit for the proposed activity.

B. Process for Modifying and Reissuing the NWPs

The 16 NWPs that were issued or reissued in the final rule that was published in the Federal Register on January 13, 2021, went into effect on March 15, 2021. The January 13, 2021, final rule to issue or reissue those 16 NWPs also reissued the NWP general conditions and definitions that apply to all of the NWPs, including the NWPs that were issued or reissued in the final rule that was published in the Federal Register on December 27, 2021. The 41 NWPs that were issued or reissued in the final rule published in the Federal Register on December 27, 2021, went into effect on February 25, 2022. The NWPs issued or reissued by both final rules expire on March 14, 2026. If these NWPs are not modified or reissued within five years of their effective dates, they automatically expire and becomes null and void (see 33 CFR 330.6(b)).

The process for modifying and reissuing the NWPs for the next five-year cycle starts with today's publication of the proposed NWPs in the Federal Register for a 30-day comment period and may include a public hearing. Requests for a public hearing must be submitted in writing via one of the ways identified in the ADDRESSES section of this proposed rule. Public hearing requests must explain the reason or reasons why a public hearing should be held. If the Corps determines that a public hearing or hearings would assist in making a decision on the proposed NWPs, general conditions, and definitions, a 30-day advance notice will be published in the Federal Register to advise interested parties of the date(s) and location(s) for the public hearing(s). Any announcement of public hearings would also be posted as a supporting document in docket number COE-2025-0002 at www.regulations.gov as well as the Corps Regulatory Program's "Regulatory Announcements" page at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/

Shortly after the publication of this Federal Register notice, Corps district offices will issue public notices to solicit comments on proposed Corps regional conditions for these NWPs. In their district public notices, consistent with 33 CFR 330.5(b)(2)(ii), district engineers may also propose to suspend or revoke some or all of these NWPs if they have issued, or are proposing to issue, regional general permits, programmatic general permits, or Clean Water Act section 404 letters of permission for use instead of some or all of these NWPs. The comment period for these district public notices will usually be 45 days. See Section I.D below titled "Regional Conditioning of Nationwide Permits" for more information on this process.

Prior to the publication of this Federal Register notice, Corps district offices sent emails or letters to Clean Water Act Section 401 certifying authorities (i.e., states, tribes approved by EPA Regional Administrators to administer water quality certification programs, and where appropriate, EPA regions) to request pre-filing meetings with those certifying authorities. After the pre-filing meeting request requirements have been completed, Corps districts will request water quality certification (WQC) for those NWPs that authorize activities which may result in any discharge from a point source into waters of the United States. Consistent with 40 CFR 121.6(c), the Corps will utilize the six month default reasonable period of time. As a result, certifying authorities will have six months to act on the certification request.

The six month reasonable period of time for certifying authorities to act on certification requests for the proposed NWPs was selected because the rulemaking to issue or reissue the NWPs covers the entire nation, which has a large number of certifying authorities under Section 401 of the Clean Water Act, and because it is the default reasonable period of time identified in EPA's water quality certification regulations. Because the NWPs are generally available across the country and there are many certifying authorities in the United States and its territories, it is not practicable for the Corps to negotiate a reasonable period of time with each certifying authority. Another consideration is the expiration of the current NWPs on March 14, 2026, and the need to issue a final rule to issue or reissue the NWPs before the current NWPs expire in 2026.

The Corps also believes that six months is sufficient for certifying authorities to complete their WQC decisions for the proposed NWPs because the Corps is proposing a small number of changes to the existing NWPs, and proposing to issue only one new NWP.

This water quality certification process for this rulemaking action is consistent with current WQC procedures, where certifying authorities conduct their evaluations to determine whether a federally licensed or permitted activity will comply with applicable water quality requirements, so that any necessary WQC conditions can be incorporated into the federal permit before it is issued. It is also consistent with EPA's Clean Water Act Section 401 Water Quality Certification Improvement Rule that was published in the Federal Register on September 27, 2023 (88 FR 66558) that went into effect on November 27, 2023.

After the publication of this Federal Register notice, Corps district offices will send letters or emails with consistency determinations pursuant to the Coastal Zone Management Act (CZMA) to the state agencies responsible for managing their coastal zones. Each letter or email will request that the state agency review the Corps district's consistency determination and, if necessary, provide conditions based on specific enforceable coastal zone management

policies that would allow the state agency to concur with the Corps district's consistency determination (see 15 CFR 930.4). The state agency will have at least 60 days to review the Corps district's consistency determination unless the state agency and Corps agree to an alternative notification schedule (see 15 CFR 930.41(a)). This review period will be extended up to 15 days if the state agency, within the 60-day period, requests an extension of time for their review (see 15 CFR 930.41(b)). If the state issues a consistency concurrence with conditions, the division engineer will make those conditions regional conditions for the NWP in that state, unless she or he determines that the conditions do not comply with the provisions of 33 CFR 325.4 (see 33 CFR 330.4(d)(2)). If the division engineer determines the conditions identified by the state do not comply with the provisions of 33 CFR 325.4, the state's conditional consistency concurrence will be considered an objection (see 15 CFR 930.4(b)), and project proponents who want to use those NWPs will need to obtain individual CZMA consistency concurrences or presumptions of concurrence.

During the period between the issuance of the final NWPs and their publication in the Federal Register, Corps districts will prepare supplemental documents and proposed regional conditions for approval by division engineers before the final NWPs go into effect. The supplemental documents address the environmental considerations related to the use of NWPs in a Corps district, state, or other geographic region. The supplemental documents will certify that the NWPs, with any regional conditions or geographic suspensions or revocations, will authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the environment or any relevant public interest review factor. The Corps' public interest review factors are listed in 33 CFR 320.4(a)(1) and are discussed in more detail in subsequent paragraphs in section 320.4.

The documentation requirements for issuing, modifying, suspending, or revoking an NWP by Corps Headquarters are described at 33 CFR 330.5(b)(3). For the issuance of an NWP, compliance with the requirements of the National Environmental Policy Act is completed when Corps Headquarters issues the final rule for the NWP along with the national decision document for that NWP. The national decision document completed for each NWP includes an environmental assessment and a finding of no significant impact. The national decision document for each NWP also includes a public interest review conducted in accordance with the requirements of 33 CFR 320.4. If the NWP authorizes discharges of dredged or fill material into waters of the United States, the national decision also includes a Clean Water Act section 404(b)(1) compliance analysis conducted in accordance with 40 CFR part 230.

After an NWP is issued, each of the eight division engineers determines whether it is necessary to exercise discretionary authority to modify, suspend, or

revoke authorizations for that NWP for any specific geographic area, class of activities, or class of waters within his or her division, including on a statewide basis (see 33 CFR 330.5(c)). Each division engineer prepares supplemental documentation for the modification, suspension, or revocation of authorizations for that NWP in a specific geographic area, including whether regional conditions are necessary ensure that the NWP authorizes only those activities that result in no more than minimal individual and cumulative adverse environmental effects. If the division engineer determines that regional conditions are, or are not, necessary to ensure use of that NWP results in no more than minimal individual and cumulative adverse environmental effects, he or she will include a certification in that supplemental document to memorialize that determination. The supplemental documents prepared by division engineers are not NEPA documents, because compliance with NEPA was completed by the issuance of the national decision document by Corps Headquarters. Likewise, the supplemental documents prepared by division engineers do not include a public interest review conducted at the regional scale because the Corps completed its public interest review when Corps Headquarters issued the national decision document for that NWP. In addition, if the NWP authorizes discharges of dredged or fill material into waters of the United States, the supplemental documents issued by division engineers do not include a Clean Water Act section 404(b)(1) guidelines analysis conducted at the regional scale because the Corps fulfilled the requirements of the Clean Water Act section 404(b)(1) guidelines when Corps Headquarters issued the national decision document for that NWP.

For a specific activity authorized by an NWP, where a district engineer issues a written verification, with or without activity-specific conditions, to ensure the NWP activity results in no more than minimal individual and cumulative adverse environmental effects, the district engineer prepares a brief document to explain his or her decision to issue the NWP verification. If the district engineer determines that it is necessary to exercise discretionary authority to suspend or revoke the NWP authorization, or require an individual permit for the proposed activity, he or she prepares a brief document that explains why it is necessary to exercise that discretionary authority. The documentation prepared by the district engineer for the NWP verification, the suspension or revocation of an NWP authorization, or the exercise of discretionary authority to require an individual permit, is not a NEPA document because Corps Headquarters fulfilled NEPA requirements when it issued the national decision document in support of the issuance of the NWP at the culmination of the rulemaking process.

C. Status of Existing Permits

Activities authorized by the 2021 NWPs currently remain authorized by those NWPs until March 14, 2026. Any activity that was completed under the

authorization of an NWP which was in effect at the time the activity was completed continues to be authorized by that NWP.

Under 33 CFR 330.6(a)(3)(ii), if the NWP is reissued without modification or the activity complies with any subsequent modification of the NWP authorization, the NWP verification letter (i.e., the written confirmation from the district engineer that the proposed activity is authorized by NWP) should include a statement that says the verification will remain valid for the period of time specified in the verification letter. The specified period of time is usually the expiration date of the NWP. For the 2021 NWPs, if the previously verified NWP activity continues to qualify for NWP authorization after the NWP is reissued or modified, that verification letter continues to be in effect until March 14, 2026, unless the district engineer specified a different expiration date in the NWP verification letter. For most activities authorized by the 2021 NWPs, where the district engineer issued an NWP verification letter, the verification letter identified March 14, 2026, as the expiration date for those NWPs. As long as the verified NWP activities comply with the terms and conditions of the modified and reissued 2026 NWPs, those activities continue to be authorized by the applicable NWP(s) until March 14, 2026, unless the district engineer modifies, suspends, or revokes a specific NWP authorization.

Under 33 CFR 330.6(b), Corps Headquarters may modify, reissue, or revoke the NWPs at any time. Activities that were authorized by the previous set of NWPs which have commenced (i.e., are under construction), or are under contract to commence in reliance upon an NWP, will remain authorized provided the activity is completed within twelve months of the date of an NWP's expiration, modification, or revocation, unless discretionary authority has been exercised by a division or district engineer on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). This provision applies to activities that were previously verified by the district engineer as qualifying for NWP authorization, but no longer qualify for NWP authorization under the modified or reissued NWP.

An activity completed under the authorization provided by a 2021 NWP continues to be authorized by that NWP (see 33 CFR 330.6(b)) regardless of whether the Corps issues a final rule for the 2026 NWPs. If the activity no longer qualifies for NWP authorization under the 2026 reissuance or modification of that NWP, the project proponent would have 12 months to complete the authorized activity as long as that activity is under construction or under contract to commence construction before the reissued or modified NWP goes into effect. If the project proponent does not have the activity under construction or under contract to commence construction before the reissued or modified NWP goes into effect, he or she will need to seek another form of DA authorization for the regulated activity. After that 12 month period, if those activities no longer qualify

for NWP authorization because they do not meet the terms and conditions of the 2026 NWPs (including any regional conditions imposed by division engineers), the project proponent will need to obtain an individual permit, or seek authorization under a regional general permit, if such a general permit is available in the applicable Corps district and can be used to authorize the proposed activity.

D. Regional Conditioning of Nationwide Permits

Under Section 404(e) of the Clean Water Act, NWPs can only be issued for those activities that result in no more than minimal individual and cumulative adverse environmental effects. For activities that require authorization under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Corps' regulations at 33 CFR 322.2(f) impose a similar requirement. Since it can be challenging for the Corps to write national terms and conditions for the NWPs in such a way that they account for regional differences in aquatic ecosystem structure, functions, and services, and other regional environmental concerns or differences, an important mechanism for ensuring compliance with these requirements is regional conditions imposed by division engineers to address those regional differences. Effective regional conditions help protect local aquatic ecosystems and other resources, and the functions and services they provide. They also help ensure that the NWPs authorize only those activities that result in no more than minimal individual and cumulative adverse effects on the aquatic environment and are not contrary to the public interest.

There are two types of regional conditions: (1) Corps regional conditions and (2) water quality certification/Coastal Zone Management Act consistency concurrence regional conditions. Corps regional conditions are added to the NWPs by division engineers in accordance with the procedures at 33 CFR 330.5(c). Water quality certification and Coastal Zone Management Act consistency concurrence regional conditions are also added to the NWPs if an appropriate certifying authority issues a water quality certification or CZMA consistency concurrence with conditions for the issuance, reissuance, or modification of the NWPs prior to the effective date of the issued, reissued, or modified NWPs.

Examples of Corps regional conditions include:

- Restricting the types of waters of the United States where the NWPs may be used (e.g., fens, bogs, bottomland hardwood forests, etc.) or prohibiting the use of some or all of the NWPs in those types of waters or in specific watersheds.
- Restricting or prohibiting the use of NWPs in an area covered by a Special Area Management Plan, where regional general permits are issued to

authorize activities that have no more than minimal individual and cumulative adverse environmental effects and are consistent with that plan.

- Revoking certain NWPs in a watershed or other type of geographic area (e.g., a state or county) to require other forms of DA authorization (e.g., individual permits) for those activities.
- Adding PCN requirements to NWPs in certain watersheds or other types of geographic areas, or in certain types of waters of the United States, to require notification for all activities or impose lower PCN thresholds.
- Reducing NWP acreage limits for activities in certain types of waters of the United States (e.g., streams) or specific waterbodies, or in specific watersheds or other types of geographic regions.
- Restricting activities authorized by NWPs to certain times of the year in a particular waterbody, to minimize the adverse effects of those activities on fish or shellfish spawning, wildlife nesting, or other ecologically cyclical events.
- Conditions necessary to facilitate compliance with the "Endangered Species" general condition, to enhance protection of listed species or designated critical habitat under the Endangered Species Act.
- Conditions necessary to facilitate compliance with the "Tribal Rights" general condition, to enhance protection of tribal trust resources, including natural and cultural resources and tribal lands.
- Conditions necessary for ensuring compliance with the "Historic Properties" general condition, to enhance protection of historic properties.
- Conditions necessary to ensure that activities authorized by NWP will have no more than minimal individual and cumulative adverse effects on Essential Fish Habitat.

Regional conditions are modifications of the NWPs that are made by division engineers. Regional conditions can only add conditions to, or further restrict the applicability of, an NWP (see 33 CFR 330.1(d)). Corps regional conditions approved by division engineers cannot remove or reduce any of the terms and conditions of the NWPs, including general conditions. Corps regional conditions cannot increase PCN thresholds or remove notification requirements, but they can lower PCN thresholds to require PCNs for more activities authorized by a specific NWP. In summary, Corps regional conditions can only be more restrictive than the NWP terms and conditions established by Corps Headquarters when it issues or reissues an NWP.

Corps regional conditions may be added to NWPs by division engineers after a public notice and comment process and coordination with appropriate federal, state, and local agencies, as well as tribes. After Corps Headquarters publishes, in the Federal Register, the proposed rule to issue, reissue, or modify

NWPs, district engineers issue local public notices to announce the availability of the proposed rule for review and comment and to solicit public comment on proposed regional conditions and/or proposed suspensions or revocations of NWP authorizations for specific geographic areas, classes of activities, or classes of waters (see 33 CFR 330.5(b)(2)(ii)). These local public notices usually have a 45-day comment period. The local public notices also solicit suggestions from the public and interested agencies on additional regional conditions that they believe are necessary to ensure that the NWPs authorize only those activities that have no more than minimal adverse environmental effects. Comments on proposed regional conditions should be sent to the Corps district that issued the public notice. Corps districts will also consult or coordinate with tribes to identify and propose regional conditions to ensure compliance with general condition 17 (treaty rights) and fulfill the Corps' tribal trust responsibilities. The process for adding Corps regional conditions to the NWPs is described at 33 CFR 330.5(c). The regulations for the regional conditioning process were promulgated in 1991, with the proposed rule published in the Federal Register on April 10, 1991 (56 FR 14598) and the final rule published in the Federal Register on November 22, 1991 (56 FR 59110).

In response to the district's local public notice, interested parties may suggest additional Corps regional conditions or changes to Corps regional conditions. Interested parties may also suggest suspension or revocation of NWPs in certain geographic areas, such as specific watersheds or waterbodies. Such comments should include data to support the need for the suggested modifications, suspensions, or revocations of NWPs.

After the public comment period ends for the districts' local public notices, each Corps district evaluates the comments received in response to their local public notice and begins preparing, as required by 33 CFR 330.5(c)(1)(iii), supplemental documents for each NWP. Each supplemental document will evaluate the NWP on a regional basis (e.g., by Corps district geographic area of responsibility or by state) and discuss whether regional conditions are needed for that NWP to ensure that authorized activities result in no more than minimal individual and cumulative adverse environmental effects. Each supplemental document will also include a statement by the division engineer that will certify that the NWP, with approved regional conditions, will authorize only those activities that will have no more than minimal individual and cumulative adverse environmental effects.

The supplemental documents may cover a Corps district, especially in cases where the geographic area of responsibility for the Corps district covers an entire state. If more than one Corps district operates in a state, the lead district is responsible for preparing the supplemental documents and coordinating with the other Corps districts. The supplemental documents include an evaluation of

public and agency comments on proposed and suggested regional conditions, with responses to those comments, to show that the views of potentially affected parties were fully considered (33 CFR 330.5(c)(1)(ii)). Each supplemental document also explains how substantive comments submitted in response to the local public notice were considered. After the supplemental documents for the NWPs are drafted by the district, they are sent to the division engineer for review along with the district's recommendations for regional conditions. The division engineer may approve the supplemental documents and the district's recommended regional conditions. Alternatively, the division engineer may also request changes to one or more supplemental documents, including changes to the regional conditions recommended by the district in those supplemental documents.

After the division engineer approves regional conditions for the NWPs by signing the supplemental documents, the district issues a public notice announcing the final Corps regional conditions and when those regional conditions go into effect (see 33 CFR 330.5(c)(1)(v)). The district's public notice is posted on its web site. Copies of the district's public notice are also sent to interested parties that are on the district's public notice mailing list via email or the U.S. mail. The public notice will also describe, if appropriate, a grandfathering period as specified by 33 CFR 330.6(b) for those project proponents who have already commenced work under the NWP or are under contract to commence work under the NWP (see 33 CFR 330.5(c)(1)(iv)). Copies of all Corps regional conditions approved by the division engineers for the NWPs are forwarded to Corps Headquarters (see 33 CFR 330.5(c)(3)).

Under the current regulations, Corps Headquarters does not have a role in the districts' proposal of regional conditions, or the review and approval of Corps' regional conditions by division engineers. Corps Headquarters provides templates for the supplemental documents required by 33 CFR 330.5(c)(1)(iii), to promote consistency in the preparation of the supplemental documents. If requested by district and division offices, Corps Headquarters also provides advice on appropriate Corps regional conditions for the NWPs.

The Corps is a highly decentralized organization, with most of the authority for administering the regulatory program delegated to the 39 district engineers and 8 division engineers (see 33 CFR 320.1(a)(2)). District engineers are responsible for the day-to-day implementation of the Corps' Regulatory Program, including the evaluation of applications for individual permits, evaluating PCNs for proposed NWP activities, evaluating notifications for activities authorized by regional general permits, responding to requests for approved and preliminary jurisdictional determinations, conducting compliance and enforcement actions, and other tasks.

Division engineers are responsible for overseeing implementation of the Regulatory Program by their districts, and making permit decisions referred to them by district engineers under the circumstances identified in 33 CFR 325.8(b). Under that section of the Corps' regulations, a division engineer can refer certain permit applications to the Chief of Engineers for a decision. Other than making permit decisions under the circumstances listed in §325.8(c), Corps Headquarters is responsible for development of regulations, guidance, and policies.

Since the purpose of regional conditions is to tailor the NWPs to account for regional differences in aquatic resource types, the functions they provide, and their value to the region so that the NWPs in a particular geographic area authorize only those activities that result in no more than minimal individual and cumulative adverse environmental effects, requiring consistency among regional conditions at a national level would be contrary to the purpose of regional conditions and would reduce the utility of the NWPs. In other words, the ability to add restrictions to one or more NWPs at a regional level to ensure that those activities result in no more than minimal individual and cumulative adverse environmental effects allows the national terms and conditions to be less restrictive, and thereby potentially appropriate, in other areas of the country. This ability to tailor the NWP program in specific areas of the country allows the NWPs to authorize more activities than would be possible if the need for greater restrictions in one part of the country had to be applied to the nation as a whole. Corps regional conditions should be written clearly and provide only the additional restrictions that are necessary to ensure that NWP activities in the applicable geographic region result only in minimal individual and cumulative adverse environmental effects, consistent with the requirements of Section 404(e) of the Clean Water Act.

Under the Corps' current regulations at 33 CFR 330.5(c), the authority to approve Corps regional conditions is assigned to division engineers. A division engineer can take steps to provide consistency in Corps regional conditions for the districts within her or his division. However, it should also be noted that the eight Corps divisions encompass large geographic regions and there can be substantial differences in aquatic resource types, functions, services, and values within a Corps division. For example, the Corps' Northwestern Division extends from the northwest coast to the Midwest, with oceanic and estuarine waters along the coasts of Oregon and Washington, to inland wetlands and rivers in Missouri and Nebraska. As another example, the Mississippi Valley Division extends from Louisiana, with its extensive coastal wetlands and bottomland hardwood forests to Minnesota, which has many lakes, bogs, marshes, and swamps.

In addition, there are usually also substantial differences in other resources that are subject to regional conditions that may be developed to assist in the Corps' compliance with other applicable federal laws, such as Section 7 of the Endangered Species Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, Section 106 of the National Historic Preservation Act, and the Wild and Scenic Rivers Act. The presence and ranges of endangered and threatened species, and the locations of designated critical habitat often vary substantially within a Corps division. Most coastal Corps districts have essential fish habitat in their geographic areas of responsibility, whereas inland districts do not. Regional conditions may also be developed to address tribal treaty rights and trust resources, which likely vary from tribe to tribe. Therefore, because of these factors consistency in regional conditions necessary to ensure that NWPs only authorize activities that have no more than minimal adverse environmental effects cannot be practicably achieved at a national or division level without reducing the availability of NWPs in other areas of the country.

Consistent with the Corps' approach to providing more transparency in the process for proposing and adding regional conditions to the NWPs that was adopted for the 2021 NWPs, the Corps will be posting copies of the district public notices soliciting input for proposed and suggested regional conditions in the www.regulations.gov docket for this rulemaking action (docket number COE-2025-0002), under "Supporting and Related Material." In addition, after the final NWPs are issued, the Corps will post copies of all district public notices announcing the final regional conditions in the www.regulations.gov docket for this rulemaking action, so that copies of all these district public notices are available in a single location. This docket is intended to provide a central location for interested parties to obtain information on proposed and finalized Corps regional conditions, as well as the WQC/CZMA regional conditions added through the water quality certification process and Coastal Zone Management Act consistency concurrence process for the issuance and reissuance process for the NWPs. Comments on regional conditions proposed by Corps districts must be sent to the Corps district identified in the public notice, not to Corps Headquarters.

If, after the NWPs go into effect, division or district engineers receive new information that calls for new or modified Corps regional conditions to ensure that authorized activities cause no more than minimal individual and cumulative adverse environmental effects, Corps division and district engineers may work together to propose and approve new or modified regional conditions after following the procedures in 33 CFR 330.5(c). Adding new Corps regional conditions, or modifying existing Corps regional conditions, after the final rule issuing or reissuing the NWPs go into effect includes a public notice and comment process, and amending supplemental documents for those Corps

regional conditions. Information on regional conditions for the NWPs, and on the suspension or revocation of one or more NWPs in a particular area, can be obtained from the appropriate district engineer.

Water Quality Certification and Coastal Zone Management Authorization Regional Reviews

The processes for states, approved tribes, and EPA to issue water quality certifications (WQCs) for the issuance of the NWPs, and for states to issue general CZMA consistency concurrences for the NWPs are separate from the Corps' process in 33 CFR 330.5(c) for division engineers adding Corps regional conditions to the NWPs. The WQC process is governed by EPA's regulations at 40 CFR part 121, and by the regulations and policies of certifying authorities, such as states, tribes approved by EPA to administer their own water quality certification programs, or EPA regions. EPA regions act as the certifying authorities where no state or tribe has authority to issue certification (33 U.S.C. 1341(a)(1)). Currently, EPA acts as the certifying authority in two scenarios: (1) on behalf of tribes without "treatment in a similar manner as a state" (TAS) for Clean Water Act section 401 and (2) on lands of exclusive federal jurisdiction in relevant respects. The CZMA consistency process is governed by regulations issued by the Department of Commerce at 15 CFR part 930. Individuals who are interested in providing comments specific to WQCs and CZMA consistency determinations for the issuance or reissuance of the NWPs should submit their comments directly to the appropriate state, authorized tribe, or EPA regional office. Because these processes are separate from the Corps' regional conditioning process, the public notices issued by states, authorized tribes, and EPA regions during the WQC and CZMA consistency determination processes will not be included in the docket for this rulemaking action.

The Corps' regulations for establishing WQC regional conditions for the NWPs are provided at 33 CFR 330.4(c)(2). If, prior to the issuance or reissuance of NWPs, a state, authorized tribe, or EPA region issues a Clean Water Act section 401 water quality certification with conditions, the division engineer will make those water quality certification conditions regional conditions for the applicable NWPs, unless she or he determines those conditions do not comply with 33 CFR 325.4 (see 33 CFR 330.4(c)(2)).

If the division engineer determines those water quality certification conditions do not comply with 33 CFR 325.4, then the conditioned water quality certification will be considered denied, and the project proponent will need to request an activity-specific water quality certification for the proposed activity which may result in any discharge from a point source into waters of the United States from the certifying authority. That certification request must satisfy the requirements of 40 CFR 121.5(b). The certifying authority may grant, grant with

conditions, or deny water quality certification for an individual license or permit, for any activity which may result in any discharge into waters of the United States (see 40 CFR 121.7), including an activity-specific discharge into waters of the United States that may be authorized by an NWP.

A similar process applies to a CZMA consistency concurrence issued by a state for the issuance of an NWP (see 33 CFR 330.4(d)(2)). If the division engineer determines those CZMA concurrence conditions do not comply with 33 CFR 325.4, then the conditioned CZMA consistency certification will be considered an objection (see 15 CFR 930.4(b)), and the project proponent will need to request an activity-specific CZMA consistency concurrence from the state under subpart D of 15 CFR part 930.

After division engineers finalize Corps regional conditions, and determined whether conditions in WQCs and CZMA consistency concurrences for the issuance or reissuance of the NWPs are WQC/CZMA regional conditions for the NWPs, Corps districts will issue public notices announcing the final Corps and WQC/CZMA regional conditions, and the status of WQCs and CZMA consistency concurrences for the final NWPs. Corps Headquarters will post copies of these district public notices in the regulations.gov docket (docket number COE-2025-0002), under “Supporting and Related Material.”

E. Nature-Based Solutions and the NWP Program

A number of NWPs currently authorize discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States for the construction and maintenance of nature-based solutions. “Nature-based solutions” have been defined by Cohen-Shacham and others (2016) as “actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.” Nature-based solutions have the potential to furnish cost-effective approaches to providing environmental, social, and economic benefits, and they may also help build resilience (Raymond et al. 2017). The Corps is proposing to add this definition to the NWPs, in Section F, Definitions.

Nature-based solutions can currently be authorized by NWP 27 (aquatic ecosystem restoration, enhancement, and establishment activities), NWP 43 (stormwater management facilities), NWP 13 (bank stabilization activities), NWP 31 (maintenance of existing flood control facilities), NWP 41 (reshaping existing drainage and irrigation ditches), NWP 55 (seaweed mariculture activities), NWP 54 (living shorelines), and NWP 59 (water reclamation and reuse facilities). The Corps is proposing modifications to some NWPs (e.g., NWPs 13 and 43) to

enhance the ability of those NWPs to authorize regulated activities associated with nature-based solutions.

The Corps is proposing to issue a new NWP titled "Activities to Improve the Passage of Fish and Other Aquatic Organisms" (which is designated as NWP A in this proposed rule; if this NWP is issued, it will be assigned a number) to authorize activities to restore or enhance the passage of fish and other aquatic organisms, as well as other ecological processes such as the transport of water, sediment and nutrients, around or through barriers so that they can access other aquatic habitats. Activities authorized by this proposed new NWP would include nature-like fishways, which are a nature-based solutions that can help improve the ability of fish and other aquatic organisms to move around or through barriers and access upstream and downstream aquatic habitats.

Nature-based solutions can vary in the degree to which they involve natural or restored ecosystems and engineered components. For example, subcategories of nature-based solutions may include natural infrastructure and green infrastructure. Natural infrastructure consists of existing or restored natural ecosystems, including those that involve some degree of stewardship by people to maintain the structure, functions, and dynamics of those ecosystems. Examples of natural infrastructure include wetland restoration activities where the restored wetland resembles an ecological reference, or a river or stream corridor that is restored to a multi-threaded channel interspersed with wetlands and floodplains, with structure, function, and dynamics that are similar to undisturbed river or stream valleys with beaver dams and/or wood jams that supported anastomosing or anabranching channels interspersed with wetlands and floodplains. Green infrastructure consists of nature-based solutions involving combinations of features of natural ecosystems with some (gray) engineered components. Examples of green infrastructure include rain gardens, constructed wetlands for wastewater treatment, and stormwater management facilities.

F. Notes in NWPs for Utilities and Mariculture Activities

A number of NWPs currently authorize structures or work in navigable waters of the United States under the authority of Section 10 of the Rivers and Harbors Act. Two groups of NWPs which authorize work and structures in navigable waters of the United States, those that authorize activities associated with utilities and those that authorize activities associated with mariculture, each include a Note intended to protect navigation.

The NWPs that authorize activities associated with utilities, NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 52 (Water-Based Renewable Energy Generation Pilot Projects), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility Line Activities for Water and

Other Substances) include a Note (designated as Note 1 in NWP 12, designated as Note 3 in NWP 52, designated as Note 1 in NWP 57, and designated as Note 1 in NWP 58) which directs the Corps to provide a copy of the NWP verification to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for inclusion on nautical charts. The NWPs that authorize activities associated with mariculture, NWP 48 (Commercial Shellfish Mariculture Activities) and NWP 55 (Seaweed Mariculture Activities) include a Note (designated as Note 1 in each of these NWP) which advises the permittee to notify the U.S. Coast Guard (USCG) of the project.

The Corps is proposing to modify the text of both sets of Notes to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG. In addition, we are proposing to modify the NWPs that authorize activities associated with utilities and those that authorize activities associated with mariculture to include the revised text of both Notes in each NWP.

The Corps is proposing the modify the Note in the NWPs that authorize activities associated with utilities to clarify that the information provided to NOS will be used to update nautical charts and make Coast Pilot corrections. In addition, the Corps is proposing to modify the text of the Note to remove the language that directs the Corps to provide a copy of the NWP verification to NOS and replace it with language recommending that the permittee provide as-built drawings and the geographic coordinate system used in the as-built drawings to NOS. The Corps is also proposing to remove language from the Note which specifies which structures should be reported to NOS. The Corps is retaining language to specify that this Note applies to structures and work authorized in coastal waters, the Great Lakes, and United States territories. The Corps is also proposing to add a new last sentence to the Note to state that the information should be transmitted via email to ocs.ndb@noaa.gov.

These revisions remove an administrative burden from the Corps and encourage permittees to ensure that structures in navigable waters of the United States are reflected on the appropriate navigation chart. The Corps is proposing to modify the Notes in the NWPs associated with utility activities (designated as Note 1 in NWP 12, designated as Note 3 in NWP 52, designated as Note 1 in NWP 57, and designated as Note 1 in NWP 58) as discussed above. The Corps is also proposing to add a new Note to NWP 48 (to be designated as Note 4) and NWP 55 (to be designated at Note 4).

The Corps is also seeking comment on the need to add this proposed revised Note to NWP 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities) and NWP 27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities). NWP 4 authorizes a variety of fish and wildlife

harvesting devices such as pound nets, crab traps, eel pots, lobster traps, and duck blinds. These devices may be in place for a short time and may be moved multiple times in a season. The temporary nature of these devices and the recurring relocation of these devices may limit the practicability of notifying NOS of the location of these devices. NWP 27 can be used to authorize the removal of culverts and other obstructions from waters, but it cannot be used to add or replace existing structures with new structures. Activities authorized under NWP 27 must result in aquatic habitat that resembles an ecological reference.

The current text of the Note in the NWPs that authorize activities associated with mariculture encourages permittees to notify the USCG of their project. The Corps is proposing to modify the Note to specify that this Note applies to proposed structures and work in navigable waters of the United States. The Corps also proposes to modify the Note to encourage project proponents to contact USCG before submitting a Pre-Construction Notification or, if no Pre-Construction Notification is required, before beginning construction. If a permittee receives an NWP verification, and subsequently modifies their project after coordinating with USCG, the permittee may need to contact the Corps to request a reverification of the NWP. In addition, the Corps is proposing to modify the Note to recommend that the project proponent provide USCG with the location and dimensions of the proposed structures. The Corps also proposes to add a second sentence to inform project proponents of the assistance that USCG may provide. The Corps also proposes to modify the note to add a third sentence that will assist the project proponent in locating the appropriate USCG office.

The Corps proposes to modify Note 1 of NWP 48 and Note 1 of NWP 55 and discussed above. The Corps also proposes to add a new Note to NWP 4 (to be designated as Note 1); NWP 12 (to be designated as Note 7), NWP 52 (to be designated as Note 6), NWP 57 (to be designated as Note 8), and NWP 58 (to be designated as Note 7) consistent with the proposed revised Note discussed above.

The Corps is also seeking comment on the need to add this proposed revised Note to NWP 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities) and NWP 27 (Aquatic Habitat Restoration, Enhancement, and Establishment Activities). NWP 4 authorizes a variety of fish and wildlife harvesting devices such as pound nets, crab traps, eel pots, lobster traps, and duck blinds. These devices may be in place for a short time and may be moved multiple times in a season. The temporary nature of these devices and the recurring relocation of these devices may limit the practicability of coordinating with USCG on the location of these devices. NWP 27 can be used to authorize the removal of culverts and other obstructions from waters, but it cannot be used to add or replace existing structures with new structures. Activities authorized

under NWP 27 must result in aquatic habitat that resembles an ecological reference.

G. Severability

The purpose of this section is to clarify the Corps' intent with respect to the severability of the NWPs in this rule. Each NWP in this rule operates independently. If any particular NWP of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of the NWPs in this rule invalid. Likewise, if the application of any NWP to a particular circumstance is determined to be invalid, the Corps intends that the NWP remain applicable to all other circumstances.

II. Summary of Proposed Rule

In this proposed rule, the Corps proposes to reissue 56 of the existing NWPs with some modifications and to issue one new NWP. The Corps is not proposing to reissue NWP 56, which authorizes structures in marine and estuarine waters, including federal waters over the outer continental shelf, for finfish mariculture activities. The proposed new NWP A, if issued, would authorize activities that improve the passage of fish and other aquatic organisms and other important ecological processes. This new NWP is being proposed to provide NWP authorization for discharges of dredged or fill material into waters of the United States or structures or work in navigable waters for activities that improve the passage of fish and other aquatic organisms, including nature-based solutions such as nature-like fishways that provide a path for fish and other aquatic organisms to move past dams and weirs, but do not quality for authorization under NWP 27 because they involve engineering features that do not resemble ecological references. Proposed new NWP A does not replace NWP 56, which the Corps is proposing to not reissue and which authorized finfish mariculture activities in ocean and estuarine waters. Proposed new NWP A and NWP 56 authorize different categories of activities.

The Corps is proposing to revise the text of NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 13 (bank stabilization), NWP 15 (U.S. Coast Guard approved bridges), NWP 23 (approved categorical exclusions), NWP 24 (Indian tribe or state assumed section 404 program), NWP 27 (aquatic ecosystem restoration, enhancement, and establishment activities), NWP 48 (commercial shellfish mariculture activities), NWP 52 (Water-Based Renewable Energy Generation Projects), NWP 54 (living shorelines), NWP 55 (Seaweed Mariculture Activities), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility Line Activities for Water and Other Substances to provide NWP authorization for additional activities or clarify what is authorized by these NWPs. Some of the proposed modifications to the NWPs are intended to address

litigation that occurred after the 2021 NWPs were issued and went into effect. The Corps is proposing to not reissue NWP 56 (finfish mariculture activities) because of on-going litigation. The Corps is also proposing to modify some general conditions and definitions so that they are clearer and can be more easily understood by the regulated public, government personnel, and interested parties, while retaining terms and conditions that help protect the aquatic environment and recognize when activities requiring DA authorization would benefit the aquatic environment. Making the text of the NWPs clearer and easier to understand will also facilitate compliance with these permits, which will benefit the aquatic environment. The NWP program allows the Corps to authorize activities with only minimal adverse environmental impacts in an efficient, effective, and timely manner. The NWPs contribute to environmental protection because they encourage project proponents to minimize the amount of adverse impacts to waters of the United States to qualify for NWP authorization. For example, in FY 2023, 74 percent of the NWP verifications involving discharges of dredged or fill material into waters of the United States had impacts of less than 1/10-acre, well below the 1/2-acre limit in numerous NWPs. Thus, through the NWPs the Corps is able to better protect the aquatic environment by focusing its limited resources on more extensive evaluations through the individual permit process, to provide more rigorous evaluation of activities that have the potential for causing more severe adverse environmental effects.

The Corps is soliciting comment on all changes to the nationwide permits, general conditions, and definitions discussed below, as well as the nationwide permits, general conditions, and definitions for which the Corps has not proposed any changes. Minor grammatical changes, the removal of redundant language, and other small administrative changes are not discussed in the preamble below. Therefore, commenters should carefully read each proposed NWP, general condition, and definition in this proposed rule. The Corps also welcomes comments on situations that might warrant nationwide permit coverage but that are not covered by a current nationwide permit.

A. Discussion of Proposed Modifications to Existing Nationwide Permits

NWP 12. Oil or Natural Gas Pipeline Activities. As discussed in the Preamble Section I.F. above, the Corps is proposing to modify Note 1 and to add a Note (designated as Note 7) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

NWP 13. Bank stabilization activities. The Corps is proposing to modify NWP 13 by adding a paragraph to clarify that this NWP can be used to authorize nature-based solutions associated with bank stabilization activities, including those in conjunction with hard bank stabilization activities such as seawalls,

bulkheads, and revetments. The Corps is also proposing to modify this NWP by adding a new Note to encourage project proponents to use soft bank stabilization approaches and/or nature-based solutions where appropriate to reduce the potential individual and cumulative adverse environmental effects that may be caused by bank stabilization activities. The proposed new Note also provides examples of the numerous factors that likely need to be considered when planning and designing a proposed bank stabilization activity, including hard or soft approaches to bank stabilization.

Over the past 15 years or so, there have been numerous publications and studies that have examined the potential for applying ecological engineering approaches and nature-based solutions to bank stabilization activities to reduce the adverse effects of hard bank stabilization structures on nearshore biodiversity, habitat value, and other ecosystem functions and services, especially in coastal areas (e.g., Chapman and Underwood 2011, Morris et al. 2018, Strain et al. 2017, O'Shaughnessy et al. 2020). Ecological engineering approaches for bank stabilization activities can provide nature-based solutions that are sustainable, help improve environmental quality, and support biodiversity (Suedel et al. 2022). They can be incorporated into the planning, design, and implementation of new bank stabilization activities in coastal environments, or be retrofitted into existing seawalls, bulkheads, and revetments during maintenance of these existing structures.

Seawalls and bulkheads can be constructed with materials that have textured surfaces (e.g., crevices, depressions, pits, grooves, gaps) that provide structural complexity and microhabitats that habitat-forming sessile organisms such as barnacles, branching coralline algae, bivalves, algae, and corals can attach to, grow, and further enhance habitat structure (Strain et al. 2017) that can be used by other aquatic organisms. Fish may feed on the aquatic organisms attached to these seawalls and bulkheads, and aquatic organisms can be attracted to the structural habitat on these seawalls and bulkheads. Seawalls and bulkheads constructed with textured surfaces and other features to increase habitat complexity and are colonized by benthic organisms, such as seaweeds and sessile animals, and may attract and support populations of juvenile fish, including salmon species (Morris et al. 2018). Habitat complexity at seawalls and bulkheads that supports more diverse aquatic organism assemblages can also be enhanced at seawalls by incorporating water retaining features such as rock or tidal pools (O'Shaughnessy et al. 2020), "flower pots" (Morris et al. 2018), and benches (Toft et al. 2013), or large or small ledges (Strain et al. 2017).

Rocks can be placed in subtidal and intertidal areas next to seawalls and bulkheads, or in clusters next to seawalls and bulkheads, to provide habitat for aquatic organisms (Suedel et al. 2022). Rock piles next to seawalls and bulkheads can be constructed from rocks of different sizes or rocks of similar

size, and gaps between these rocks can provide habitat and refuge areas for aquatic organisms. Another nature-based solution that may increase habitat and biodiversity next to seawalls, bulkheads, and revetments involves the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment (Suedel et al. 2022).

Revetments can be designed and constructed to increase structural complexity that can provide habitat for benthic and motile aquatic organisms. Rocks of different sizes can be used to construct revetments and provide cracks and holes of different sizes that can be used as habitat by aquatic organisms and plants (Suedel et al. 2022).

Another nature-based solution identified in the proposed new paragraph is the placement of pieces of large wood in front seawalls, bulkheads, and revetments. The placement of large wood in marine waters can add structural complexity, especially in waterbodies with soft substrates such as sand, that can attract benthic and pelagic organisms and enhance local biodiversity (Dickson et al. 2023). In the past, rivers have transported substantial amounts of wood to ocean and estuarine waters, and that wood has provided food and habitat for a wide variety of aquatic organisms (Wohl and Iskin 2021). Inputs of wood to marine and estuarine waters has declined because of logging and other deforestation activities, dam construction, channel engineering, removal of large wood, and coastal hardening (Dickson et al. 2023, Wohl and Iskin 2021). Installing large pieces of wood into marine and estuarine waters seaward of seawalls, bulkheads, and revetments can provide habitat for a variety of aquatic organisms, increase the number of trophic connections among aquatic species, and contribute to local nutrient cycling, and may help lessen changes in of biodiversity that may occur as a result of the construction of a seawall, bulkhead, or revetment (Witte et al. 2024, Dickson et al. 2023).

In some situations, incorporating the ecological engineering and nature-based solutions to increase habitat functions and other functions, and to increase biodiversity along shorelines where bank stabilization activities are proposed or where modifications to existing bank stabilization are proposed, may require district engineers to issue waivers for some NWP 13 activities. One of the quantitative limits in NWP 13 is that the activity cannot exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. NWP 13 allows the district engineer to waive this limit as long as she or he makes a written determination concluding that the regulated activity for the bank stabilization project will result in no more than minimal adverse environmental effects. When evaluating NWP 13 PCNs that include requests for waivers of this limit, and the proposed bank stabilization activity includes nature-based solutions

to provide habitat and other functions as described in the proposed new paragraph, district engineers should consider the potential gains in habitat functions and other functions that are likely to result from incorporating nature-based solutions into bank stabilization activities. Those gains should be considered when deciding whether the proposed bank stabilization is likely to result in minimal individual and cumulative adverse environmental effects and whether the requested waiver of the one cubic yard per running foot limit should be granted.

The Corps is proposing to add a new Note to NWP 13 (to be designated as Note 2) to remind potential users of NWP 13 and other interested parties of the Corps' current regulations regarding considerations of property ownership and the general right of landowners to protect their property from erosion. That regulation is located at 33 CFR 320.4(g)(2), and it states:

> Because a landowner has the general right to protect property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appears contrary to the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources.

Proposed Note 2 begins by paraphrasing section 320.4(g)(2), and in response to an NWP 13 PCN, the district engineer can provide general guidance on potential alternative means of bank stabilization that may have less adverse environmental impacts than the applicant's proposed bank stabilization activity. If applicant decides not to follow the district engineer's general advice, the district engineer will evaluate the PCN and determine whether the proposed bank stabilization activity will result in no more than minimal individual and cumulative adverse environmental effects in accordance with the criteria provided in Section D, District Engineer's Decision.

The district engineer may add conditions to the NWP 13 authorization to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects. If the district engineer determines the proposed bank stabilization activity will result in more than minimal individual and cumulative adverse environmental effects, he or she will give the applicant the opportunity to propose mitigation measures (i.e., avoidance, minimization, and/or compensatory mitigation) to reduce the adverse impacts of the proposed activity

so that they are no more than minimal (see 33 CFR 330.1(e)(1)). If appropriate and practicable mitigation is not likely to be accomplished, or reasonably enforceable (see the Corps' regulations at 33 CFR 325.4(a) concerning adding conditions to DA permits), the district engineer will exercise discretionary authority to require an individual permit for the proposed bank stabilization activity. During the individual permit process, reasonable and practicable alternatives must be considered, and those reasonable and practicable alternatives may include other approaches to bank stabilization.

The second and third sentences of proposed Note 2 discuss options for soft bank stabilization approaches versus hard bank stabilization approaches. The second sentence states that permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. The third sentence states that hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. Nonetheless, where hard bank stabilization is more appropriate there may be opportunities to incorporate nature based solutions.

The number of factors to consider when identifying, planning, and designing an appropriate and effective bank stabilization activity for a particular site make that process complex and not conducive to establishing a simple hierarchy of preferred bank stabilization techniques. As discussed in 33 CFR 320.4(g)(2), landowners may want to seek advice from entities with expertise in planning and designing bank stabilization activities to propose an option that will be effective in protecting their land and assets on their property from erosion now and in the future, especially as the coastal environment changes over time.

In proposed Note 2, the Corps identifies the following factors that may need to be considered when identifying, planning, and designing a bank stabilization activity: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed. The Corps invites public comment on other factors that should be added to this proposed Note, or factors that should be removed from this proposed Note.

NWP 15. U.S. Coast Guard Approved Bridges. The Corps is proposing to modify this NWP to refer to the General Bridge Act of 1946 as one of the

statutory authorities that may be used by the U.S. Coast Guard to authorize a bridge over navigable waters of the United States.

NWP 23. Approved Categorical Exclusions. The Corps is proposing to modify paragraph (a) of this NWP by adding references to the National Environmental Policy Act to replace the references from the Council on Environmental Quality NEPA regulations that were removed from the Code of Federal Regulations on April 11, 2025 (90 FR 10610). The Corps is proposing to modify paragraph (a) to reference sections 106, 109, and 111(1) of NEPA.

The Corps is seeking comment on whether a Regulatory Guidance Letter is the best way to document the categorical exclusions that are approved under this NWP or if another document, such as a Federal Register notice, would provide better notice to the public. Providing notice of the approved changes in the Federal Register ensures the broadest dissemination of the decision and is a more appropriate format for a decision process that was subject to public comment process. The list of approved categorical exclusions would still be made available on the Corps Headquarters website.

NWP 24. Indian Tribe or State Administered Section 404 Programs. The Corps is proposing to modify this NWP to remove Florida from the list of states that have been approved by EPA to administer their own Clean Water Act section 404 permit program under the authority of 33 U.S.C. 1344(g)-(l). EPA's approval of Florida's assumption of the Clean Water Act section 404 permit program was vacated by the District Court for the District of Columbia in 2024.

NWP 27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities. This NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for the restoration, enhancement, and establishment of aquatic ecosystems, as long as those activities result in net gains in aquatic resource functions and services. The Corps is proposing numerous changes to NWP 27 to provide a more efficient, effective, and less costly process for authorizing voluntary aquatic ecosystem restoration, enhancement, and establishment activities that are intended to produce net increases in aquatic ecosystem functions and services. NWP 27 can also be used to authorize activities to restore and enhance waters of the United States which are conducted by other federal agencies. These changes will not affect the availability of NWP 27 to authorize discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for aquatic ecosystem restoration, enhancement, and establishment activities conducted by Corps-approved mitigation banks to generate mitigation credits for DA permits. The review and approval of mitigation

banks by the Corps is a separate process governed by the Corps' regulations at 33 CFR 332.8.

The Corps is proposing to change the title of this NWP to refer to "aquatic ecosystems" instead of "aquatic habitats" because activities authorized by this NWP should, over time, produce net increases in a variety of aquatic ecosystem functions and services. The Corps is also proposing to modify the paragraph that requires NWP 27 activities to resemble ecological references, and include ecological references that are cultural ecosystems and ecological references based on indigenous and local ecological knowledge. In addition, the Corps is proposing to remove the list of examples of activities authorized by this NWP and modify the list of categories of activities that are not authorized by this NWP. The Corps is proposing to require the submission of Reports for all NWP 27 activities and remove the "Notification" paragraphs from this NWP. However, PCNs will still be required when PCN thresholds in the NWP general conditions (e.g., general condition 18, endangered species) or regional conditions added by division engineers are triggered. Lastly, the Corps is proposing to add a new Note (Note 2) to this NWP to state that if an NWP 27 activity requires pre-construction notification because of an NWP general condition or a regional condition imposed by a division engineer, the baseline information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

NWP 27 is used primarily for voluntary aquatic ecosystem restoration, enhancement, and establishment activities conducted by various entities such as non-governmental organizations, tribes, land stewards, private landowners, and federal, tribal, state, and local government agencies. NWP 27 is also used for required restoration activities conducted by other federal agencies. Voluntary aquatic ecosystem restoration, enhancement, and establishment activities are not subject to the requirements for compensatory mitigation projects identified in 33 CFR part 332. For voluntary aquatic ecosystem restoration, enhancement, and establishment activities, project proponents can decide whether, and how, they establish goals, objectives, and ecological performance criteria, and monitor, evaluate, and report project outcomes. Project proponents can also determine whether their voluntary aquatic ecosystem restoration, enhancement, or establishment projects have achieved their goals, objectives, and ecological performance criteria.

NWP 27 may also be used by third-party mitigation providers (e.g., mitigation bank sponsors and in-lieu fee program sponsors) to authorize activities regulated under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899 for the construction of mitigation banks and in-lieu fee projects. The mitigation banking instrument or in-lieu fee program

instrument approved by the Corps is the legal document for the establishment, operation, and use of a mitigation bank or an in-lieu fee program, but it does not authorize the regulated activities that may be needed to physically conduct the aquatic resource restoration, enhancement, or establishment that generate mitigation bank or in-lieu fee program credits. Those regulated activities may be authorized by NWP 27, individual permits, or regional general permits.

In addition, NWP 27 may be used to authorize regulated activities for implementing permittee-responsible mitigation projects, especially advance permittee-responsible mitigation projects. When an activity authorized by a DA permit requires permittee-responsible mitigation, authorization of the regulated activities that need to be conducted to implement the approved mitigation plan for the permittee-responsible mitigation project is usually included in the DA authorization for the permitted activity. However, there may be situations where regulated activities for the permittee-responsible mitigation are not authorized by the DA permit and a separate DA authorization is needed to implement the permittee-responsible mitigation project. Those situations usually include advance permittee-responsible mitigation, because those permittee-responsible mitigation projects are implemented in advance of the Corps issuing permits for the activities that will use the advance permittee-responsible mitigation to fulfill the required compensatory mitigation. When an activity is authorized by a general permit, and the district engineer requires permittee-responsible mitigation to offset permitted impacts, if the general permit authorization does not cover the regulated activities needed to implement the required permittee-responsible mitigation, those activities may be authorized by NWP 27.

Proposed Change to the Title of NWP 27

The Corps is proposing to change the title of this NWP to refer to “aquatic ecosystems” instead of “aquatic habitat” because this NWP requires authorized activities to result in net increases in aquatic resource functions and services. NWP 27 activities must provide net increases to an appropriate suite of ecosystem functions and services, including hydrologic, biogeochemical cycling, and habitat support functions, as well as the ecosystem services (benefits) that may be produced by those functions. The benefits may be to human populations, and the benefits may also be to the ecosystems themselves (Comberti et la. 2015). The suite of functions and services produced by aquatic ecosystem restoration, enhancement, and establishment activities is likely to vary on a project-by-project basis, and may be dependent on a variety of factors such as landscape or seascape context, the legacies of past land or water use, the various drivers of ecosystem structure and function at various scales, ecosystem dynamics, and the techniques used for the aquatic ecosystem restoration, enhancement, or establishment activities.

The general categories of functions typically performed by wetlands include hydrologic functions, water quality improvement, vegetation support, habitat support for animals, and soil functions (National Research Council (NRC) 2001). For riverine ecosystems (i.e., rivers and streams and their riparian areas and floodplains), the general categories of functions they perform include system dynamics, hydrologic balance, sediment processes and character, biological support, and chemical processes and pathways (Fischenich 2006). Oceans, estuaries, lakes, and other aquatic ecosystems may perform some of these functions and they may perform other functions. In terms of ecosystem services, there are four general categories performed by waters and wetlands: provisioning, regulating, supporting, and cultural (Millennium Ecosystem Assessment 2005). Other classification systems for ecosystem services may be used, depending on the purpose for considering ecosystem services (e.g., Costanza 2008).

NWP 27 requires that authorized activities result in net gains in aquatic ecosystem functions and services, and it may take various amounts of time after the restoration, enhancement, or establishment activity is implemented before the net increases in functions and services are produced by the restored, enhanced, or established aquatic ecosystem. Different functions usually develop at different rates after restoration, enhancement, or establishment activities are conducted (e.g., Lewis et al. 1995, Bullock et al. 2011). For example, in wetlands hydrologic functions develop fairly quickly after the restoration activity is initiated, but habitat functions may take longer to develop as plant and animal communities, and soils, respond to the restoration action. Restored, enhanced, or establish aquatic ecosystems need to go through ecosystem development processes to improve the physical, chemical, and biological process that generate ecosystem functions and services.

Proposed Changes to Ecological Reference Requirement

In 2017, the Corps added a paragraph to NWP 27 (see 82 FR 1989) requiring aquatic habitat restoration, enhancement, and establishment activities to be planned, designed, and implemented to produce aquatic habitat that resembles ecological references. This change was made in response to several comments received in response to the June 1, 2016, proposed rule to reissue and modify the NWPs (81 FR 35186), where several commenters expressed concern about project proponents using NWP 27 to authorize activities that are not aquatic ecosystem restoration activities, and they said those activities should be authorized by other NWPs, regional general permits, or individual permits instead of NWP 27. Examples of activities identified by those commenters included bank stabilization activities, culvert replacements, stormwater management activities, pollutant reduction best management practice facilities

constructed to meet Total Daily Maximum Loads (TMDLs) established under section 303(d) of the Clean Water Act, and the construction of living shorelines.

The activities identified in the previous paragraph may be authorized by NWP 13 (bank stabilization activities), NWP 14 (culvert replacements for linear transportation projects), NWP 43 (stormwater management activities and pollutant reduction best management practice facilities constructed to meet TMDLs established under section 303(d) of the Clean Water Act), and NWP 54 (living shorelines). The Corps is proposing to retain the ecological reference requirement in NWP 27, with some proposed modifications, to keep the DA authorization provided by this NWP limited to aquatic ecosystem restoration, enhancement, and establishment activities that resemble ecological references. Activities intended to produce or improve specific ecological functions, such as ecological engineering activities that include engineered or artificial components that do not resemble ecological references, are more appropriately authorized by other NWPs (e.g., NWP 13 (bank stabilization activities), NWP 14 (culvert replacements for linear transportation projects), NWP 43 (stormwater management activities and pollutant reduction best management practice facilities constructed to meet TMDLs established under section 303(d) of the Clean Water Act), and NWP 54 (living shorelines)), an appropriate regional general permit, or an individual permit.

The Corps is proposing to modify the ecological reference requirement to clarify that ecological references are based on natural ecosystems. Natural ecosystems are "developed by natural processes and are self-organizing and self-maintaining" (Society for Ecological Restoration International Science & Policy Working Group 2004). Ecological references may be based on the characteristics of aquatic ecosystems or riparian areas that currently exist in the region, or that existed in the region in the past. Natural ecosystems have been impacted by human influences to varying degrees and may be managed by people to varying degrees. The Corps is also proposing to add a sentence to this NWP stating that ecological references include cultural ecosystems. Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human activities (Clewell and Aronson 2013), specifically ecosystem management activities such as fire stewardship. Other examples of stewardship activities conducted by people, including indigenous and local societies, in cultural ecosystems are soil management and cultivating and harvesting plant species of cultural importance (Comberti et al. 2015). Understanding that all ecosystems are cultural ecosystems to varying degrees because of pervasive human influences on these ecosystems is important for establishing realistic and achievable goals and objectives for aquatic ecosystem restoration, enhancement, and establishment activities, for human-influenced ecological references. Including cultural ecosystems as ecological references is intended to recognize that people have managed and altered ecosystems for

thousands of years (Ellis 2021) to produce desired functions and services. The concept of cultural ecosystems also recognizes that people, including people in indigenous and local societies, have long had reciprocal relationships with ecosystems (Dìaz et al. 2018, Comberti et al. 2015), with ecosystems providing services to people and people providing services to ecosystems.

Aquatic ecosystem restoration, enhancement, and establishment activities may use different types of applicable knowledge, including indigenous and local ecological knowledge, to guide the planning, implementation, and stewardship of those activities (Dickson-Hoyle et al. 2022). Therefore, the Corps is proposing to modify the last sentence of the second paragraph of this NWP to state that an ecological reference may also be based on regional ecological knowledge, including indigenous and local ecological knowledge, of the target aquatic ecosystem type or riparian areas.

Proposed Removal of List of Examples of Authorized Activities

The Corps is proposing to remove the third paragraph of the 2021 NWP 27, which provided a list of examples of aquatic ecosystem restoration, enhancement, or establishment activities that could be authorized by NWP 27. The Corps is proposing to remove that list of examples because there are many techniques and approaches to restoring, enhancing, and establishing aquatic ecosystems that may involve discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. The list of examples have been interpreted by some entities as being the only activities that can be authorized by NWP 27, instead of examples of techniques and approaches that can be used for aquatic ecosystem restoration, enhancement, and establishment activities that result in net increases in aquatic ecosystem functions and services.

New techniques and approaches for aquatic ecosystem restoration, enhancement, and establishment activities are being developed by ecosystem restoration practitioners as they gain experience and adapt to monitoring results and other lessons learned from previous aquatic ecosystem restoration, enhancement, and establishment efforts. Effective techniques and approaches for restoring, enhancing, or establishing aquatic ecosystems may also vary by geographic region to address regional differences in aquatic ecosystem structure, functions, and dynamics, the ecosystem services they provide, and how those aquatic ecosystems are managed. Removing the list of examples from the text of NWP 27 eliminates the need to add or remove examples as the knowledge base for ecosystem restoration and management develops and expands, and more effective ecosystem restoration approaches replace less effective ecosystem restoration approaches.

NWP 27 is available to authorize regulated activities for the restoration, enhancement, and establishment of aquatic ecosystems when those activities resemble ecological references, produce net gains in aquatic resource functions and services, and cause no more than minimal individual and cumulative adverse environmental effects, regardless of the specific techniques used. The determination that an NWP 27 activity has come to resemble an ecological reference should be made after the activity has had sufficient time to undergo ecosystem development processes after the discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States have been conducted. That timeframe should allow for any necessary corrective measures or adaptive management actions that may need to be done by the project proponent to try to achieve the goals and objectives of the aquatic ecosystem restoration, enhancement, or establishment activity.

Except for replacing "resources" with "ecosystem" to be consistent with the proposed change to the title of this NWP, the Corps is not proposing changes to the fourth paragraph of the 2021 NWP 27 (now proposed as the third paragraph). That paragraph states that NWP 27 authorizes the relocation of non-tidal waters, including non-tidal wetlands, and streams, on the project site provided there are net increases in aquatic ecosystem functions and services.

Proposed Changes to List of Activities Not Authorized by NWP 27

The current text of NWP 27 states that it does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type or uplands, except for the relocation of non-tidal waters on the project site. This provision was added to NWP 27 in 2007 (see 72 FR 11185) to prevent NWP 27 from being used to authorize discharges of dredged or fill material into waters of the United States for the construction of impoundments in streams to create wetlands, or for constructing green-tree reservoirs (see 72 FR 11119). This provision was not intended to prevent NWP 27 from being used to authorize discharges of dredged or fill material into waters of the United States for aquatic ecosystem restoration and enhancement activities that aim to reinitiate or restore natural physical, chemical, and/or biological processes in dynamic ecosystems where components of those ecosystems (e.g., stream channels, wetlands, and floodplains) interact with each other and change over time and space in response to various internal and external drivers, such as floods, sediment transport and deposition, changing precipitation patterns, and organisms (e.g., vegetation, beaver).

During the implementation of the 2021 NWPs, the Corps received suggestions from a number of restoration practitioners, including private entities, government agencies, and non-governmental organizations, who conduct process-based river and stream restoration activities (e.g., riverscape

restorations) regarding potential changes to NWP 27 to make it clear that restoration of these dynamic ecosystems can be authorized by that NWP. Some organizations and restoration practitioners that fund or implement process-based river and stream restoration projects have reported that the current text of NWP 27, especially the provision that prohibits the conversion of a stream or natural wetlands to another aquatic habitat type, has in some situations prevented them from using NWP 27 to authorize those aquatic ecosystem restoration activities. They suggested that the Corps remove the sentence containing that provision because process-based river and stream restoration projects often produce dynamic systems where the locations and extents of river and stream channels, floodplains, and wetlands in a valley or river corridor change in response to flood events and other drivers and those changes have been viewed by some reviewers in some instances as "conversions" of streams or natural wetlands to another aquatic use that are not authorized by NWP 27.

In response to those suggestions, the Corps is proposing to modify this NWP by removing a sentence that specifies that this NWP does not authorize the conversion of a stream or natural wetland to another aquatic type. Examples of such process-based river or stream restoration activities that may have been disqualified from NWP 27 authorization in some situations by that sentence include low-tech river or stream corridor restoration activities (e.g., Wheaton et al. 2019), including the use of beaver dams or beaver dam analogues to restore incised streams and their floodplains (e.g., Pollock et al. 2014) and the use of native materials such as large wood harvested on-site to construct wood jams that promote reconnecting stream channels to their floodplains (e.g., Ciotti et al. 2021).

The Corps is proposing to remove that sentence from NWP 27 to facilitate the use of this NWP to authorize regulated activities associated with process-based river and stream restoration projects, and the potential gains in aquatic ecosystem functions and services and other watershed benefits that such restoration projects have the potential to provide, including greater ecosystem resilience and sustainability. There are other provisions in NWP 27, including some proposed modifications discussed in this proposed rule, that will provide guardrails to help ensure that activities authorized by NWP 27 provide net gains and aquatic ecosystem functions and services and result in no more than minimal individual and cumulative adverse environmental effects. One of those provisions is the requirement that NWP 27 activities resemble ecological references, which was added to NWP 27 in 2017 (see 82 FR 1989). Another one is the expanded requirement for project proponents to submit reports to district engineers to give them 30 days to notify project proponents if their proposed activities do not qualify for NWP 27.

Process-based river and stream restoration attempts to reestablish the rates and degrees of physical, chemical, and biological processes that sustain riverine ecosystems, including their floodplains (Beechie et al. 2010). They identify four principles for process-based restoration of rivers and streams: (1) focusing on addressing the root causes of ecosystem change; (2) tailoring restoration actions to local potential; (3) matching the scale of restoration to the scale of the problem causing ecosystem change; and (4) establishing explicit expectations for restoration outcomes (Beechie et al. 2010). Under a process-based restoration approach, rivers and streams are not just seen as channels, but as complex and changing systems within a valley floor where fluvial processes occur (Ciotti et al. 2021).

Ecosystems, including aquatic ecosystems, are constantly changing, they typically exhibit non-equilibrium dynamics, and they can exist in a number of alternative states (e.g., Perring et al. 2015, Holl 2020).The most diverse, ecologically valuable river and stream habitats are characterized by dynamic migration and flooding (Kondolf 2011). Where feasible and appropriate, the river or stream corridor should be given sufficient space ("process space") for physical, chemical, and biological processes and the riverine system's intrinsic energy to drive changes in structure and function (e.g., Ciotti et al. 2021) as disturbances, changing environmental conditions, and other drivers of ecosystem structure and function occur.

Process-based restoration approaches may also be used for the purpose of reconnecting rivers and streams with their floodplains when those rivers and streams have become incised and disconnected from their floodplains. Reconnecting rivers and streams with their floodplains can be accomplished by activities such as reintroducing beaver with the intent that they would construct dams, and the installation of log jams that extend across the width of the river or stream channel (Polvi and Wohl 2013) to slow water and sediment transport so that the channel aggrades and becomes reconnected to its floodplain. These objectives may also be accomplished by installing beaver dam analogues (BDAs) and post assisted log structures (PALS) (Wheaton et al. 2019). Restored river and stream corridors may have multi-thread (anastomosing) river and stream channels interspersed with wetlands and floodplains. Some restored river and stream corridors may have single-thread river and stream channels with adjacent wetlands, especially in narrow valleys.

Recent work (e.g., Merritts et al. 2011, Wohl et al. 2021) has found that multithreaded networks of stream channels and wetlands were common in North America and Europe before land use changes (especially deforestation and agricultural conversions), mill dam construction, and other activities caused substantial sediment deposits to accumulate in valleys where these anastomosing riverine systems were located. These sediment deposits often

resulted in single thread stream channels that are now a common target for stream restoration activities. With increasing awareness of anastomosing river-wetland corridors as ecosystems that have the potential to provide greater ecological diversity, complexity, richness, and functionality (Cluer and Thorne 2013), as well as ecosystem services, there is greater interest in using these anastomosing river-wetland systems as ecological references for restoration activities in valleys that can accommodate these restoration targets.

Some process-based river and stream restoration approaches attempt to restore these aquatic ecosystems to improve their dynamism and diversity (Powers et al. 2018). They may also attempt to improve habitat for native fish species, other species that utilize river and stream channels and riparian areas, and improve or protect water quality (Flitcroft et al. 2022). They may attempt to restore river and stream valleys to Stage 0 of a modified river and stream channel evolution model proposed by Cluer and Thorne (2013). Stage 0 is described by Cluer and Thorne (2013) as a "pre-disturbance, dynamically meta-stable network of anabranching channels and floodplain with vegetated islands supporting wet woodland or grassland." Their proposed stage 0 addressed research in North America (e.g., Merritts et al. 2011) that found that pre-disturbance stream-wetland corridors in North America consisted of multi-threaded (anastomosing or anabranching) stream channels and their floodplains that were inundated several times per year. In the eastern United States, these multi-channel stream-floodplain-wetland systems were disturbed by the accumulation of sediment in valleys caused by the construction of mill dams, clearing forests, and the development of agricultural land (Walter and Merritts 2008), which often changed multi-threaded channels into single threaded channels as the stream eroded the substantial depths of sediment that accumulated in the valley over many years.

Stage 0 streams can provide more diverse habitats and ecosystem functions than single-threaded stream corridor systems (Cluer and Thorne 2013). The anastomosing stream systems characterized by stage 0 can provide a variety of diverse habitats, refuge areas during flood events, refuge areas during drought, resistance to natural and anthropogenic disturbances, and improved water quality (Cluer and Thorne 2013). There is increased interest in using stage 0 stream systems as an ecological reference for river and stream corridor restoration projects because of the functions and services they provide, as well as potential for greater resilience to changing environmental conditions.

Process-based approaches may also be used for wetland restoration, enhancement, and establishment activities. For wetlands, the focus would be on re-establishing or establishing appropriate hydrological conditions (Mitsch and Gosselink 2015) that drive wetland ecosystem development and the functions and services they provide. Appropriate hydrological conditions include the

hydroperiod, which is the hydrologic signature of a wetland that establishes and maintains a wetland's structure and function (Mitsch and Gosselink 2015). The hydrologic signature consists of hydrologic inputs and outputs, such as water depth, flow patterns, and the duration and frequency of flooding. A wetland's hydrologic signature influences abiotic factors, including soil anaerobiosis, nutrient availability, and in coastal wetlands, salinity, and those abiotic factors determine which plant and animal species and other organisms will inhabit a wetland (Mitsch and Gosselink 2015). Wetland restoration, enhancement, and establishment activities that focus on providing an appropriate hydrologic signature would allow natural energy, self-organization, and physical, chemical and biological processes to drive the development of wetland structure and function. Focusing on restoring wetland processes and giving the wetland the ability and space to respond to changing environmental conditions and other anthropogenic and natural disturbances may result in more resilient and sustainable wetlands.

Process-based river and stream restoration activities may require less maintenance than other restoration approaches, including form-based restoration, because of their ability to respond to, and adapt to, internal and external drivers of ecosystem change (e.g., Kondolf 2011, Ciotti et al. 2021). Attempting to restore aquatic ecosystems to specific forms, instead reinstating ecological processes that allow for variability and responding to changing environmental conditions, can also reduce habitat variability and ecological resilience (Hiers et al. 2016), and may provide fewer ecological functions than restoration actions that allow rivers and streams to flood and self-adjust (Kondolf 2011) in response to disturbances.

Process-based river and stream corridor restoration projects are likely to have the ability to self-adjust in response to changes in hydrology, sediment loads, watershed land use, and other drivers of river and stream structure and function, as long as those riverine systems are given sufficient space to make those adjustments. Giving rivers and streams, and their associated wetlands, floodplains, and riparian areas, space to adjust within a channel migration zone has the most potential to produce sustainable river and stream corridor restoration projects (Kondolf 2011). In contrast, form-based river and stream restoration approaches such as channel reconstruction and bank stabilization activities are more likely to require active management and maintenance activities to address changing environmental conditions, including land uses within the watershed (Ciotti et al. 2021, Hiers et al. 2016). Form-based river and stream restoration activities may be more likely to fail as hydrology and sediment loads change, because those approaches make riverine systems less resilient to such changes (Tullos et al. 2021).

Modifying NWP 27 by removing the provision prohibiting the use of the NWP for conversion of a stream or natural wetlands should make it clear that this NWP authorizes the restoration of river-wetland corridors even though the dynamics of these corridors generally results in changes in stream channels, wetlands, riparian areas, and floodplains over time because of natural processes. This proposed modification to NWP 27 is consistent with the Corps' definition of "restoration," which is "the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource." 33 CFR 332.2. The definition of restoration is provided in Section F of this proposed rule, as it has been provided in previous reissuances of the NWPs since 2007. Because restoration is defined as returning natural/historic functions to a former or degraded aquatic resource, activities authorized by NWP 27 should include changes in habitat type or structure as long as those changes would result in an aquatic ecosystem restoration or enhancement project that resembles an ecological reference, whether that ecological reference is based on existing aquatic ecosystems in the region (including cultural ecosystems), or historic information concerning aquatic ecosystem structure, functions, and dynamics that are relevant to the region.

Process-based river and stream corridor restoration projects may use low-tech approaches, such as beaver dam analogues (BDAs) and post-assisted log structures (PALS), to restore river-wetland corridors that have become impaired because of a lack of large wood and beaver dams in these riverscapes (e.g., Wheaton et al. 2019). The ecological reference requirement in NWP 27 does not prevent the use of BDAs and PALS to conduct these process-based river and stream corridor restoration activities because those structures mimic beaver dams and clusters of large wood that may be found in ecological references where beaver and large wood have not been removed or substantially reduced.

In addition, the Corps is proposing to remove the sentence that states that changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type, because the rehabilitated wetland should resemble an ecological reference that has a similar pattern of wetland hydrology and hydroperiod. The Corps is also proposing to retain the sentence that states that NWP 27 does not authorize stream channelization. Furthermore, the Corps is proposing to retain the provision stating that NWP 27 does not authorize discharges of dredged or fill material into waters of the United States, or structures and work in navigable waters of the United States, to relocate tidal waters or convert tidal waters, including tidal wetlands, to other aquatic uses such as the conversion of tidal wetlands into open water impoundments.

The Corps is proposing to add a provision to NWP 27 stating that it does not authorize dam removal activities. The removal of low-head dams may be

authorized by NWP 53, which was first issued in 2017 (see 82 FR 1997). NWP 53 was reissued in 2021 (see 86 FR 73581) and it generally defines a "low-head dam." A low-head dam provides little or no storage function, so the removal of low-head dams is unlikely to result in substantial releases of sediment downstream when the low-head dam structure is removed. The proposed modification of NWP 27 that would not allow it to be used to authorize dam removal activities would apply to all types of dams, especially storage dams. The removal of storage dams is more likely to have the potential to cause temporary adverse impacts to the aquatic environment that are more than minimal, such as potential releases of large amounts of sediment that may have accumulated upstream of the storage dam. The removal of storage dams can be authorized through the individual permit process, so that a more thorough evaluation of the potential temporary and permanent adverse impacts caused by the dam removal activity can be conducted. NWP 27 can be used to authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area in conjunction with use of NWP 53 to authorize removal of the low-head dam.

With respect to using NWP 27 to authorize discharges of dredged or fill material into waters of the United States and/or structures or work in navigable waters of the United States to construct, maintain, or expand nature-based solutions, it can only be used to authorize nature-based solutions that resemble ecological references. Examples of nature-based solutions that might be authorized by NWP 27 include:

- Thin-layer placement of dredged material to sustain wetlands and other aquatic habitats.
- Placement of spoil material to elevate a degraded riverbed and restore geomorphic processes.
- Alignments of river channel within the existing floodway to enhance riverine function and connectivity.
- Reservoir sediment management activities to maintain continuity of sediment transport through the river network to sustain downstream aquatic habitats (e.g., downstream geomorphology) and terrestrial habitats (non-wetland riparian areas and floodplains) (see 86 FR 73544-73548).
- Restoration of fringe wetlands in estuaries and lakes to reduce bank erosion.
- Restoration of oyster reefs, coral reefs, and other types of subtidal or intertidal habitats to provide habitat, support biodiversity, and provide a variety of co-benefits (e.g., reduced shoreline or bank erosion).
- The re-establishment, rehabilitation, establishment, or enhancement of riparian areas and wetlands to trap or transform sediments and pollutants

carried by surface run-off or shallow subsurface flows before that water reaches rivers, streams, lakes, estuaries, ocean waters.
- Use of dredged material to re-establish, rehabilitate, enhance, or establish wetlands or other aquatic habitats.
- Process-based restoration of river corridors (i.e., river and stream channels and their associated floodplains, riparian areas, and wetlands), to increase the functions and services provided by river corridors and provide increased resilience to drought and wildfires.

Nature-based solutions that resemble ecological references can produce co-benefits that are byproducts of the structure, function, and dynamics of an ecological reference. One example is reservoir sediment management activities that provide a co-benefit of maintaining the storage capacity of the reservoir, which may reduce the need to construct additional reservoirs in the region. Another example is the restoration of river-wetland corridors that can provide resilience to droughts, floods, and wildfires (Tullos et al. 2021).

NWP 27 does not authorize the construction, maintenance, or expansion of nature-based solutions that consist of a combination of natural ecosystems and artificial, engineered features because those activities would not resemble ecological references. Portions of a single and complete project (as defined in 33 CFR 330.2(i)) that resemble an ecological reference may be authorized by NWP 27 and other portions of the same project with artificial, engineered features may be authorized by other NWPs, such as NWP 13 (bank stabilization), NWP 43 (stormwater management activities), or NWP 54 (living shorelines). NWP 27 can be used to authorize the removal of culverts and other obstructions from waters and wetlands, but it cannot be used to replace existing culverts or structures with new culverts or other artificial structures, because culverts and similar structures do not resemble ecological references. The Corps is proposing to issue a new NWP (proposed new NWP A in this proposed rule) to authorize activities to improve passage for fish and other aquatic organisms and restore or enhance other critical ecological processes, such as nature-based fishways, which are a type of nature-based solution that often have artificial, engineered features to help fish and other aquatic organisms move around barriers.

Proposed Changes to the Reversion Provision

In the “Reversion” provision of NWP 27, the Corps is proposing to add the Bureau of Land Management to the list of federal agencies that can execute binding stream and wetland restoration and enhancement agreements, or wetland establishment agreements, with landowners. Those activities may be authorized by this NWP if they result in net gains in aquatic ecosystem functions and services, resemble ecological references, and cause no more than minimal individual and cumulative adverse environmental effects.

Proposed Changes to Reporting Requirements

In 2007, NWP 27 was modified to include a "Report" requirement for proposed activities that do not require PCNs to give district engineers an opportunity to review those proposed activities to ensure that they comply with the terms and conditions of this NWP (see 71 FR 56269). District engineers have 30 days to review the reported NWP 27 activities, including the: (1) binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the Surface Mining Control and Reclamation Act (SMCRA) permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency (see 72 FR 11186). If a district engineer determined that a proposed activity did not qualify for NWP 27 authorization, she or he would need to notify the project proponent within that 30-day period that another form of DA authorization would be required for the proposed activity. The Report requirement was developed so that standard PCNs would not be required for activities covered under the three categories listed above, to reduce documentation burdens and compliance costs for project proponents conducting aquatic habitat restoration, enhancement, or establishment activities.

The Corps is proposing to expand the "Report" requirement to all activities authorized by this NWP, except for those aquatic ecosystem restoration, enhancement, or establishment activities that require PCNs because of NWP general conditions such as general condition 18 (endangered species) or regional conditions imposed by division engineers that add PCN requirements for NWP 27 activities. Requiring the submission of reports for proposed NWP 27 activities is intended to provide a more efficient and effective process for authorizing voluntary aquatic ecosystem restoration, enhancement, and establishment activities, and reduce compliance costs for entities undertaking these environmentally beneficial projects.

The Corps is proposing to modify the information that project proponents are required to submit for the required reports. The proposed information requirements are intended to provide information to help district engineers assess whether the proposed NWP 27 activity is likely to resemble an ecological reference, produce a net increase in aquatic resource functions and services, and cause no more than minimal individual and cumulative adverse environmental effects. The report must include the project proponent's name, address, and telephone numbers, as well as the location of the proposed activity. The reporting requirement requires the permittee to provide general information on the baseline ecological conditions at the project site, including a general

description and map of the approximate boundaries of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type.

The report also requires the permittee to submit a sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site to generally depict the restoration, enhancement, and/or establishment actions the permittee proposes to take to increase aquatic ecosystem functions and services at that site. The required sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site will be used by district engineers to determine whether the proposed NWP 27 activity is likely to resemble an ecological reference.

The report must also include a description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site. If the project proponent has executed a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Ocean Service, U.S. Forest Service, Bureau of Land Management, or their designated state cooperating agencies, a copy of that agreement must be included in the report. If applicable, the report must also include the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action. Lastly, the report must include, if applicable, the SMCRA permit issued by OSMRE or the applicable state agency.

Proposed Removal of Notification Requirement

The Corps is proposing to remove the PCN thresholds from this NWP and in their place require every project proponent to submit a Report for their proposed activity to give district engineers 30 days to review the proposed aquatic ecosystem restoration, enhancement, or establishment activity. If the district engineer reviews the report, and he or she determines that the proposed activity is unlikely to resemble and ecological reference, is unlikely to or result in net increases in aquatic ecosystem functions and services, and/or is likely to result in more than minimal adverse environmental effects, then she or he will inform the project proponent that the proposed activity is not authorized by NWP 27. The Corps is proposing this change to NWP 27 to provide a more efficient and effective process for authorizing aquatic ecosystem restoration,

enhancement, and establishment activities, especially for voluntary activities conducted by non-governmental organizations, government agencies, and entities that conduct aquatic ecosystem restoration, enhancement, and establishment activities.

Pre-construction notifications will still be required for some NWP 27 activities, when PCNs are required because of NWP general conditions (e.g., general condition 18, endangered species; general condition 20, historic properties) or by regional conditions imposed by division engineers.

Proposed New Note 2

The Corps is proposing to add a new Note to NWP 27 to address one of the information needs for PCNs when PCNs are required for NWP 27 activities because of NWP general conditions or regional conditions imposed by division engineers. The current Note in NWP 27 would be redesignated as "Note 1." The proposed new Note 2 states that if an NWP 27 activity requires a PCN because of an NWP general condition or a regional condition imposed by a division engineer, the information on baseline ecological conditions of the project site provided by item (3) of the Report requirement, including the general description and map of aquatic and terrestrial habitat types and their approximate boundaries on that site, substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of NWP general condition 32, pre-construction notification.

The general description and map of aquatic and terrestrial habitat types on that project site with their approximate boundaries is similar to a delineation of waters, wetlands, and other special aquatic sites that is required for PCNs for other NWP activities under paragraph (b)(5) of general condition 32. Both the general description and map of aquatic and terrestrial habitat types on the project site required by item (3) of the Report requirement in NWP 27 and the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32 for NWP PCNs serve the same purpose of describing the baseline ecological conditions on a site for a proposed NWP activity. The baseline ecological information is used by district engineers to evaluate the potential impacts of a proposed NWP activity, and for NWP 27 activities, help assess whether the proposed activity is likely to result in net increases in aquatic ecosystem functions and services.

NWP 27 does not have any quantitative limits, such as acreage limits, where determining precise locations of wetland boundaries, ordinary high water marks, high tide lines, boundaries of special aquatic sites, or other boundaries may be needed to determine whether an acreage limit or other quantitative limit of an NWP might be exceeded by a proposed activity requiring DA authorization.

The criteria used to determine whether a proposed aquatic ecosystem restoration, enhancement, or establishment activity is authorized by NWP 27 are qualitative, so precise delineations of boundaries of waters, wetlands, and other special aquatic sites are not needed for this NWP.

As a general matter, determining precise boundaries for waters, wetlands, and other special aquatic sites on the project site is unnecessary for aquatic ecosystem restoration, enhancement, and establishment activities because these activities are intended to provide net increases in aquatic ecosystem functions and services. So for NWP 27 activities, a general description and map of approximate boundaries of aquatic and terrestrial habitats on the project site should be sufficient for providing environmental baseline information for district engineers to review in Reports and, when required, PCNs. Another reason why qualitative ecological baseline information is sufficient for NWP 27 activities is that aquatic ecosystems are dynamic and their boundaries are likely to change over time in response to stochastic variations in ecological processes, environmental changes, and natural and anthropogenic disturbances. It should also be noted that in some landscapes (e.g., where the gradient between wetlands and uplands is gentle) it might not be possible to identify a precise location for a wetland-upland boundary (NRC 1995).

Paragraph (b)(5) of general condition 32 states that wetland delineations must be prepared in accordance with the current method required by the Corps. The current wetland delineation method required by the Corps consists of the 1987 Corps of Engineers Wetlands Delineation Manual (Technical Report Y-87-1) and the appropriate regional supplement to the 1987 Wetlands Delineation Manual. There are 10 regional supplements to the 1987 Wetlands Delineation Manual, and those regional supplements are available at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/ (accessed October 18, 2024).

The 1987 Corps of Engineers Wetlands Delineation Manual (1987 Manual) discusses two general types of wetland delineation methods: routine and comprehensive. Routine determinations utilize simple, rapidly applied methods that produce sufficient qualitative information for making a wetland determination. Comprehensive wetland delineation methods usually require substantial amounts of time and effort to gather quantitative information to make the wetland determination.

Section D of Part IV of the 1987 Manual describes general procedures for making routine wetland determinations. A routine wetland determination may be made with or without a site visit. Section E of Part IV of the 1987 Manual describes general procedures for making comprehensive wetland determinations. Comprehensive wetland determinations usually involve

production of a maximum amount of information, which is often quantitative information The 1987 Manual states that comprehensive wetland determinations should only be used for very complex project areas and/or when the wetland determination requires rigorous documentation.

For aquatic ecosystem restoration, enhancement, and establishment activities authorized by NWP 27, a qualitative approach similar to the routine wetland determination described in Section D of Part IV of the 1987 Manual will normally be sufficient to provide the baseline information required by proposed item (3) of the Reporting requirement for NWP 27. If the proposed NWP 27 activity requires a PCN because of an NWP general condition, such as paragraph (c) of general condition 18 (endangered species), or a regional condition imposed by a division engineer, then the baseline information provided by item (3) of the Reporting requirement can substitute for a delineation of waters, wetlands, and other special aquatic sites prepared under the general approach described in Section D of Part IV of the 1987 Manual for routine wetland delineations. Paragraph (b)(5) of general condition 32 only requires the delineation of waters, wetlands, and other special aquatic sites (i.e., a map or drawing), and it does not specify whether a routine or comprehensive delineation approach needs to be used. Paragraph (b)(5) of general condition 32 does not require quantitative information to be provided in support of a delineation of waters, wetlands, and other special aquatic sites. In addition, paragraph (b)(5) does not require the submittal of a wetland delineation report or data forms with the delineation of waters, wetlands, and other special aquatic sites. Therefore, the general description and map of aquatic and terrestrial habitat types on the NWP 27 project site required by paragraph (3) of the Reporting requirement should be a sufficient substitute for a delineation prepared to satisfy paragraph (b)(5) of general condition 32 when an NWP 27 activity requires a PCN.

For waters where the ordinary high water mark indicates the geographic limit of the Corps' jurisdiction, there have been manuals developed for identifying ordinary high water marks. Those manuals are available at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/techbio/ (accessed January 29, 2025) under "Stream Channel Identification and Delineation." There are currently no nationally available manuals for identifying the boundaries of special aquatic sites that are not wetlands, such as sanctuaries and refuges, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes, although there may be regional manuals available that were developed by other agencies or other organizations.

The Corps is proposing to add Note 2 to NWP 27 as part of its effort to provide a more efficient and cost-effective approach to authorizing voluntary aquatic ecosystem restoration, enhancement, establishment activities that are expected to produce net gains in aquatic ecosystem functions and services and

cause no more than minimal individual and cumulative adverse environmental effects. The costs of preparing wetland delineations under the comprehensive method described in the 1987 Manual and using similar approaches for waters and other special aquatic sites can be cost prohibitive to federal, tribal, state, and local government entities, non-governmental organizations, and landowners that want to conduct voluntary aquatic ecosystem restoration, enhancement, and establishment activities to help improve the functions and services provided by aquatic ecosystems. The costs of producing highly detailed, quantitative delineations of waters, wetlands, and other special aquatic sites can consume funds that could be more beneficially expended on either conducting those restoration and enhancement activities over larger areas, or at more sites.

NWP 43. Stormwater Management Facilities. The Corps is proposing to modify this NWP to reference the broader term of "nature-based solutions" instead of the narrower terms of "green infrastructure" and "low-impact development integrated management features" for natural and nature-based features that can be constructed and maintained to manage stormwater and reduce inputs of pollutants, including sediments and nutrients, to downstream waters. To provide additional clarity to potential permittees, the Corps is also proposing to add more examples to the text of this NWP of nature-based solutions for stormwater management and reducing pollution loads to waters and wetlands.

The Corps is proposing to include the following examples of nature-based solutions for stormwater management and pollution abatement that can be authorized by this NWP if they involve discharges of dredged or fill material into non-tidal waters of the United States: stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances. Other nature-based solutions and other features that are conducted to meet pollutant reduction targets established under Total Maximum Daily Loads set under the Clean Water Act may also be authorized by this NWP as long as they comply with the applicable terms and conditions of this NWP.

NWP 48. Commercial Shellfish Mariculture Activities. Because of federal court decisions in The Coalition to Protect Puget Sound v. U.S. Army Corps of Engineers (U.S. District Court, Western District Court of Washington at Seattle and U.S. Court of Appeals for the Ninth Circuit), which vacated NWP 48 in waters within Washington State, the Corps is proposing to modify NWP 48 to exclude its use in waters withing Washington State. Because of those decisions, the Corps has been authorizing commercial shellfish mariculture activities in Washington State through standard individual permits and letters of permission, and is proposing to continue that practice.

Commercial shellfish mariculture activities are currently being authorized in waters in Washington State by standard individual permits and letters of permission. Commercial shellfish mariculture activities have been occurring in waters within Washington State since the mid-1800s (Washington Sea Grant 2015) and standard individual permits and letters of permission are a more effective and efficient mechanism for these on-going activities because the Corps' regulations provide district engineers with substantial discretion in establishing expiration dates for standard individual permits and letters of permission.

General permits issued under the Corps' permitting authorities can be in effect for no more than 5 years (see 33 CFR 325.2(e)(2) and 33 CFR 330.6(b)). Commercial shellfish mariculture activities typically involve on-going discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States throughout the five year period a general permit is in effect. When that general permit expires, the on-going commercial shellfish mariculture activities must be reauthorized in order for the regulated activities to continue to be authorized by general permit, assuming the general permit is reissued by the appropriate permitting authority (i.e., Corps Headquarters for an NWP, a district engineer for a regional general permit or a programmatic general permit). Authorizing these on-going activities through standard individual permits and letters of permission can reduce burdens on the regulated public (e.g., compliance costs for commercial shellfish mariculture producers) and Corps districts (e.g., administrative costs associated with reviewing PCNs and issuing verification letters) by authorizing these on-going activities over longer periods of time. Using the standard individual permit and letter of permission processes for authorizing these on-going activities can create efficiencies for both commercial shellfish producers and Corps districts.

In other areas of the country, commercial shellfish mariculture operators can choose to utilize NWP 48 or other general permits to provide DA authorization for their activities, or they can apply for standard individual permits or letters of permission for those activities and if they would like to request that Corps districts issue standard individual permits or letter of permissions for those activities that would be in effect for periods longer than five years.

As discussed in the Preamble Section I.F. above, the Corps is proposing to revise Note 1. As discussed in the Preamble Section I.F. above, the Corps is proposing to add a Note (to be designated as Note 4) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

NWP 52. Water-Based Renewable Energy Generation Facilities. As discussed in the Preamble Section I.F. above, the Corps is proposing to revise

Note 3 and to add a Note (to be designated as Note 6) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

NWP 54. Living Shorelines. The Corps is proposing to modify the first paragraph of this NWP to state that a portion of a living shoreline can consist of an unvegetated cobble or sand beach, which can be considered a pocket beach. A pocket beach can provide habitat for larval fishes, juvenile salmon, as well as various invertebrate species such as copepods and amphipods (Toft et al. 2013). The Corps is also proposing to modify paragraph (a) of this NWP by adding the phrase "cobble" and "gravel" before "sand fills" because the unconsolidated sediment in a living shoreline may consist of larger sized grains (e.g., cobbles and gravels) in addition to sands. Sediment particle size is strongly correlated to the ability of water to entrain and move sediment grains through water flows, currents, or wave activity (NRC 2007), with stronger forces needed to move larger sediment particle sizes. Therefore, cobbles and gravels may require more wave energy or stronger tidal flows to be transported by littoral drift or other sediment movements along shorelines in coastal waters, and can help living shorelines become less susceptible to erosion and potential sediment losses through water-mediated transport from a living shoreline. Cobbles and gravels may also provide suitable habitat for nearshore species (Emmett et al. 2017).

NWP 55. Seaweed Mariculture Activities. As discussed in the Preamble Section I.F. above, the Corps is proposing to modify Note 1 and to add a Note 3 (to be designated as Note 2) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

NWP 56. Finfish Mariculture Activities. The Corps is proposing to not reissue this NWP. Under this proposed rule, NWP 56 would be allowed to expire on March 14, 2026, and after that date project proponents who want to construct structures in navigable waters of the United States for finfish mariculture activities would have to obtain individual permits (i.e., standard individual permits or letters of permission) for those activities unless the Corps district has issued a regional general permit or a programmatic general permit to authorize finfish mariculture activities. In Don't Cage Our Oceans, et al. v. U.S. Army Corps of Engineers, the U.S. District Court, Western District of Washington at Seattle, vacated NWP 56, so that standard individual permits and letters of permission would be required for finfish mariculture activities.

As of September 2024, Corps districts issued six NWP 56 verifications and exercised discretionary authority in response to two NWP 56 PCNs to require individual permits for those proposed finfish mariculture structures. The Court's order allowed those NWP 56 verifications to remain in effect, but

prohibited the Corps from issuing additional NWP 56 verifications. Another NWP 56 PCN was withdrawn to give the applicant more time to respond to recommendations made by another federal agency concerning his or her proposed finfish mariculture activity. Given the low frequency of use of NWP 56 and the proportion of PCNs where district engineers exercised discretionary authority to require individual permits for proposed finfish mariculture activities, the Corps believes that finfish mariculture structures that require authorization under Section 10 of the Rivers and Harbors Act of 1899 are more appropriately authorized through the standard individual permit or letter of permission processes. These activities may also be authorized by regional general permits in marine and estuarine waters where a district engineer develops a regional general permit or programmatic general permit to authorize structures for finfish mariculture activities that have no more than minimal individual and cumulative adverse environmental effects.

NWP 57. Electrical Utility Line and Telecommunication Activities. As discussed in the Preamble Section I.F. above, the Corps is proposing to modify Note 1 and to add a Note (to be designated as Note 8) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

NWP 58. Utility Line Activities for Water and Other Substances. As discussed in the Preamble Section I.F. above, the Corps is proposing to modify Note 1 and to add a Note (to be designated as Note 7) to add language to clarify the intent of each Note, to identify information that should be provided to NOS or USCG, and to provide contact information for both NOS and USCG.

B. Discussion of the Proposed New Nationwide Permit

A. Activities to Improve Passage of Fish and Other Aquatic Organisms. The Corps is proposing to issue a new NWP to authorize structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for activities that restore or enhance the passage of fish and other aquatic organisms through river and stream networks as well as other types of waters.

Proposed new NWP A can be used to authorize regulated activities associated with compensatory mitigation projects, voluntary activities to improve the passage of fish and other aquatic organisms, and activities that fulfill requirements by other federal, tribal, state, or local government agencies to improve the passage of fish and other aquatic organisms. It can be used to authorize a variety of activities that increase the ability of fish and other aquatic organisms to pass through, or around, infrastructure and other built features, such as the installation of larger replacement culverts designed and constructed

to improve the upstream and downstream passage of fish and other aquatic organisms through that culvert. Proposed new NWP A may also be used to authorize discharges of dredged or fill material into waters of the United States to modify or replace bridges constructed over non-navigable waters (i.e., waters that are not navigable waters of the United States, as defined at 33 CFR part 329) to improve the ability of fish and other aquatic organisms to migrate past those bridges. Bridges over navigable waters of the United States are regulated by the U.S. Coast Guard, not the Corps of Engineers.

The Corps is proposing to include the following examples of activities that could be authorized by this NWP to improve the ability of fish and other aquatic organisms to move through aquatic ecosystems: (1) the construction, maintenance, or expansion of conventional and nature-like fishways; (2) the construction, maintenance, or expansion of fish bypass channels around existing in-stream structures, such as dams or weirs; (3) the replacement of existing culverts or low-water crossings with culverts planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; (4) the installation or maintenance of fish screens to prevent fish and other aquatic organisms from being trapped or stranded in irrigation ditches and other features; (5) the maintenance, modification, or replacement of existing tidal gates to improve the ability of fish and other aquatic organisms to move past those structures; and (6) the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures. The Corps invites commenters to suggest other examples that could be added to the text of this proposed new NWP, with explanations as to how those activities might restore or enhance the passage of fish and other aquatic organisms through aquatic ecosystems.

Technical or conventional fishways or fish passes include fish ladders made of concrete, metal, wood, or other materials, with sloping or stepped channels and partitions comprised of weirs, walls, chutes, and vanes to facilitate the movement of fish through the fishway (Selinger and Zeiringer 2018, Silva et al. 2018, Katopodis et al. 2001). Nature-like fishways are constructed to mimic natural habitat, but often have engineered components, and may be constructed with natural materials such as rock, wood, and bioengineering materials to simulate a natural stream with riffles, pools, and passable rapids (Selinger and Zeiringer 2018, Katopodis et al. 2001). Conventional fishways often are constructed to facilitate the passage of certain species of fish, while nature-like fishways can accommodated a wider range of fish species, and help other types of aquatic organisms (e.g., aquatic invertebrates and amphibians) pass around obstructions (Katopodis et al. 2001). Nature-like fishways use ecological engineering principles to provide nature-based solutions to improve the ability of fish and other aquatic organisms to pass around obstacles to access other aquatic habitats. Fishways can be designed to reduce the ability of large bodied

predatory fish or non-native species to move through the fishway, such as designing the fishway to have shallow water depths that larger individuals cannot pass through (Tamario et al. 2018).

In-stream nature-like fishways include fish ramps, roughened channels, constructed riffles, and rock-ramp fishways that are constructed with rocks and coarse sediments at a low gradient that are resistant to downstream transport to help fish and other aquatic organisms move around a barrier safely and relatively quickly (Silva et al. 2018).

Another type of nature-like fishway is a bypass channel that mimics a natural stream channel to provide a route for fish and other aquatic organisms to go around an in-stream obstruction such as a hydropower dam or other type of dam (Tamario et al. 2018). Bypass channels are constructed with natural materials, such as wood, boulders, gravel, rocks, and other vegetation that mimic natural rapids or riffles or pools (Katopodis et al. 2001). Bypass channels can also provide habitat, shelter, and spawning areas for fish, and support passage by numerous fish species at various age classes (Tamario et al. 2018).

Culverted fishways convey water from one side of a road embankment to the other side and can be constructed in a variety of shapes (Katopodis et al. 2001). They may include riprap, vanes, baffles, weirs, blocks, or plates to assist fish in passing through the culvert, and need to be constructed so that fish can enter, pass through, and exit the culvert with minimal delays (Katopodis et al. 2001). One example of an approach to designing culverts to improve the passage of fish and other aquatic organism is the Stream Simulation Design method developed by the U.S. Forest Service.[1]

Tide gates are structures which close to prevent tidal waters or floodwaters from flowing inland but open to allow upstream waters to flow downstream when the tidal waters or floodwaters recede. Modifications to tide gates, such as changing the hinge configuration of the gate or adding floats that cause the tide gate to remain open for a longer period of time allow fish to move between habitats (Souder, J. and G. Giannico. 2020).

The Corps is proposing a one acre limit for this NWP. The one acre limit applies to “losses of waters of the United States” as that phrase is defined in Section F of the proposed NWPs. The proposed one acre limit would apply to waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. For activities that are intended to improve the passage of fish and other aquatic organisms

[1] https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fsm91_054564.pdf (accessed April 27, 2025).

through river or stream networks or other components of the aquatic environment, permanent fills in rivers and streams or other aquatic habitats may occur through the placement of boulders, cobbles, large wood and other materials to construct a nature-like fishway or the construction of a conventional fishway, or the replacement of a culvert. The construction of bypass channels around dams or weirs could involve filling or excavating wetlands or river or stream channels.

For NWP A activities solely in rivers and streams, the one acre limit would apply to the acreage of river or stream bed that is permanently adversely affected by filling or excavation because of the regulated activity. For example, the area directly impacted by the placement of large rocks on the river or stream bed to construct a step-pool fishway would be considered a "loss of waters of the United States" under the definition provided in Section F of this proposed rule because those rocks would be permanently placed on the river or stream bed. However, the area of river or stream bed where those rocks were placed would continue to exist as an altered river or stream segment and continue to provide some or all of the functions that river or stream provided before the step-pool fishway was constructed. In other words, while the placement of rocks, wood, and other materials on a river or stream bed to construct a fishway changes the physical and hydrologic characteristics of a river or stream segment to improve the passage of fish and other aquatic organisms, that river or stream segment continues to exist as aquatic habitat and perform other ecological functions because it is not converted to uplands or dry land. Therefore, the area of the river or stream segment in which the fishway is constructed is a "loss" (in the sense that there would be a permanent change in the bed of the river or stream to facilitate the passage of fish and other aquatic organisms) that is counted towards the one acre limit proposed for this NWP, but that area of river or stream segment would not be lost in the sense that it would be converted to terrestrial habitat or a feature of the built environment (e.g., grey infrastructure).

Fishways and other activities constructed or expanded to improve the passage of fish and other aquatic organisms around or through barriers have to provide aquatic habitat to support those aquatic organisms while they move through the fishways or other features, even though that habitat may have some artificial or engineered components. The area of river or stream bed in which a nature-based fishway is constructed would likely continue to provide river and stream functions and services, in contrast to activities authorized by other NWPs such as NWPs 29 and 39 (which currently have 1/2-acre limits), which typically change aquatic habitats to dry land, buildings, grey infrastructure (e.g., roads, parking lots), and other features of a built environment.

Because activities that are planned, designed, and constructed to improve the ability of fish and other aquatic organisms to pass through or around barriers

are unlikely to result in the conversion of aquatic habitats to dry land, the Corps believes a one-acre limit would be appropriate for fishways and other approaches to improve connectivity for fish and other aquatic organisms in aquatic ecosystems. The Corps invites public comments on alternative acreage limits for this proposed new NWP. Commenters are encouraged to provide rationales for any alternative acreage limits they suggest.

The Corps is proposing to require PCNs for proposed activities that result in the loss of greater than 1/10-acre of waters of the United States so that district engineers can review these proposed activities and determine whether they will result in no more than minimal individual and cumulative adverse environmental effects. The Corps is also soliciting public comment on whether a different PCN threshold should be used for this NWP, such as requiring PCNs for all proposed activities or for proposed discharges of dredged or fill material into special aquatic sites.

If a district engineer determines that the proposed NWP activity would result in more than minimal adverse environmental effects, she or he will exercise discretionary authority to require an individual permit for the proposed activity unless the project proponent modifies the proposed activity to reduce the adverse environmental effects so that they are no more than minimal, individually and cumulatively (see 33 CFR 330.1(e)(3)). As another safeguard, division engineers can impose regional conditions on this NWP if it is issued to reduce the one acre limit or the 1/10-acre PCN threshold if it is necessary to do so in a particular watershed or other geographic region to ensure that this NWP authorizes only those activities that have no more than minimal individual and cumulative adverse environmental effects.

For activities authorized by this proposed new NWP, PCNs may also be required by one or more NWP general conditions (e.g., general condition 18, endangered species, or general condition 20, historic properties), or regional conditions added by a division engineer in a Corps district, state, watershed, or other geographic region in accordance with the procedures at 33 CFR 330.4(c).

In addition, the Corps is proposing to include a sentence in this NWP to state that it does not authorize dam removal activities, even though dams are often a primary obstacle to the movement of fish and other aquatic organisms through river and stream networks. The removal of low-head dams may be authorized by NWP 53. This NWP could be used to authorize regulated activities associated with the removal or modification of a weir, and for those activities that would result in the loss of greater than 1/10-acre of waters of the United States, the district engineer would review the proposed removal or modification of a weir and determine whether that activity qualifies for authorization under this NWP.

The removal of other types of dams, especially storage dams, typically require individual permits because removal of those dams often results in temporary impacts to the aquatic environment that are more than minimal because of substantial releases of sediment that usually occur unless the entity removing the dam removes sediment that accumulated upstream of the dam before breaching or removing the dam structure. Therefore, the Corps is proposing to exclude dam removal activities from this NWP.

On September 25, 2018, the Corps issued Regulatory Guidance Letter (RGL) 18-01. RGL 18-01 was issued to provide guidance on compensatory mitigation projects to restore river and stream structure, functions, and dynamics that involve the removal of obsolete dams and other structures, including the removal or replacement of undersized or perched culverts. Compensatory mitigation credits can be generated by the removal or replacement of undersized or perched culverts when the replacement of those structures result in increases in river and stream functions by increasing connectivity and improving other aquatic ecosystem and watershed functions, such as water movement, the transportation of nutrients and energy through the tributary network, the ability of fish and other aquatic organisms to move among tributaries and other aquatic habitats within a river or stream network or within a watershed. Compensatory mitigation may also be generated by the removal of culverts and other obstructions that impede or reduce the ability of fish and other aquatic organisms to move through aquatic ecosystems.

The Corps is proposing this new NWP in part to assist with the implementation of RGL 18-01. The compensatory mitigation activities described in RGL 18-01 to restore river and stream structure, functions, and dynamics through the removal of obsolete dams and other structures, and the removal or replacement of undersized or perched culverts may be conducted by mitigation bank sponsors, in-lieu fee program sponsors, and entities conducting advance permittee-responsible mitigation. The activities described in RGL 18-01 can be authorized by individual permits, some NWPs, and if available, regional general permits issued by district engineers. For example, the removal of low-head dams can be authorized by NWP 53. The removal or replacement of undersized or perched culverts associated with linear transportation projects may be authorized by NWP 14. The removal of culverts from a river or stream can be authorized by NWP 27, as long as the site is restored or enhanced to resemble an ecological reference, which would not include replacing the undersized or perched culvert with a new culvert. However, proposed new NWP A could be used to replace an existing culvert with a new culvert that improves the ability of fish and other aquatic organisms to pass through the culvert.

C. Discussion of Proposed Modifications to Nationwide Permit General Conditions

GC 9. Management of Water Flows. The Corps is proposing to add "tidal flows" to the text of this general condition to clarify that expected high flows, and normal or high flows, include the flow of water caused by tides.

GC 11. Equipment. The Corps is proposing to modify this general condition by adding two new sentences to specify that areas affected by the use of mats, must be restored. Restoration must include returning the area to pre-construction elevations, and may include revegetation and addressing soil compaction, if appropriate. The use of mats, and the operation of heavy equipment on those mats, may result in soil compaction that can adversely affect water infiltration, reestablishment of vegetation, and other processes. This proposed change is intended to address situations where the use of mats during construction activities may have resulted in soil compaction and produced depressional areas that may hold surface water and inhibit the recovery of hydrologic and soil functions, as well as the plant community, in the area affected by the placement of mats.

GC 18. Endangered Species. The Corps is proposing to modify the last sentence of the first paragraph of this general condition by removing language referring to 50 CFR 402.17. In a final rule published in the Federal Register on April 5, 2024 (89 FR 24268), the U.S. Fish and Wildlife Service and National Marine Fisheries Service removed section 402.17 from their Endangered Species Act section 7 interagency consultation regulations at 50 CFR part 402.

GC 25. Water Quality. The Corps is proposing to modify the text of this general condition to clarify that the proposed activity which may result in any discharge from a point source would have to be into a water of the United States in order to trigger the requirement for water quality certification. This proposed change would make the text of this general condition consistent with EPA's current water quality certification regulations at 40 CFR part 121, which defines "license or permit" as consistent with See 40 CFR 121.1(f).

GC 28. Use of Multiple Nationwide Permits. General condition 28 addresses the use of more than one NWP to authorize a single and complete project.

The Corps is proposing modifications to this GC to clarify the standards that must be met to comply with this general condition. The first standard is that the total acreage of loss of waters from a single and complete project cannot exceed the acreage limit of the NWP with the highest specified limit. That is, when multiple NWPs are used to authorize a single and complete project, the

acreage limits cannot be combined; the permissible acreage impact is limited to the impact specified in the NWP with the highest acreage limit. The second standard is that the acreage loss of waters resulting from the activities authorized under each NWP cannot exceed the acreage limit for that NWP. The Corps is proposing a new paragraph (a) that articulates the first standard.

With the addition of a new paragraph (a), the previous paragraphs (a) and (b) become (b) and (c) respectively. In addition, text has been added to paragraph (b) to specify the limits of each NWP in the example. The Corps is proposing no other changes to this paragraph. If only one of the NWPs has a specified acreage limit, then that is the "highest specified acreage limit."

Similarly, the Corps is proposing to move the text from paragraph (b) in the current NWPs to paragraph (c) of this general condition and to clarify the application of this general condition when two or more NWPs used to authorize a single and complete project have specified acreage limits. The Corps is proposing to modify the first sentence of paragraph (c) so that it applies to situations where more than one of the NWPs used to authorize the single and complete project have specified acreages limits. This change clarifies that the specified limit of each NWP used to authorize an activity cannot be exceeded. In other words, the use of multiple NWPs to authorize a single and complete project cannot circumvent the specified acreage limit of a particular NWP for the impacts covered by that particular NWP. In such situations, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed their respective specified acreage limits. The Corps is proposing to modify the example in the second sentence of paragraph (c) to make it clear that the two NWPs used in this example each have different acreage limits: 1/2-acre for NWP 39 and 1 acre for NWP 46. In this example, the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre. The acreage limits of these two NWPs cannot be combined to limit losses of waters of the United States to one and a half acres. In other words, under this combination of NWPs, acreage the loss of waters of the United States authorized by NWP 39, in this example, could not exceed ½-acre and would count towards the 1-acre limit in NWP 46.

GC 30. Compliance Certification. The Corps is proposing to modify the second sentence of this general condition to refer to the "successful completion" of any required permittee-responsible mitigation instead of the "success" of any required permittee-responsible mitigation. This proposed change is intended to make it clear that the permittee has to complete the required permittee-responsible mitigation to the district engineer's satisfaction, because the district engineer is responsible for determining whether the permittee-responsible mitigation project has complied with the applicable permit conditions and achieved its ecological performance standards. Use of the word "success" in this

sentence lacks clarity as to what the permittee needs to accomplish to fulfill the permittee-responsible mitigation requirements in their NWP verifications.

GC 32. Pre-construction notification. The Corps is proposing modifications to this general condition. The Corps is proposing to modify paragraph (a)(2), to make it consistent with paragraph (c) of general condition 18, endangered species.

In paragraph (b)(5) of this general condition, the Corps is proposing to simplify the first sentence to state that the PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. The Corps is proposing to remove references to "other waters" such as lakes and ponds and perennial and intermittent streams because those features would be covered by the term "waters." The text of the proposed NWPs do not use the term "intermittent streams."

The Corps is also proposing to modify paragraph (b)(5) of this general condition by adding a new sentence at the end of this paragraph. The proposed new sentence points permittees using NWP 27 for aquatic ecosystem restoration, enhancement, and establishment activities to proposed new Note 2 in NWP 27. Proposed Note 2 in NWP 27 states that if an activity authorized by NWP 27 requires a PCN because of an NWP general condition or a regional condition imposed by a division engineer, the information required by subparagraph (3) of the Reporting requirement of NWP 27 substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

D. Discussion of Proposed Modification to Section D, "District Engineer's Decision"

In Section D, "District Engineer's Decision," the Corps is proposing to add a sentence to paragraph 3 to clarify that compensatory mitigation shall not be required for activities authorized by NWP 27 The Corps is proposing to add this clarification because of reports from users of NWP 27 that some district engineers have required compensatory mitigation for activities authorized by NWP 27. Since 2012, the text of NWP 27 has explicitly stated that compensatory mitigation is not required for NWP 27 activities because those activities are required to result in net increases in aquatic resource functions and services (see 77 FR 10275). The proposed addition of this sentence to this paragraph is intended to ensure that a district engineer's decision is consistent with the terms of NWP 27.

E. Discussion of Proposed Modifications to Section F, "Definitions"

Ecological reference. The Corps is proposing modifications to this definition to align with proposed changes to the second paragraph of NWP 27, which discusses the requirement for aquatic ecosystem restoration, enhancement, and establishment activities to be planned, designed, and implemented to result aquatic ecosystems that resemble ecological references. The proposed revisions to this definition discuss three types of ecological references: (1) an aquatic ecosystem type or riparian area type that currently exists in the region (i.e., a contemporary ecological reference); (2) an aquatic ecosystem type or riparian area type that existed in the region in the past (i.e., an historic ecological reference); and (3) indigenous and local ecological knowledge that applies to the aquatic ecosystem type or riparian area type (i.e., an ecological reference based on a cultural ecosystem).

The Corps is also proposing to change this definition to include cultural ecosystems, which are defined as "ecosystems that have developed under the joint influence of natural processes and human-imposed organization" (Clewell and Aronson 2013). Over the past 12,000 years, ecosystems have been transformed by human land uses and other activities, such as hunting, burning, foraging, farming, and industrial agriculture (Ellis 2021). All ecosystems are cultural ecosystems to varying degrees, because of pervasive human impacts that have occurred to those ecosystems over those thousands of years (Evans and Davis 2018) and the varying degrees of those human impacts. In other words, cultural ecosystems are widespread because of the long history of people managing ecosystems to provide specific functions and services, such as food production. Cultural ecosystems also occur in seascapes because of the interactions of abiotic, biotic, and human processes in coastal areas that are comprised of marine and estuarine waters and their adjacent coastal lands (Pungetti et al. 2012).

It should also be understood that ecosystems have benefitted to varying degrees because of people providing services to ecosystems (Comberti et al. 2015). Humans have always been important components of ecosystems and have long played a role in maintaining ecosystem health (Costanza 2012). The concept of ecosystem services that focuses on a unidirectional flow of services from ecosystems to people is incorrect because it does not recognize the important role that people, including indigenous and local societies, have had in the maintenance and enhancement of ecosystems (Comberti et al. 2015). The reciprocal relationships between ecosystems and people may be facilitated by indigenous and local ecological knowledge, as well as other sources of ecological knowledge, so the Corps is proposing to include indigenous and local ecological knowledge as information which can be used to establish ecological references for NWP 27 activities, consistent with the Information Quality Act. Traditional management activities, including those conducted by indigenous people and local (e.g., rural) societies, may have included practices such as

burning regimes, harvest restrictions, habitat protection, and species protection (Evans and Davis 2018) to achieve reciprocal relationships between people and ecosystems goals to influence the structure and functions of those ecosystems and the services they provide to each other.

Nature-based solutions. The Corps is proposing to add a definition of "nature-based solutions" to Section F. Some of the NWPs proposed for reissuance, and proposed new NWP A, may be used to authorize discharges of dredged or fill material into waters of the United States and/or structure and work in navigable waters of the United States for the construction and maintenance of nature-based solutions. The source of the proposed definition is Cohen-Shacham and others (2016).[2]

Stream bed. The Corps is proposing to modify the definition of "stream bed" by adding a sentence that states that the substrate of a stream bed may also be comprised, in part, of large and small wood fragments, leaves, algae, and other organic materials. Organic substrates in stream beds can include wood pieces, leaves, algae, moss, and macrophytes, and they exhibit substantial variability in size and how long they remain in streams (Allan and Castillo 2007). Stream structure and function is strongly influenced by organic materials, including large wood jams, beaver dams, and living and dead vegetation (Polvi and Wohl 2013).

III. Compliance with Relevant Statutes

A. National Environmental Policy Act Compliance

The Corps has prepared a draft decision document for each proposed NWP. Each draft decision document contains an environmental assessment (EA). The EA generally discusses the anticipated impacts the NWP will have on the human environment. Each draft decision document also includes a public interest review conducted in accordance with 33 CFR 320.4. If a proposed NWP authorizes discharges of dredged or fill material into waters of the United States, the draft decision document for that NWP will also include a Clean Water Act Section 404(b)(1) Guidelines analysis conducted in accordance with the applicable provisions of 40 CFR part 230, including 40 CFR 230.7 which address

[2] Cohen-Shacham and others (2016) define "nature-based solutions" as "Actions to protect, sustainably manage and restore natural or modified ecosystems that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits." (See page 2 of Cohen-Shacham, E., Walters, G., Janzen, C. and Maginnis, S. (eds.) (2016). Nature-based Solutions to address global societal challenges. Gland, Switzerland: IUCN. xiii + 97pp.)

the issuance of general permits. These draft decision documents evaluate the environmental effects of each NWP from a national perspective.

The draft decision documents for the proposed NWPs are available on the internet at: www.regulations.gov (docket ID number COE-2025-0002) as "Supporting and Related Materials." The Corps is soliciting comments on these draft national decision documents, and any comments received will be considered when preparing the final decision documents for the NWPs.

B. Compliance with Section 404(e) of the Clean Water Act

The proposed NWPs are to be issued in accordance with Section 404(e) of the Clean Water Act and 33 CFR part 330. These NWPs authorize categories of activities that are similar in nature. The "similar in nature" requirement does not mean that activities authorized by an NWP must be identical to each other. We believe that the phrase "categories of activities that are similar in nature"," as determined by the Secretary," is best read to confer broad discretion on the Secretary to facilitate the practical implementation of this general permit program.

Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public while maintaining environmental protection, by efficiently authorizing activities that have no more than minimal adverse environmental effects, consistent with Congressional intent in the 1977 amendments to the Federal Water Pollution Control Act. The NWPs provide incentives for project proponents to minimize impacts to jurisdictional waters and wetlands to qualify for NWP authorization instead of having to apply for individual permits. Keeping the number of NWPs manageable is a key component for making the NWPs protective of the environment and streamlining the authorization process for those general categories of activities that have no more than minimal individual and cumulative adverse environmental effects.

These 404(b)(1) Guidelines analyses in the national decision documents are conducted in accordance with 40 CFR part 230.7. The 404(b)(1) Guidelines analyses in the national decision documents also include cumulative effects analyses done in accordance with 40 CFR 230.7(b) and 230.11(g).

The various terms and conditions of these NWPs, including the NWP regulations at 33 CFR 330.1(d) and 330.4(e), allow district engineers to exercise discretionary authority to modify, suspend, or revoke NWP authorizations or to require individual permits, and ensure compliance with section 404(e) of the Clean Water Act. For each NWP that may authorize discharges of dredged or fill material into waters of the United States, the national decision documents prepared by Corps Headquarters include a 404(b)(1) Guidelines analysis. The

supplemental documents prepared by division engineers will discuss regional circumstances, to provide the basis for division engineers to add regional conditions to the NWPs to address relevant factors in the 404(b)(1) Guidelines.

C. Compliance with the Endangered Species Act

The Corps has determined that the NWP regulations at 33 CFR 330.4(f) and NWP general condition 18, endangered species, ensure that all activities authorized by NWPs comply with section 7 of the Endangered Species Act (ESA). Those regulations and general condition 18 require non-federal permittees to submit PCNs for any activity that might affect listed species or designated critical habitat. The Corps then evaluates the PCN and makes an effect determination for the proposed NWP activity for the purposes of ESA section 7. The Corps established the "might affect" threshold in 33 CFR 330.4(f)(2) and paragraph (c) of general condition 18 because it is more stringent than the "may affect" threshold for section 7 consultation in the U.S. Fish and Wildlife Service's (FWS) and National Marine Fisheries Service's (NMFS) ESA section 7 consultation regulations at 50 CFR part 402. The word "might" is defined as having "less probability or possibility" than the word "may" (Merriam-Webster's Collegiate Dictionary, 10th edition). Since "might" has a lower probability of occurring, it is below the threshold (i.e., "may affect") that triggers the requirement for ESA section 7 consultation for a proposed Federal action.

If the project proponent is required to submit a PCN and the proposed activity might affect listed species or critical habitat, the activity is not authorized by NWP until either the Corps district makes a "no effect" determination or makes a "may affect" determination and complies with the applicable ESA section 7 consultation requirements (including those under 50 CFR 402.05, 402.13, or 402.14).

When evaluating a PCN, the Corps district will either make a "no effect" determination or a "may affect" determination. If the Corps district makes a "may affect" determination, it will notify the non-federal applicant and the activity is not authorized by NWP until the Corps complies with applicable ESA Section 7 consultation requirements. If the non-federal project proponent does not comply with 33 CFR 330.4(f)(2) and general condition 18, and does not submit the required PCN, then the activity is not authorized by NWP. In such situations, it is an unauthorized activity and the Corps district will determine an appropriate course of action under its regulations at 33 CFR part 326 to respond to the unauthorized activity.

Federal agencies, including state agencies (e.g., certain state Departments of Transportation) to which the Federal Highway Administration has

assigned its responsibilities for ESA section 7 consultation pursuant to 23 U.S.C. 327(a)(2)(B), are required to follow their own procedures for complying with Section 7 of the ESA (see 33 CFR 330.4(f)(1) and paragraph (b) of general condition 18). This includes circumstances when an NWP activity is part of a larger overall federal project or action. The federal agency's ESA section 7 compliance covers the NWP activity because it is undertaking the NWP activity and possibly other related activities that are part of a larger overall federal project or action. For those NWPs that require pre-construction notification for proposed activities, the federal permittee is required to provide the district engineer with the appropriate documentation to demonstrate compliance with ESA section 7. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the proposed activity to fulfill both the federal agency's and the Corps' obligations to comply with section 7 of the ESA.

On October 15, 2012, the Chief Counsel for the Corps issued a letter to the FWS and NMFS (the Services) clarifying the Corps' legal position regarding compliance with section 7 of the ESA for the NWPs. That letter explained that the issuance or reissuance of the NWPs, along with compliance with ESA section 7 through NWP general condition 18 (which applies to every NWP and which relates to endangered and threatened species) and 33 CFR 330.4(f), results in "no effect" to listed species or critical habitat, and therefore the reissuance/issuance action itself does not require ESA section 7 consultation. Although the reissuance/issuance of the NWPs itself has no effect on listed species or their critical habitat and thus requires no ESA section 7 consultation, the terms and conditions of the NWPs, including general condition 18 and 33 CFR 330.4(f), ensure that ESA consultation will take place on an activity-specific basis wherever appropriate at the field level of the Corps, FWS, and NMFS. The principles discussed in the Corps' October 15, 2012, letter apply to this proposed issuance/reissuance of NWPs. Those principles are discussed in more detail below.

The only activities that are immediately authorized by NWPs are "no effect" activities under section 7 of the ESA and its implementing regulations at 50 CFR part 402. Therefore, the issuance or reissuance of NWPs does not require ESA section 7 consultation because no activities authorized by any of the NWPs "may affect" listed species or critical habitat without first completing activity-specific ESA section 7 consultations with the Services, as required by general condition 18 and 33 CFR 330.4(f). Regional programmatic ESA section 7 consultations may also be used to satisfy the requirements of the NWPs in general condition 18 and 33 CFR 330.4(f) if a proposed NWP activity is covered by a regional programmatic ESA section 7 consultation.

In the May 11, 2015, issue of the Federal Register (80 FR 26832) the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) published a final rule that amended the incidental take statement provisions of the implementing regulations for ESA section 7 at 50 CFR part 402. That final rule went into effect on June 10, 2015. In that final rule, the FWS and NMFS defined two types of programmatic ESA section 7 consultations, and discussed the circumstances under which providing an incidental take statement with a biological opinion for a programmatic section 7 consultation is appropriate. The two types of programmatic section 7 consultations are: framework programmatic actions and mixed programmatic actions.

A framework programmatic action is federal action that approves a framework for the development of future actions that are authorized, funded, or carried out at a later time. A mixed programmatic action is a federal action that approves action(s) that will not be subject to further section 7 consultation, and approves a framework for the development of future actions that are authorized, funded, or carried out at a later time. Definitions of “framework programmatic action” and “mixed programmatic action” are provided at 50 CFR 402.02. In the preamble to the 2015 final rule, the FWS and NMFS stated that action agencies can seek to engage in section 7 consultation on programmatic actions to gain efficiencies in the section 7 consultation process (80 FR 26836).

The 2015 amendments to 50 CFR part 402 also address the circumstances when incidental take statements will be provided in biological opinions for programmatic actions. In their final rule, the FWS and NMFS stated that when a framework programmatic action does not authorize any federal action to proceed, no take is anticipated to result from the framework programmatic action itself, and, therefore, the FWS and NMFS are not required to provide an incidental take statement in a biological opinion for a framework programmatic action (see 80 FR 26835). The FWS and NMFS acknowledged that adoption of a framework action by the federal action agency would not, by itself, result in any anticipated take of listed species (see 80 FR 26836). Therefore, the FWS and NMFS determined that it is appropriate not to provide an incidental take statement at the program level; any take that may occur when future actions are implemented under the framework action would be addressed through activity-specific ESA section 7 consultations. For a national framework programmatic action, anticipated take from future actions could also be addressed through incidental take statements in regional programmatic section 7 consultations. In the preamble to the 2015 final rule, the FWS and NMFS identified the Corps’ NWP program as an example of a framework action at a national scale that can address ESA section 7 consultation requirements at a later time as appropriate, as specific activities are authorized, funded, or carried out (see 80 FR 26835). In their 2015 final rule, the FWS and NMFS also stated that this regulatory change does not imply that section 7 consultation is required

for a framework programmatic action that has no effect on listed species or critical habitat (see 80 FR 26835).

The FWS's and NMFS's regulations at 50 CFR 402.14(a) require each federal agency to review its actions at the earliest possible time to determine whether a proposed action may affect listed species or critical habitat. This requirement applies to framework actions, including framework actions that occur at a national scale. If the federal agency determines its proposed action may affect listed species or critical habitat, formal consultation is required unless the FWS and/or NMFS provide written concurrence that the proposed action is not likely to adversely affect any listed species or critical habitat. However, if the federal agency determines that its proposed action, including any framework action, will have no effect on listed species or critical habitat, section 7 consultation is not required. The ESA section 7 consultation regulations at 50 CFR 402.14(a) state that the Director of FWS or NMFS may request a federal agency to enter into consultation if he or she identifies any action of that agency that may affect listed species or critical habitat and for which there has been no consultation. When such a request is made, the Director shall forward to the federal agency a written explanation of the basis for the request. Section 402.14(a) provides a mechanism whereby the NMFS or FWS can provide their disagreement with a federal agency's "no effect" determination for the purposes of ESA section 7 for a proposed federal action, including a framework action.

In the April 5, 2024, issue of the Federal Register (89 FR 24268) the FWS and NMFS published a final rule that amended portions of their regulations for interagency cooperation under Section 7 of the ESA. That final rule went into effect on May 6, 2024. With respect to making effects determinations for proposed federal actions, such as activities authorized by NWPs, the FWS and NMFS made two important changes to 50 CFR part 402: (a) amending the definition of "effects of the action", and (b) amending the definition of "environmental baseline." The FWS and NMFS also removed section 402.17 from their regulations at 50 CFR part 402. When the Corps district receives a pre-construction notification for a proposed NWP activity, it is responsible for applying the definition of "effect of the action" to the proposed NWP activity and to determine the consequences caused by the proposed action and which activities are reasonably certain to occur. The Corps district determines whether the proposed NWP activity "may affect" listed species or designated critical habitat and initiates formal or informal section 7 consultation unless it determines the proposed NWP activity will have "no effect" on listed species or designated critical habitat. If ESA section 7 consultation is required for a proposed NWP activity, then application of the definition of "environmental baseline" can be an important element of that consultation.

Applying the 2024 amendments to the FWS's and NMFS's ESA section 7 regulations to the review of PCNs, for a proposed NWP activity the "effects of the action" include all consequences to listed species or critical habitat that are caused by the proposed NWP activity, including the consequences of other activities that are caused by the proposed NWP activity but that are not part of that proposed NWP activity. A consequence is caused by a proposed NWP activity if it would not occur but for the proposed NWP activity and it is reasonably certain to occur.

As discussed in this proposed rule, the NWP program has been structured, through the requirements of NWP general condition 18 and 33 CFR 330.4(f) to focus ESA section 7 compliance at the activity-specific and regional scales. Each year, Corps districts initiate thousands of formal and informal ESA section 7 consultations for specific NWP activities (see below), and many Corps districts have worked with the FWS and NMFS to develop formal and informal regional programmatic consultations. Focusing ESA section 7 compliance at the activity-specific scale and regional programmatic scale is more efficient for the permittees, the Corps, and the FWS and NMFS because it is at the activity-specific and regional scales that informal consultation written concurrences and biological opinions with incidental take statements are completed for proposed NWP activities.

As stated in 50 CFR 402.14(i)(7), for a framework programmatic action, an incidental take statement is not required at the programmatic level, and any incidental take resulting from any action subsequently authorized, funded, or carried out under the program will be addressed in subsequent section 7 consultation, as appropriate. For a proposed NWP activity that may affect listed species or designated critical habitat a biological opinion with an incidental take statement is needed for the NWP activity to go forward, unless the FWS or NMFS issued a written concurrence that the proposed NWP activity is not likely to adversely affect listed species or designated critical habitat. It is through activity-specific section 7 consultations and regional programmatic section 7 consultations that effective protection of listed species and their designated critical habitat is achieved.

After applying the 2015 and 2024 amendments to 50 CFR part 402 to the NWP rulemaking process, the Corps continues to believe that the issuance or reissuance of the NWPs has "no effect" on listed species or designated critical habitat, and that the ESA section 7 compliance is most effectively achieved by applying the requirements of general condition 18 and 33 CFR 330.4(f) to specific proposed NWP activities that are identified after the NWPs are issued and go into effect. District engineers will review PCNs for proposed NWP activities and if they determine a particular proposed NWP activity "may affect" listed species or designated critical habitat, they will initiate section 7 consultation

with the FWS and/or NMFS depending on which listed species or designated critical habitat may be affected. Compliance with the requirements of ESA section 7 for proposed NWP activities can also be achieved by applying appropriate formal or informal regional programmatic ESA section 7 consultations that have been developed by Corps districts with regional offices of the FWS and NMFS.

ESA section 7 requires each federal agency to ensure, through consultation with the Services, that "any action authorized, funded, or carried out" by that agency "is not likely to jeopardize the continued existence of listed species or adversely modify designated critical habitat." (See 16 U.S.C. 1536(a)(2).) Accordingly, the Services' section 7 regulations specify that an action agency must ensure that the action "it authorizes," including authorization by permit, does not cause jeopardy or adverse modification. (See 50 CFR 402.01(a) and 402.02). Thus, in assessing application of ESA section 7 to NWPs issued or reissued by the Corps, the proper focus is on the nature and extent of the specific activities "authorized" by the NWPs and the timing of that authorization.

The issuance or reissuance of the NWPs by the Chief of Engineers imposes express limitations on activities authorized by those NWPs. These limitations are imposed by the NWP terms and conditions, including the general conditions that apply to all NWPs regardless of whether pre-construction notification is required. With respect to listed species and critical habitat, general condition 18 expressly prohibits any activity "which 'may affect' a listed species or critical habitat, unless section 7 consultation addressing the effects of the proposed activity has been completed." General condition 18 also states that if an activity "might affect" a listed species (or a species proposed for listing) or critical habitat (or critical habitat proposed for such designation), a non-federal applicant must submit a PCN and "shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized." In addition, 33 CFR 330.4(f)(2) imposes a PCN requirement for proposed NWP activities by non-federal permittees where listed species or critical habitat might be affected or are in the vicinity of the proposed NWP activity. Section 330.4(f)(2) also prohibits those permittees from beginning the NWP activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Permit applicants that are federal agencies should follow their own requirements for complying with the ESA (see 33 CFR 330.4(f)(1)), and if their proposed NWP activities require PCNs, then their PCNs must include documentation demonstrating their compliance with the ESA (see paragraph (b)(7) of general condition 32).

Thus, because no NWP can or does authorize an activity that may affect a listed species or critical habitat absent an activity-specific ESA section 7 consultation or an applicable regional programmatic ESA section 7 consultation, and because any activity that may affect a listed species or critical habitat must undergo an activity-specific consultation or be in compliance with a regional programmatic ESA section 7 consultation before the district engineer can verify that the activity is authorized by NWP, the issuance or reissuance of NWPs has "no effect" on listed species or critical habitat. Accordingly, the action being "authorized" by the Corps (i.e., the issuance or re-issuance of the NWPs themselves) has no effect on listed species or critical habitat.

To help ensure protection of listed species and critical habitat, general condition 18 and 33 CFR 330.4(f) establish a more stringent threshold than the threshold set forth in the Services' ESA section 7 regulations for initiation of section 7 consultation. Specifically, while section 7 consultation must be initiated for any activity that "may affect" listed species or critical habitat, for non-federal permittees general condition 18 require submission of a PCN to the Corps if "any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat" and prohibits work until "notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized." (See paragraph (c) of general condition 18.) The PCN must "include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed work or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed work." (See paragraph (b)(7) of the "Pre-Construction Notification" general condition.) Paragraph (f) of general condition 18 notes that information on the location of listed species and their critical habitat can be obtained from the Services directly or from their web sites.

Paragraph (e) of general condition 18 makes it clear to project proponents that an NWP does not authorize the "take" of an endangered or threatened species. Paragraph (e) of general condition 18 also states that a separate authorization (e.g., an ESA section 10 permit or a biological opinion with an "incidental take statement") is required to take a listed species. In addition, paragraph (a) of general condition 18 states that no activity is authorized by 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" or "which will directly or indirectly destroy or adversely modify the critical habitat of such species." Such activities would require district engineers to exercise their discretionary authority and subject the proposed activity to the individual permit review process, because an activity that would jeopardize the continued existence of a listed species, or a species proposed for listing, or that would

destroy or adversely modify the critical habitat of such species would not result in no more than minimal adverse environmental effects and thus cannot be authorized by NWP.

The Corps' NWP regulations at 33 CFR 330.1(c) state that an "activity is authorized under an NWP only if that activity and the permittee satisfy all of the NWP's terms and conditions." Thus, if a project proponent moves forward with an activity that "might affect" an ESA listed species without complying with the PCN requirement or other requirements of general condition 18, the activity is not authorized under section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act of 1899. In this case, the project proponent could be subject to enforcement action and penalties under the Clean Water Act. In addition, if the unauthorized activity results in a "take" of listed species as defined by the ESA and its implementing regulations, then the person conducting that activity could be subject to penalties, enforcement actions, and other actions by the FWS or NMFS under section 11 of the ESA.

For listed species under the jurisdiction of the FWS, information on listed species that may be present in the vicinity of a proposed activity is available through the Information Planning and Consultation (IPaC) system,[3] an on-line project planning tool developed and maintained by the FWS.

During the process for developing regional conditions, Corps districts coordinate or consult with FWS and/or NMFS regional or field offices to identify regional conditions that can provide additional assurance of compliance with general condition 18 and 33 CFR 330.4(f)(2). Such regional conditions can add PCN requirements to one or more NWPs in areas inhabited by listed species (or species proposed for listing) or where designated critical habitat (or critical habitat proposed for such designation) occurs. Regional conditions can also be used to establish time-of-year restrictions when no NWP activity can take place to ensure that individuals of listed species are not adversely affected by such activities. Corps districts will continue to consider through regional consultations, local initiatives, or other cooperative efforts additional information and measures to ensure protection of listed species and critical habitat, the requirements established by general condition 18 (which apply to all uses of all NWPs), and other provisions of the Corps regulations ensure full compliance with ESA section 7.

Corps district offices meet with local representatives of the FWS 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

[3] https://ecos.fws.gov/ipac/

also establish, through local procedures or other means, additional safeguards that ensure compliance with the ESA. Through ESA section 7 consultation, or through other coordination with the FWS and/or the NMFS, as appropriate, the Corps establishes procedures to ensure that NWP activities 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 activity-specific conditions to be added to an NWP authorization by a district engineer.

Based on the fact that NWP issuance or reissuance has no effect on listed species or critical habitat and any proposed NWP activity that "may affect" listed species or critical habitat will undergo an activity-specific ESA section 7 consultation, there is no requirement that the Corps undertake programmatic consultation for the NWP Program. The national programmatic consultations conducted in the past for the NWP Program were voluntary consultations. Regional programmatic consultation can be conducted by Corps districts and regional or local offices of the FWS and/or NMFS to provide further assurance against potential adverse effects on listed species or critical habitat, and ensure other benefits to listed species or critical habitat, such as through the establishment of additional procedures, regional NWP conditions, activity-specific NWP conditions, or other safeguards that may be employed by Corps district offices based on further discussions between the Corps and the FWS and NMFS.

The programmatic ESA section 7 consultations the Corps conducted for the 2007 and 2012 NWPs were voluntary consultations. The voluntary programmatic consultation conducted with the NMFS for the 2012 NWPs resulted in a biological opinion issued on February 15, 2012, which was replaced by a new biological opinion issued on November 24, 2014. A new biological opinion was issued by NMFS after the proposed action was modified and triggered re-initiation of that programmatic consultation. The programmatic consultation on the 2012 NWPs with the FWS did not result in a biological opinion. For the 2017 or 2021 NWPs, Corps Headquarters did not request a national programmatic consultation. For the 2021 NWPs, Corps Headquarters issued a biological assessment concluding that the issuance or reissuance of NWPs through the rulemaking process has no effect on listed species and designated critical habitat. A copy of the biological assessment is available at: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/ (at the link titled "Biological Assessment for the 2021 Nationwide Permits") and the Corps will be revising this biological assessment, especially the list of active and pending regional programmatic ESA section 7 consultations that can be used for NWP activities.

In the Corps Regulatory Program's automated information system (ORM), the Corps collects data on all individual permit applications, all NWP PCNs, all voluntary requests for NWP verifications where the NWP or general conditions do not require PCNs, and all verifications of activities authorized by regional general permits. For all written authorizations issued by the Corps, the collected data include authorized impacts and required compensatory mitigation, as well as information on all consultations conducted under section 7 of the ESA. Every year, the Corps evaluates approximately 25,000 NWP PCNs and requests for NWP verifications for activities that do not require PCNs, and provides written verifications for those activities when district engineers determine those activities result in no more than minimal adverse environmental effects. During the evaluation process, district engineers assess potential impacts to listed species and critical habitat and conduct section 7 consultations whenever they determine proposed NWP activities "may affect" listed species or critical habitat. District engineers will exercise discretionary authority and require individual permits when proposed NWP activities will result in more than minimal adverse environmental effects.

Each year, the Corps conducts thousands of ESA section 7 consultations with the FWS and NMFS for activities authorized by NWPs. These section 7 consultations are tracked in ORM. In FY 2024 (October 1, 2023 to September 30, 2024), Corps districts conducted 217 formal consultations and 2,647 informal consultations under ESA section 7 for NWP PCNs. During that time period, the Corps also used regional programmatic consultations for 4,667 NWP PCNs to comply with ESA section 7. Therefore, during that year more than 7,500 ESA section 7 consultation actions were conducted where either formal or informal consultations were conducted for NWP PCNs or the proposed NWP activities used existing regional programmatic ESA section 7 consultations (formal and informal) to comply with ESA section 7, including those NWP activities that required PCNs under paragraph (c) of general condition 18. For a linear project authorized by NWPs 12, 14, 57, or 58 where the district engineer determines that one or more crossings of waters of the United States that require Corps authorization "may affect" listed species or designated critical habitat, the district engineer initiates a single section 7 consultation with the FWS and/or NMFS for all of those crossings that she or he determines "may affect" listed species or designate critical habitat. The number of section 7 consultations provided above represents the number of NWP PCNs that required some form of ESA section 7 consultation, not the number of single and complete projects authorized by NWP that may be included in a single PCN. A single NWP PCN may include more than one single and complete project, especially if it is for a linear project such as a utility line or road with multiple separate and distant crossings of jurisdictional waters and wetlands from its point of origin to its terminal point.

During the process for reissuing the NWPs, Corps districts will coordinate with regional and field offices of the FWS and NMFS to discuss whether new or modified regional conditions should be imposed on the NWPs to improve protection of listed species and designated critical habitat and ensure that the NWPs only authorize activities with no more than minimal individual and cumulative adverse environmental effects. Regional conditions must comply with the Corps' regulations at 33 CFR 325.4 for adding permit conditions to DA authorizations. Division engineers decide whether suggested regional conditions identified during this coordination are appropriate for the NWPs. During this coordination, other tools, such as additional regional programmatic consultations or standard local operating procedures, might be developed to facilitate compliance with the ESA while streamlining the process for authorizing activities under the NWPs. Section 7 consultation on permit conditions, including regional conditions, occurs only when a Corps district makes a "may affect" determination and initiates formal or informal section 7 consultation with the FWS and/or NMFS, depending on the species that may be affected by a proposed regional condition. Otherwise, the Corps district coordinates the regional conditions with the FWS and/or NMFS. Regional conditions, standard local operating procedures for endangered species (i.e., SLOPES), and regional programmatic consultations are important tools for protecting listed species and critical habitat and helping to tailor the NWP program to address specific species, their habitats, and the stressors that affect those species.

D. Compliance with the Essential Fish Habitat Provisions of the Magnuson-Stevens Fishery Conservation and Management Act

The NWP Program's compliance with the essential fish habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act will be achieved through EFH consultations between Corps districts and NMFS regional offices. This approach continues the EFH Conservation Recommendations provided by NMFS Headquarters to Corps Headquarters in 1999 for the NWP Program. Corps districts that have EFH designated within their geographic areas of responsibility will coordinate with NMFS regional offices, to the extent necessary, to develop NWP regional conditions that conserve EFH, are consistent with NMFS regional EFH Conservation Recommendations, and are approved by division engineers under the procedures at 33 CFR 330.5(c). District engineers may also add conditions to NWP authorizations to address EFH Conservation Recommendations made by NMFS during activity-specific EFH consultations. Corps districts will conduct consultations in accordance with the EFH consultation regulations at 50 CFR 600.920.

E. Compliance with Section 401 of the Clean Water Act

A water quality certification granted by a state, authorized tribe, or EPA, or a waiver thereof, is required by Section 401 of the Clean Water Act, for an activity authorized by NWP which may result in a discharge from a point source into waters of the United States. Water quality certifications may be granted without conditions, granted with conditions, denied, or waived for specific NWPs.

The NWPs are conditioned to ensure that adverse environmental effects will be no more than minimal and address the types of activities that would be routinely authorized if evaluated under the individual permit process. The Corps recognizes that in some states or tribal lands there will be a need to conduct individual state or tribal review for some activities, to ensure compliance with applicable water quality requirements. Each Corps district will initiate discussions with their respective state(s), tribe(s), and EPA regional offices, as appropriate, to discuss issues of concern and identify regional approaches to address the scope of waters, activities, discharges, and PCN requirements, as appropriate, to resolve any issue, as necessary.

Prior to the publication of this proposed rule in the Federal Register, Corps districts sent letters to certifying authorities (i.e., states, authorized tribes, or EPA regions, as appropriate) to request pre-filing meetings in accordance with 40 CFR 121.4. After the pre-filing meeting request requirement is satisfied, or if the certifying authority waives or shortens the requirement for a pre-filing meeting request, the Corps districts will submit requests for water quality certification for these NWPs. The certifying authorities will have six months to grant (with or without conditions), deny, or waive WQC for the proposed NWPs. Districts' WQC requests will comply with 40 CFR 121.5 (i.e., will include this Federal Register notice), and may also include their proposed Corps regional conditions for the proposed NWPs.

After the six month reasonable period of time, Corps districts will send notifications to the EPA consistent with 40 CFR 121.12 to notify EPA of the proposed NWPs and the certifications or waivers issued by the certifying authorities. Clean Water Act section 401(a)(2) provides EPA with 30 days to determine whether a discharge from a project may affect the water quality of a neighboring jurisdiction. 33 U.S.C. 1341(a)(2). The 401(a)(2) process is a separate action that occurs after the certifying authority has granted or waived a certification request. If the EPA determines that a discharge may affect the water quality of a neighboring jurisdiction, EPA is required to notify the neighboring jurisdiction. The statute provides notified neighboring jurisdictions with 60 days to determine whether the discharge will violate its water quality requirements, and if so, object to the issuance of the license or permit, and request a public hearing from the federal licensing or permitting agency. A federal agency may not issue the license or permit until the section 401(a)(2) process concludes.

If a certifying authority denies WQC for the issuance of an NWP, then the discharges are not authorized by that NWP unless and until a project proponent obtains WQC for the specific discharge from the certifying authority, or a waiver of WQC occurs.

Please note that in some states Corps districts have issued state programmatic general permits (SPGPs) or regional general permits (RGPs), and within those states some or all of the NWPs may be suspended or revoked by division engineers. Concurrent with today's proposal, district engineers may be proposing suspension or revocation of the NWPs in states where SPGPs or RGPs will be used in place of some or all of the NWPs.

F. Section 307 of the Coastal Zone Management Act (CZMA)

Any state with a federally-approved CZMA program must concur with the Corps' determination that activities authorized by NWPs which are within, or will have reasonably foreseeable effects on any land or water uses or natural resources of the state's coastal zone, are consistent with the CZMA program to the maximum extent practicable. Coastal Zone Management Act consistency concurrences may be issued without conditions, issued with conditions, or denied for specific NWPs.

The Corps believes that, in general, the activities authorized by the NWPs will be consistent with state CZMA programs/enforceable policies. The NWPs are conditioned to ensure that adverse environmental effects will be no more than minimal and address the types of activities that would be routinely authorized if evaluated under the individual permit process. The Corps recognizes that in some states there will be a need to conduct individual state review for some activities, to ensure consistency with the state's CZMA program. Each Corps district will initiate discussions with their respective state(s) to discuss issues of concern and identify regional approaches to address the scope of waters, activities, discharges, and PCN requirements, as appropriate, to resolve these issues.

This Federal Register notice serves as the Corps' determination that the activities authorized by these NWPs are, to the maximum extent practicable, consistent with state CZMA programs. This determination is contingent upon the addition of state CZMA conditions and/or regional conditions, by the issuance by the state of an individual consistency concurrence, or when a presumption of concurrence occurs when the state does not act within 60 days after receiving a request for concurrence. The state can request a time extension of up to 15 days. (See 15 CFR 930.41.)

The Corps' CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses or natural resources of a State's coastal zone. A state's coastal zone management plan may identify geographic areas in federal waters on the outer continental shelf, where activities that require federal permits conducted in those areas require consistency certification from the state because they affect any coastal use or resource. In its coastal zone management plan, the state may include an outer continental shelf plan. An outer continental shelf plan is a plan for "the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act" and regulations issued under that Act (see 15 CFR 930.73). Activities requiring federal permits that are not identified in the state's outer continental shelf plan are considered unlisted activities. If the state wants to review an unlisted activity under the CZMA, then it must notify the applicant and the federal permitting agency that it intends to review the proposed activity. NWP authorizations for activities that are not within or would not affect a state's coastal zone do not require the Corps' CZMA consistency determinations and thus are not contingent on a State's concurrence with the Corps' consistency determinations.

If a state objects to the Corps' CZMA consistency determination for an NWP, then the affected activities are not authorized by NWP within that state until a project proponent obtains an individual CZMA consistency concurrence, or sufficient time (i.e., six months) passes after requesting a CZMA consistency concurrence for the applicant to make a presumption of consistency, as provided in 33 CFR 330.4(d)(6). However, when applicants request NWP verifications for activities that require individual consistency concurrences, and the Corps determines that those activities meet the terms and conditions of the NWP, in accordance with 33 CFR 330.6(a)(3)(iii) the Corps will issue provisional NWP verification letters. The provisional verification letter will contain general and regional conditions as well as any activity-specific conditions the Corps determines are necessary for the NWP authorization. The Corps will notify the applicant that he or she must obtain an activity-specific CZMA consistency concurrence or a presumption of concurrence before he or she is authorized to start work in waters of the United States. That is, NWP authorization will be contingent upon obtaining the necessary CZMA consistency concurrence from the state, or a presumption of concurrence. Anyone wanting to perform such activities where pre-construction notification to the Corps is not required has an affirmative responsibility to present a CZMA consistency determination to the appropriate state agency for concurrence. Upon concurrence with such CZMA consistency determinations by the state, the activity would be authorized by the NWP. This requirement is provided at 33 CFR 330.4(d).

G. Compliance With Section 106 of the National Historic Preservation Act

The NWP regulations at 33 CFR 330.4(g) and the "Historic Properties" general condition (general condition 20), ensure that all activities authorized by NWPs comply with section 106 of the NHPA. The "Historic Properties" general condition requires non-federal permittees to submit PCNs for any activity that might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The Corps then evaluates the PCN and makes an effect determination for the proposed NWP activity to determine whether there are further obligations under NHPA section 106. The Corps established the "might have the potential to cause effects" criterion under its own regulatory authorities in paragraph (c) of the "Historic Properties" general condition to require PCNs for those activities to provide an additional layer of protection for cultural resource values. Upon receipt of the PCN, the district engineer will evaluate the proposed NWP activity and make a threshold determination under 36 C.F.R. 800.3(a)(1) whether the activity has no potential to cause effects to historic properties or whether it has potential to cause effects to historic properties and thus require NHPA section 106 consultation.

If the project proponent is required to submit a PCN and the proposed activity might have the potential to cause effects to historic properties, the activity is not authorized by an NWP until either the Corps district makes a "no potential to cause effects" determination or completes NHPA section 106 consultation.

When evaluating a PCN, the Corps will either make a "no potential to cause effects" determination or a "no historic properties affected," "no adverse effect," or "adverse effect" determination. If the Corps makes a "no historic properties affected," "no adverse effect," or "adverse effect" determination, the district engineer will notify the non-federal applicant and the activity is not authorized by an NWP until NHPA section 106 consultation has been completed. If the non-federal project proponent does not comply with the "Historic Properties" general condition, and does not submit the required PCN, then the activity is not authorized by an NWP. In such situations, it is an unauthorized activity and the Corps district will determine an appropriate course of action to respond to the unauthorized activity.

The only activities that are immediately authorized by NWPs are "no potential to cause effect" activities under section 106 of the NHPA, its implementing regulations at 36 CFR part 800, and the Corps' "Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800," dated April 25, 2005, and amended on January 31, 2007. Therefore, the issuance or reissuance of

NWPs does not require NHPA section 106 consultation because no activities that might have the potential to cause effects to historic properties can be authorized by an NWP without first completing activity-specific NHPA section 106 consultations, as required by the "Historic Properties" general condition. Programmatic agreements (see 36 CFR 800.14(b)) may also be used to satisfy the requirements of the NWPs in the "Historic Properties" general condition if a proposed NWP activity is covered by that programmatic agreement.

NHPA section 106 requires a federal agency that has authority to license or permit any undertaking, to take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register, prior to issuing a license or permit. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Thus, in assessing application of NHPA section 106 to NWPs issued or reissued by the Corps, the proper focus is on the nature and extent of the specific activities "authorized" by the NWPs and the timing of that authorization.

The issuance or reissuance of the NWPs by the Chief of Engineers imposes express limitations on activities authorized by those NWPs. These limitations are imposed by the NWP terms and conditions, including the general conditions that apply to all NWPs regardless of whether pre-construction notification is required. With respect to historic properties, the "Historic Properties" general condition expressly prohibits any activity that "may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places," until the requirements of NHPA section 106 have been satisfied. The "Historic Properties" general condition also states that if an activity "might have the potential to cause effects" to any historic properties, a non-federal applicant must submit a PCN and "shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that consultation under section 106 of the NHPA has been completed." Permit applicants that are federal agencies should follow their own requirements for complying with section 106 of the NHPA (see 33 CFR 330.4(g)(1) and paragraph (b) of the "Historic Properties" general condition).

Thus, because no NWP can or does authorize an activity that may have the potential to cause effects to historic properties, and because any activity that may have the potential to cause effects to historic properties must undergo an activity-specific NHPA section 106 consultation (unless that activity is covered under a programmatic agreement) before the district engineer can verify that the activity is authorized by an NWP, the issuance or reissuance of NWPs has "no potential to cause effects" on historic properties. Accordingly, the action being "authorized" by the Corps, which is the issuance or re-issuance of the NWPs by Corps Headquarters, has no potential to cause effects on historic properties.

To help ensure protection of historic properties, the “Historic Properties” general condition establishes what the Corps believes to be an additional layer of protection for cultural resource values occurring prior to any later threshold determination set forth in the Advisory Council's NHPA Section 106 regulations for initiation of section 106 consultation. Specifically, while NHPA section 106 consultation must be initiated for any activity that “has the potential to cause effects to historic properties, assuming such historic properties were present,” for non-federal permittees the “Historic Properties” general condition requires submission by the non-Federal permittee of a PCN to the Corps preceding any assessment under section 106, if “the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.” The “Historic Properties” general condition also prohibits the proponent from conducting the NWP activity “until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that consultation under section 106 of the NHPA has been completed.” (See paragraph (d) of the “Historic Properties” general condition.) The PCN must “state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property.” (See paragraph (b)(8) of the “Pre-Construction Notification” general condition.)

In emergency situations, consistent with 33 CFR 325.2(e)(4) and 33 CFR 325 Appendix C, paragraph 14, if an activity has the potential to cause effects to historic properties, the district engineer will make reasonable efforts to obtain comments from the State Historic Preservation Officer and the Advisory Council on Historic Preservation. The district engineer will comply with the provisions of 33 CFR 325 Appendix C and the Corps’ ‘‘Revised Interim Guidance for Implementing Appendix C of 33 CFR part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR part 800,’’ dated April 25, 2005, and amended on January 31, 2007, “to the extent that time and the emergency situation allows.”

During the process for developing regional conditions, Corps districts can coordinate or consult with State Historic Preservation Officers, Tribal Historic Preservation Officers, and tribes to identify regional conditions that can provide additional assurance of compliance with the “Historic Properties” general condition and 33 CFR 330.4(g)(2) for NWP activities undertaken by non-federal permittees. Such regional conditions can add PCN requirements to one or more NWPs where historic properties occur. Corps districts will continue to consider through regional consultations, local initiatives, or other cooperative efforts and additional information and measures to ensure protection of historic properties, the requirements established by the “Historic Properties” general condition

(which apply to all uses of all NWPs), and other provisions of the Corps regulations and guidance ensure full compliance with NHPA section 106.

Based on the fact that NWP issuance or reissuance has no potential to cause effects on historic properties and that any activity that "has the potential to cause effects" to historic properties will undergo activity-specific NHPA section 106 consultation, there is no requirement that the Corps undertake programmatic consultation for the NWP program. Regional programmatic agreements can be established by Corps districts and State Historic Preservation Officers and/or Tribal Historic Preservation Officers to comply with the requirements of section 106 of the NHPA.

IV. Economic Impact

The proposed NWPs are expected to increase the number of activities eligible for NWP authorization, and reduce the number of activities that require individual permits. The Corps estimates that the proposed NWPs will authorize an additional 123 individual activities each year. Subsequently, 123 fewer activities each year would require individual permits. By authorizing more activities by NWP, this proposal will reduce burden for the regulated public primarily in the form of compliance costs. The proposed changes would increase the number of categories of activities authorized by NWP, and subsequently reduce the number of activities that require individual permits. By increasing the number of activities that can be authorized by NWPs, the proposed changes would decrease compliance costs for permit applicants since, as discussed below, the compliance costs for obtaining NWP authorization are less than the compliance costs for obtaining individual permits. In addition, the NWPs provide incentives to project proponents to minimize impacts to jurisdictional waters and wetlands in exchange for receiving the required Department of the Army authorization in less time compared to the amount of time required to obtain individual permits. In fiscal year 2024, the average time to receive an NWP verification was 55 days from the date the Corps district receives a complete PCN, compared to 253 days to receive a standard individual permit after receipt of a complete permit application (see table 1.2 of the draft regulatory impact analysis for this proposed rule, which is available in the www.regulations.gov docket (docket number COE-2025-0002).

As discussed in the Regulatory Impact Analysis for this proposed rule, the Corps estimates that a permit applicant's compliance cost for obtaining NWP authorization in 2024$ (2024 dollars) ranges from $5,289 to $17,631 (Institute for

Water Resources (2001)[4], where the 2001 compliance cost estimates were originally made using 1999$, which the Corps adjusted to 2024$ to account for inflation using the GDP deflator approach). The Corps estimates that a permit applicant's compliance costs for obtaining an individual permit for a proposed activity impacting up to 3 acres of wetland ranges from $21,157 to $42,314 in 2024$. Considering how the proposed NWPs will increase the number of activities authorized by NWP each year, the Corps estimates that the proposal, when compared with the 2021 NWPs, will decrease compliance costs for the regulated public by approximately $3.5 million per year. The Corps is soliciting comment on the assumptions and methodology used to calculate the compliance costs and burden in general associated with the NWP.

Nationwide Permit(s)	Proposed Changes	Anticipated Impacts
• NWP 12	Revise Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Add Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 13	Add new paragraph clarifying that this NWP authorizes nature-based solutions to provide habitat and other ecosystem functions and services with bank stabilization activities. Add a new Note to reference Corps regulations about selecting bank stabilization approaches, and examples of the factors to be considered.	May increase number of activities authorized by NWP; decrease number of activities requiring individual permits. (Prior versions of NWP 13 could have authorized bank stabilization activities incorporating nature-based solutions.)
• NWP 15	Add General Bridge Act of 1946 as an applicable statutory authority for bridges authorized by the U.S. Coast Guard.	No change in number of NWP authorizations.
• NWP 24	Remove Florida from list of states that have assumed the Clean Water Act section 404 permit program.	No change in number of NWP authorizations.

[4] Institute for Water Resources (IWR). 2001. Cost analysis for the 2000 issuance and modification of nationwide permits. Institute for Water Resources (Alexandria, VA). 29 pp. plus appendices.

Nationwide Permit(s)	Proposed Changes	Anticipated Impacts
• NWP 27	Change title of NWP. Revise ecological reference requirement to include historic ecosystems, cultural ecosystems, and indigenous and local ecological knowledge. Remove list of examples. Require reports for all activities and modify report requirements. Remove PCN thresholds. Exclude dam removal activities. Add new Note to address delineation requirement when NWP 27 activities require PCNs because of general conditions or regional conditions imposed by division engineers.	Increase number of activities authorized by NWP; decrease number of activities requiring individual permits. Decrease number of PCNs.
• NWP 43	Replace "green infrastructure" and "low impact development integrated management features" with "nature-based solutions" and provide additional examples of nature-based solutions related to stormwater management.	No change in number of NWP authorizations.
• NWP 48	Exclude marine and estuarine waters within Washington State. Revise Note recommending permittee contact USCG about project. Add Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.	No change in number of NWP authorizations because commercial shellfish mariculture activities in Washington State are currently being authorized by individual permits.
• NWP 52	Revise Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Add Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 54	Add gravel and cobble to types of substrate used for living shorelines. Propose to	No change in number of NWP authorizations because using cobble and gravel for living

Nationwide Permit(s)	Proposed Changes	Anticipated Impacts
	clarify that small pocket beaches can be authorized.	shorelines was not prohibited and small portions of a living shoreline could be without living components.
• NWP 55	Revise Note recommending permittee contact USCG about project . Revise Add Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.	No change in number of NWP authorizations.
• NWP 57	Revise Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Add Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP 58	Revise Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Add Note recommending permittee contact USCG about project.	No change in number of NWP authorizations.
• NWP A	Issue new NWP to authorize activities to improve passage of fish and other aquatic organisms.	Increase number of activities authorized by NWP; decrease number of activities requiring individual permits.
• General condition 9, management of water flows	Add “including tidal flows” to clarify that tidal flows should be considered as “expected high flows”	No change in number of NWP authorizations.
• General condition 11, equipment	Add a sentence requiring affected areas to be returned to pre-construction elevations, and revegetated as appropriate to rectify soil compaction that may occur from using mats.	No change in number of NWP authorizations.
• General condition 18, endangered species	Remove the reference to 50 CFR 402.17 because that section was removed by a	No change in number of NWP authorizations.

Nationwide Permit(s)	Proposed Changes	Anticipated Impacts
	final rule issued by the Services in 2024.	
• General condition 25, water quality	Add "into waters of the United States" after "discharge" to make it clear that the discharge must be into waters of the United States.	No change in number of NWP authorizations.
• General condition 28, use of multiple NWPs	Modify general condition to clarify application to NWPs with different numeric limits.	No change in number of NWP authorizations.
• General condition 32, pre-construction notification	Modify paragraph (a)(2) to include species proposed for listing and critical habitat proposed for designation. Modify paragraph (b)(5) to refer to Note 2 of NWP 27 when an NWP 27 activity requires a PCN.	No change in number of NWP authorizations.

V. Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31885, June 10, 1998) regarding plain language, this preamble is written using plain language. For this proposed rule, the Corps has used short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

The paperwork burden associated with the NWP relates exclusively to the preparation of the PCN. While different NWPs require that different information be included in a PCN, the Corps estimates that a PCN requires, on average, 11 hours to complete. The proposed NWPs would slightly increase the total paperwork burden associated with this program because the Corps estimates that under this proposal 44 more PCNs would be required each year. This increase is primarily due to the proposed modification to NWP 13 to incorporate nature-based solutions into bank stabilization activities and the proposed issuance of NWP A to authorize activities to improve the passage of fish and other aquatic organisms. Both of these proposed changes are expected to result in a reduction in the number of activities requiring individual permits. The paperwork burden associated with the proposed NWPs is expected to increase by approximately 484 hours per year from 237,193 hours to 238,227 hours.

The following table summarizes the projected changes in paperwork burden from the 2021 NWPs to the proposed 2026 NWPs.

	Number of NWP PCNs per year	**Number of NWP activities not requiring PCNs per year**	**Estimated changes in NWP PCNs per year**	**Estimated changes in number of authorized NWP activities**	**Estimated changes in number of Standard Individual Permits per year**
2021 NWPs	21,563	31,690			
Proposed 2026 NWPs	21,657	31,719	+44	+123	-123

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. For the Corps Regulatory Program under section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information collection requirements is maintained by the Corps of Engineers (OMB approval number 0710-0003).

Executive Order 12866

This action is a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) that was submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” The proposed issuance and modification of NWPs does not have federalism implications. The Corps does not believe that the proposed NWPs will have substantial direct effects on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed NWPs will not impose any additional substantive

obligations on state or local governments. Therefore, Executive Order 13132 does not apply to this proposal.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed issuance and modification of NWPs on small entities, a small entity is defined as: (1) a small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The statutes under which the Corps issues, reissues, or modifies nationwide permits are Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Under section 404, Department of the Army (DA) permits are required for discharges of dredged or fill material into waters of the United States. Under section 10, DA permits are required for any structures or other work that affect the course, location, or condition of navigable waters of the United States. Small entities proposing to discharge dredged or fill material into waters of the United States and/or install structures or conduct work in navigable waters of the United States must obtain DA permits to conduct those activities, unless a particular activity is exempt from those permit requirements. Individual permits and general permits can be issued by the Corps to satisfy the permit requirements of these two statutes. NWPs are a form of general permit issued by the Chief of Engineers.

NWPs automatically expire and become null and void if they are not modified or reissued within five years of their effective date (see 33 CFR 330.6(b)). Furthermore, section 404(e) of the Clean Water Act states that general permits, including NWPs, can be issued for no more than five years. If the current NWPs are not modified or reissued, they will expire on March 14, 2026, and small entities and other project proponents would be required to obtain alternative forms of DA permits (i.e., standard permits, letters of permission, or

regional general permits) for activities involving discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States. Regional general permits that authorize similar activities as the NWPs may be available in some geographic areas, but small entities conducting regulated activities outside those geographic areas would have to obtain individual permits for activities that require DA permits.

The issuance of NWPs to authorize activities under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899 is a deregulatory action because if the NWPs are not issued, project proponents would be required to obtain individual permits for those activities unless Corps districts issue regional general permits or programmatic general permits to authorize those activities. Each year, the NWPs authorize approximately 55,000 activities that result in no more than minimal individual and cumulative adverse environmental effects. In FY 2024, the average time for the Corps to process an application for a standard individual permit from date of receipt of a complete application to date of issuance was 253 days. During FY 2024, the average time for the Corps to process an NWP verification request was 55 days from date of receipt of a complete pre-construction notification to the issuance date. The shorter review period for NWP activities versus activities requiring standard individual permits reduces regulatory burdens on members of the public that need to obtain Department of the Army authorization for their activities.

When compared with the compliance costs for individual permits, most of the terms and conditions of the proposed NWPs are expected to result in decreases in the costs of complying with the permit requirements of sections 10 and 404. For this proposed rule, the Corps has prepared a draft Regulatory Impact Analysis in accordance with OMB Circular A-4 (2003). The draft Regulatory Impact Analysis is available in the www.regulations.gov docket for this rulemaking action (docket number COE-2025-0002, under “Supporting and Related Materials”). The Corps welcomes public comment on this draft Regulatory Impact Analysis. In the draft Regulatory Impact Analysis, the Corps estimates that under the proposed 2026 NWPs, the estimated annual direct compliance costs (in 2024$) would be between $382,000,000 and $652,000,000 per year, $3.5 million to $10.2 million per year less than the baseline direct compliance costs (i.e., the estimated annual direct compliance costs under the 2021 NWPs). The direct compliance costs of the proposed 2026 NWPs represent the cost savings achieved by the proposal compared to the baseline of the 2021 NWPs. The anticipated decrease in compliance cost results from the lower cost of obtaining NWP authorization instead of standard permits. Unlike standard permits, NWPs authorize activities without the requirement for public notice and comment on each proposed activity.

Another requirement of section 404(e) of the Clean Water Act is that general permits, including nationwide permits, authorize only those activities that result in no more than minimal adverse environmental effects, individually and cumulatively. The terms and conditions of the NWPs, such as acreage limits and mitigation measures, are imposed to ensure that the NWPs authorize only those activities that result in no more than minimal adverse effects on the aquatic environment and other public interest review factors.

After considering the economic impacts of the proposed nationwide permits on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Small entities may obtain required DA authorizations through the NWPs, in cases where there are applicable NWPs authorizing those activities and the proposed work will result in only minimal adverse effects on the aquatic environment and other public interest review factors. The terms and conditions of the NWPs proposed to be modified will not impose substantially higher costs on small entities than those of the existing NWPs. If an NWP is not available to authorize a particular activity, then another form of DA authorization, such as an individual permit or a regional general permit authorization, must be secured. However, as noted above, the Corps expects a slight to moderate increase in the number of activities than can be authorized through NWPs, because we are proposing some modifications to the NWPs to authorize additional activities. Because those activities required authorization through other forms of DA authorization (e.g., individual permits or regional general permits) the Corps expects a concurrent decrease in the numbers of individual permit authorizations required for these activities.

The Corps is interested in the potential impacts of the proposed NWPs on small entities and welcome comments on issues related to such impacts.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to

adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Corps has determined that the proposed NWPs do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The proposed NWPs are generally consistent with current agency practice, do not impose new substantive requirements and therefore do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, the Corps has determined that the proposed NWPs contain no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed issuance and modification of the NWPs is not subject to the requirements of section 203 of UMRA.

Executive Order 13045

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, federal agencies must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed NWPs are not subject to this Executive Order because they are not economically significant as defined in Executive Order 12866. In addition, the proposed NWPs do not concern an environmental health or safety risk that the Corps has reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Tribes, on the relationship between the federal government and the Tribes, or on the distribution of power and responsibilities between the federal government and Tribes."

The proposal to issue NWPs does not have tribal implications. It is generally consistent with current agency practice and will not have substantial direct effects on tribal governments, on the relationship between the federal government and the tribes, or on the distribution of power and responsibilities between the federal government and tribes. Therefore, Executive Order 13175 does not apply to this proposal. However, in the spirit of Executive Order 13175, we specifically request comment from tribal officials on the proposed rule. Each Corps district will be conducting government-to-government consultation with tribes, to identify regional conditions or other local NWP modifications that may be necessary to protect aquatic resources of interest to tribes, as part of the Corps' responsibility to protect trust resources.

Environmental Documentation

A draft decision document has been prepared for each proposed NWP. Each draft decision document includes a draft environmental assessment and public interest review determination. If an NWP authorizes discharges of dredged or fill material into waters of the United States, the draft decision document includes a 404(b)(1) Guidelines analysis. These draft decision documents are available at: www.regulations.gov (docket ID number COE-2025-0002). They are also available by contacting Headquarters, U.S. Army Corps of Engineers, Operations and Regulatory Community of Practice, 441 G Street, NW, Washington, DC 20314-1000.

Executive Order 13211

The proposed reissuance and modifications of the NWPs are not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. References

A complete list of all references cited in this document is available on the Internet at http://www.regulations.gov in docket number COE–2025–0002 or upon request from the U.S. Army Corps of Engineers (see FOR FURTHER INFORMATION CONTACT).

Authority

The Corps is proposing to reissue 56 existing NWPs and issue one new NWP under the authority of Section 404(e) of the Clean Water Act (33 U.S.C. 1344) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.).

Dated:

Jason E. Kelly
Major General, U.S. Army
Deputy Commanding General
for Civil and Emergency Operations

Nationwide Permits, Conditions, Further Information, and Definitions

A. Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, and Definitions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities

35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage and Irrigation Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
A. Activities to Improve Passage of Fish and Other Aquatic Organisms

Nationwide Permit General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project

16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

District Engineer's Decision

Further Information

Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Direct effects
Discharge
Ecological reference
Enhancement
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Loss of waters of the United States
Nature-based solutions
Navigable waters
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable

Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete linear project
Single and complete non-linear project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Tribal lands
Tribal rights
Vegetated shallows
Waterbody

B. Nationwide Permits

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

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

3. 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. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or

replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

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

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

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

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction

notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404))

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

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

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

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term “exploratory trenching” means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge of dredged or fill material does not exceed 1/10-acre in waters of the U.S. Discharges of dredged or fill material and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge

of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

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

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

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

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

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

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

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

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

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

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

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

This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

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

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

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

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

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require pre-construction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

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

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

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

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

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

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

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

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than

minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

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

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

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

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

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

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

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

This NWP authorizes discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States to incorporate nature-based solutions into new and existing bank stabilization activities to provide habitat and other ecosystem functions and services and to reduce adverse effects of bank stabilization activities on the aquatic environment. Examples of nature-based solutions for bank stabilization activities include the use of construction materials for seawalls and bulkheads that have textured surfaces, crevices, shelves, benches, and pits that support attachment and growth of benthic organisms; the construction of rock pools next to the bank stabilization activity; the construction of small pocket beaches next to the bank stabilization activity; the use of various sizes of rock for revetments to provide different sizes of spaces between rocks for habitat for various species of

organisms; the placement of rock clusters next to a seawall or bulkhead; the placement of large wood next to seawalls, bulkheads, and revetments; and the placement of bags of molluscs or the placement of small reef structures to provide habitat for molluscs and other sessile aquatic organisms next to a seawall, bulkhead, or revetment.

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

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

Note 1: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Note 2: Under 33 CFR 320.4(g)(2), a landowner has the general right to protect his or her property from erosion, and the district engineer can provide general guidance to the landowner regarding possible alternative methods of protecting his or her property. Permittees are encouraged to use soft bank stabilization approaches (e.g., bioengineering, vegetative stabilization) at sites where those methods are likely to be effective in managing erosion, such as sites where shorelines and banks are subject to moderate to low erosive forces. However, hard bank stabilization activities (e.g., seawalls, bulkheads, revetments, riprap) may be necessary at sites where shorelines and banks are subject to strong erosive forces. An appropriate and effective approach to managing shoreline or bank erosion at a specific site requires consideration of a variety of factors, including but not limited to: bank height; bank condition; the energy of tides, waves, currents, or other water flows that the bank is exposed to; fetch; nearshore water depths; the potential for storm surges; sediment or substrate

type; tidal range in waters subject to the ebb and flow of tides; shoreline configuration and orientation; the width of the waterway; and whether there is infrastructure in the vicinity of the proposed bank stabilization activity that needs to be protected and the degree of protection needed.

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

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

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

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

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

Note 2: Some discharges of dredged or fill material for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under the General Bridge Act of 1946, Section 9 of the Rivers and Harbors Act of 1899, or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate Clean Water Act Section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

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

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant

to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

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

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

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

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

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

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

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

20. Response Operations for Oil or Hazardous Substances. Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and

Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

21. Surface Coal Mining Activities. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:

(a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;

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

(c) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.

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

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

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

Note 1: Intentional ocean disposal of vessels at sea requires a permit from the U.S. EPA under the Marine Protection, Research and Sanctuaries Act, which specifies that ocean disposal should only be pursued when land-based alternatives are not available. If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

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

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to Section 106, 109, and 111(1) of the National Environmental Policy Act, that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

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

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

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

Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: the Bureau of Reclamation, Federal Highway Administration, and U.S. Coast

Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07. Any changes to approved categorical exclusions applicable to this NWP will be announced in Regulatory Guidance Letters and posted on this same web site.

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

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

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

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

27. Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities. Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal rivers and streams and their riparian areas, the restoration and enhancement of other non-tidal open waters, and the restoration and enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic ecosystem functions and services.

To be authorized by this NWP, the aquatic ecosystem restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in an aquatic ecosystem that resembles an ecological reference (i.e., a natural ecosystem). An ecological reference may be based on the characteristics of aquatic ecosystems or riparian areas that currently exist in the region, or the characteristics of aquatic ecosystems or riparian area that existed in the region in

the past. Ecological references include cultural ecosystems, which are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship for vegetation management). An ecological reference may also be based on regional ecological knowledge, including indigenous and local ecological knowledge, of the target aquatic ecosystem type or riparian area.

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

This NWP does not authorize: (1) dam removal activities; (2) stream channelization activities; and (3) the conversion of tidal wetlands to open water impoundments and other aquatic uses.

Only native plant species should be planted at the site. Compensatory mitigation is not required for activities authorized by this NWP because these activities must result in net increases in aquatic ecosystem functions and services.

Reversion. For aquatic ecosystem restoration, enhancement, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), Bureau of Land Management (BLM), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge of dredged or fill material occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted

cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory Program requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic ecosystem functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. The permittee must submit a report containing information on the proposed aquatic ecosystem restoration, enhancement, and establishment activity to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP. The report must include the following information:

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

(2) Location of the proposed activity;

(3) Information on baseline ecological conditions at the project site, including a general description and map of aquatic and terrestrial habitat types on that site. The map of existing aquatic and terrestrial habitat types and their approximate boundaries on the project site should be based on recent aerial imagery or similar information, and verified with photo points or other field-based data points for each mapped habitat type;

(4) A sketch of the proposed project elements of the NWP 27 activity drawn over a copy of the map of existing aquatic and terrestrial habitat types on the project site;

(5) A description of the techniques or mechanisms that are proposed to be used to increase aquatic ecosystem functions and services on the project site, and if applicable;

(6) A copy of: (a) the binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement with the FWS, NRCS, FSA, NMFS, NOS, USFS, BLM, or their designated state cooperating agencies; (b) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or (c) the SMCRA permit issued by OSMRE or the applicable state agency.

(Authorities: Sections 10 and 404)

Note 1: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Note 2: If an activity authorized by this NWP requires a PCN because of an NWP general condition (e.g., NWP general condition 18, endangered species) or a regional condition imposed by a division engineer, the information required by paragraph (3) of the Reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

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

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

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

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

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

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

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

31. Maintenance of Existing Flood Control Facilities. Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the “maintenance baseline,” as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from

natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

Mitigation: The district engineer will determine any required mitigation one-time only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the

district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

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

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

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

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

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

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

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

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

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

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

Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (e.g., a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges of dredged or fill material, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites,

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

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

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

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

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

36. Boat Ramps. Activities required for the construction, repair, or replacement of boat ramps, provided the activity meets all of the following criteria:

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

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

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

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

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

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

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

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by:

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

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

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

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

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

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

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

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

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

Note: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

39. Commercial and Institutional Developments. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

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

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

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

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

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

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

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

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

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

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

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

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

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

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

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. Examples of such nature-based solutions include, but are not limited to, stream biofilters, bioretention ponds or swales, rain gardens, vegetated filter strips, vegetated swales (bioswales), constructed wetlands, infiltration trenches, and regenerative stormwater conveyances, as well as other nature-based solutions and other features that are conducted to meet reduction targets established under Total Maximum Daily Loads set under the Clean Water Act.

This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, and nature-based solutions for managing stormwater and reducing inputs of sediments, nutrients, and other pollutants into waters. The maintenance of stormwater management facilities and nature-based solutions that do not contain waters of the United States does not require a section 404 permit.

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

or fill material into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities or nature-based solutions, or the expansion of existing stormwater management facilities or nature-based solutions, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or nature-based solution. (Authority: Section 404)

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

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

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

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

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

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

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the

damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

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

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12-month limit for submitting a pre-construction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

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

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

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

areas determined to be waters of the United States prior to construction of the ditch.

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

48. Commercial Shellfish Mariculture Activities. Structures or work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States necessary for new and continuing commercial shellfish mariculture operations (i.e., the cultivation of bivalve molluscs such as oysters, mussels, clams, and scallops) in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. This NWP does not authorize structures or work in navigable waters of the United States or discharges of dredged or fill material into waters of the United States within Washington State.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste.

Notification: The permittee must submit a pre-construction notification to the district engineer if the activity directly affects more than 1/2-acre of submerged aquatic vegetation. If the operator will be conducting commercial shellfish mariculture activities in multiple contiguous project areas, he or she can either

submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

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

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

Note 4: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

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

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

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

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

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

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

51. Land-Based Renewable Energy Generation Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

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

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

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

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

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

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

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

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

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

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

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

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

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

Note 3: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 6: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

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

For the purposes of this NWP, the term "low-head dam" is generally defined as a dam or weir built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest and does not have a separate spillway or spillway gates, but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment. A low-head dam may have been

built for a range of purposes (e.g., check dam, mill dam, irrigation, water supply, recreation, hydroelectric, or cooling pond), but in all cases, it provides little or no storage function.

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

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.

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

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

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

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

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;

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

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

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

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

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

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

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

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

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

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

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

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

This NWP does not authorize:

(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.

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

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

Note 1: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

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

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

Note 4: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

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

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

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

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

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

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

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

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

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

elevations. The areas affected by temporary fills must be revegetated, as appropriate.

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

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the 'as-built drawings' and the geographic coordinate system used in the 'as-built drawings' to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

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

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

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

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

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 8: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

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

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

water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

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

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

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

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

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and

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

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

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

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

Note 1: Where structures or work are authorized in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, the permittee should provide a copy of the ‘as-built drawings’ and the geographic coordinate system used in the ‘as-built drawings’ to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), to inform updates to nautical charts and Coast Pilot corrections. The information should be transmitted via email to ocs.ndb@noaa.gov.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant

locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

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

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

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

Note 6: For activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, “District Engineer’s Decision.” The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Note 7: Where structures or work are proposed in navigable waters of the United States, project proponents should ensure they provide the location and dimensions of the proposed structures to the U.S. Coast Guard (USCG) prior to submittal of a Pre-Construction Notification, or prior to beginning construction. The USCG may assess potential navigation-related concerns associated with the location of proposed structures or work, and may inform project proponents of marking and lighting requirements necessary to comply with General Condition 1 (Navigation). For assistance identifying the appropriate USCG District or Sector Waterways Management Staff responsible for the area of the proposed work, contact USCG at CGWWM@uscg.mil.

59. Water reclamation and reuse facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas

enhanced to improve water infiltration and constructed wetlands to improve water quality.

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

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

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

A. Activities to Improve Passage of Fish and Other Aquatic Organisms. Discharges of dredged or fill material into waters of the United States and structures and work in navigable waters of the United States for activities that restore or enhance the ability of fish and other aquatic organisms to move through aquatic ecosystems. Examples of activities that may be authorized by this NWP include, but are not limited to: the construction, maintenance, or expansion of conventional and nature-like fishways; the construction or expansion of fish bypass channels around existing in-stream structures; the replacement of existing culverts or low-water crossings with culverts planned, designed, and constructed to restore or enhance passage of fish and other aquatic organisms; the installation of fish screens to prevent fish and other aquatic organisms from being trapped or stranded in irrigation ditches and other features; the modification of existing in-stream structures, such as dams or weirs, to improve the ability of fish and other aquatic organisms to move past those structures.

The activity must not cause the loss of greater than one acre of waters of the United States.

This NWP does not authorize dam removal activities.

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

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or

otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows, including tidal flows. The activity must not restrict or impede the passage of normal or high flows, including tidal flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. If mats are used to minimize soil disturbance, the affected areas must be returned to pre-construction elevations, and revegetated as appropriate. In circumstances where the use of mats has caused significant soil compaction efforts using techniques (e.g., soil reaeration techniques) to break up the compaction should be employed to return the soil to a pre-construction state prior to returning to pre-construction elevations.

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

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

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

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

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

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

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

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation.

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

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of

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

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

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

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

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

consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects on any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

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

completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

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

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

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

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

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

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

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

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

rehabilitation, enhancement, or preservation, because streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

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

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

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be

environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

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

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

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

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed activity which may result in any discharge from a point source into waters of the United States is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge into waters of the United States, the permittee must submit a copy of the certification to the district engineer. The discharge into waters of the United States is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied (i.e., by the issuance of a water quality certification or a waiver and completion of the Section 401(a)(2) process).

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

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

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

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

(a) The total acreage loss of waters of the United States for a single and complete project cannot exceed the acreage limit of the NWP with the highest specified acreage limit when multiple NWPs are used to authorize an activity.

(b) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States for that single and complete project cannot exceed that specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14 (which has an acreage limit of 1/3 acre in tidal waters), with associated bank stabilization authorized by NWP 13 (which does not have a specified acreage limit), the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

(c) If two or more of the NWPs used to authorize the single and complete project have specified acreage limits, the acreage loss of waters of the United States authorized by each of those NWPs cannot exceed the specified acreage limits of each of those NWPs. For example, if a commercial development is constructed

under NWP 39 (which as a 1/2-acre limit), and the single and complete project includes the filling of a ditch authorized by NWP 46 (which has a 1-acre limit), the maximum acreage loss of waters of the United States for the construction of the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States caused by the combination of the NWP 39 and NWP 46 activities cannot exceed 1 acre.

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

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

_____
(Transferee)

_____
(Date)

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

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

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a

mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

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

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) *Timing*. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from

the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed activity;

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

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

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

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

(5) The PCN must include a delineation of waters, wetlands, and other special aquatic sites on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate. For NWP 27 activities that require PCNs because of other general conditions or regional conditions imposed by division engineers, see Note 2 of that NWP;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the compensatory mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

must provide documentation demonstrating compliance with the Endangered Species Act;

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

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

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

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

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

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

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases where the prospective permittee is not a federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she

determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add activity-specific conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed NWP activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. However, compensatory mitigation shall not be required for activities authorized by NWP 27 because those activities must result in net increases in aquatic resource functions and services (see the text of NWP 27). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal when determining whether the net adverse environmental effects of the proposed NWP activity are no more than minimal. The compensatory mitigation proposal may be

either conceptual or detailed. If the district engineer determines that the proposed activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed NWP activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN review period (unless additional time is required to comply with general conditions 16, 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

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

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

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

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

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

F. Nationwide Permit Definitions

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

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

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

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

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

Ecological reference: A model used to plan and design an aquatic ecosystem restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on: (1) the structure, functions, and dynamics of an aquatic ecosystem type or a riparian area type that currently exists in the region; (2) the structure, functions, and dynamics of an aquatic ecosystem type or riparian area type that existed in the region in the past; and/or (3) indigenous and

local ecological knowledge that apply to the aquatic ecosystem type or riparian area type (i.e., a cultural ecosystem). Cultural ecosystems are ecosystems that have developed under the joint influence of natural processes and human management activities (e.g., fire stewardship). An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

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

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

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

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

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

project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

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

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

Nature-based solutions: Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

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

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

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

Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

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

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

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

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

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

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

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in

aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

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

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

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

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

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of

owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

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

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

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock, inorganic particles that range in size from clay to boulders. The substrate may also be comprised, in part, of organic matter, such as large or small wood fragments, leaves, algae, and other organic materials. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

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

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

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

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

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

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

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