



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
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December 18, 2025

Ms. Tammy Turley
U.S. Army Corps of Engineers New England District
Regulatory Division
696 Virginia Road
Concord, MA 01742-2751

RE: Nationwide Permits Reissuance for Proposed Implementation in Massachusetts, Maine, Rhode Island, Connecticut, Vermont, and New Hampshire

Dear Ms. Turley,

The Massachusetts Office of Coastal Zone Management (CZM) has reviewed the proposed adoption of the Nationwide Permits (NWP) for the U.S. Army Corps of Engineers (USACE) Section 10 and Section 404 authorizations and issues this conditional concurrence.

NWPs are issued by USACE 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 NWPs are proposed to replace the Massachusetts General Permits (MA GPs) currently used to authorize Section 10 and/or Section 404 activities. Under Section 307 of the Coastal Zone Management Act (CZMA), 15 CFR § 930.31, USACE filed for federal consistency certification with CZM on June 18, 2025, initiating a 60-day federal consistency review. To align with the reasonable period of time allotted for the review and issuance of the Section 401 Water Quality Certificate (401 WQC) by the Massachusetts Department of Environmental Protection (MassDEP), CZM requested, and USACE accepted an extension of the CZM federal consistency review period, resulting in a decision due date of December 18, 2025. Throughout the review process, CZM met regularly with USACE and MassDEP to discuss the NWPs and conformance with state regulation and policy.

In conducting its federal consistency review of the NWPs, CZM considered the text of the NWPs, the nature and extent of differences between the NWPs and the current MA GPs, and CZM's experience with review of projects authorized pursuant to the most recent and prior versions of the MA GPs. The current MA GPs took effect in June 2023 and established review thresholds and conditions that project proponents must abide by to comply with USACE authorization, MassDEP 401 WQC regulations, and the Massachusetts Coastal Program Enforceable Policies.

CZM concurred that projects eligible for Self-Verification under the MA GPs are consistent with the Massachusetts Coastal Program Enforceable Policies, but review of projects requiring PCN under the MA GPs is needed to ensure consistency with the Massachusetts Coastal Program Enforceable Policies. Based on review of the text of the NWP, a comparison of the NWP to the MA GPs, and our experience in reviewing applications for projects eligible for PCN under the MA GPs, CZM has determined that the terms of certain NWPs will allow some projects to proceed in Massachusetts with lower levels of review than is currently required under the MA GPs. Further, some projects eligible for authorization under the NWPs may be inconsistent with one or more Massachusetts Coastal Program Enforceable Policies. As a result, CZM has determined that the conditions provided in this conditional concurrence are necessary to ensure that projects authorized by USACE under the NWPs are consistent with the Massachusetts Coastal Program Enforceable Policies.

I. CZM Conditional Concurrence with NWPs

CZM concurs with the NWPs on the following conditions:

- A.** Any Section 10 and/or Section 404 applicant (including any person eligible for non-reporting status) proposing work subject to any listed NWP that exceeds any review threshold set out in section II shall notify CZM pursuant to section III.
- B.** CZM will review each notification to determine whether individual review is warranted and reserves the right to take individual review of any project exceeding these thresholds where such project is inconsistent with one or more of the Massachusetts Coastal Program Enforceable Policies, such that individual review is warranted.

These conditions apply to any application for work, regardless of whether that work is eligible for non-reporting status under the relevant NWP(s).

II. Review Thresholds

Proponents applying for authorization under the NWPs for projects in the Massachusetts coastal zone that exceed the following thresholds must submit the information provided in section III to CZM in order for CZM to determine if the project warrants federal consistency review.

A. Thresholds Applicable to all NWPs

- 1. NWP PCN Requirements:** Any project in the coastal zone that triggers the submission of a PCN under the NWPs.
- 2. Salt Marsh or Tidal Vegetated Shallows:** Any project wholly or partially located in saltmarsh or tidal vegetated shallows.
- 3. Tide Gates:** Any project proposing a new tide gate.

B. Thresholds Applicable to Specific NWPs

- 1. NWP 3 (Maintenance)**
 - a.** The combined permanent and temporary impacts extending beyond the original footprint are $\geq 5,000$ square feet in tidal waters.

- b. The combined permanent and temporary impacts extending beyond the original footprint are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.
 - c. The removal of sediment outside the immediate vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) that is ≥ 200 linear feet.
- 2. NWP 4 (Fish and Wildlife Harvesting, Enhancement, Attraction)**
- a. Any project that includes artificial reefs or new, or expansions of, impoundments and semi-impoundments of waters of the U.S. for the culture or holding of motile species such as lobster with an impounded area $> \frac{1}{2}$ acre.
- 3. NWP 5 (Scientific Measurement Devices)**
- a. Any aspect of the project will be located in mudflats.
 - b. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
 - c. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.
- 4. NWP 6 (Survey Activities)**
- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
 - b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.
 - c. Exploratory trenching in tidal waters. “Exploratory trenching” means mechanical land or underwater clearing of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material.
- 5. NWP 7 (Outfall Structures and Associated Intake Structures)**
- a. Any project applying for authorization under NWP 7.
- 6. NWP 8 (Oil and Gas Structures on the Outer Continental Shelf)**
- a. Any project applying for authorization under NWP 8.
- 7. NWP 10 (Mooring Buoys)**
- a. Any aspect of the project will be located in mudflats or natural rocky habitat.
- 8. NWP 12 (Oil or Natural Gas Pipeline Activities)**
- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
 - b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

- c. The project involves unconfined work or silt-producing activities in streams with diadromous fish.

9. NWP 13 (Bank Stabilization)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.
- c. Activities in tidal waters that are ≥ 200 linear feet.
- d. Any project including stream channelization or relocation activities.
- e. Any project including breakwaters, groins, or jetties.

10. NWP 14 (Linear Transportation Projects)

- a. Any aspect of the project will be located in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

11. NWP 17 (Hydropower Projects)

- a. Any project applying for authorization under NWP 17.

12. NWP 18 (Minor Discharges)

- a. Any discharge associated with beach nourishment.

13. NWP 19 (Minor Dredging)

- a. Any dredging considered to be improvement dredging per the Massachusetts 401 Water Quality Certification Regulations at 310 CMR 9.02.

14. NWP 20 (Response Operations for Oil or Hazardous Substances)

- a. Any aspect of the project will be located in mudflats or natural rocky habitat.
- b. Temporary impacts are $\geq 1,000$ square feet in tidal waters for spill response training exercises.

15. NWP 23 (Categorical Exclusions)

- a. Any project applying for authorization under NWP 23.

16. NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities)

- a. In tidal waters excluding tidal vegetated shallows, the combined permanent and temporary impacts are $\geq 5,000$ square feet.
- b. Eelgrass (vegetated shallows) planting and transplanting ≥ 100 square feet in tidal waters.

- c. Runneling projects with the purpose of restoring saltmarsh by removing excess water that ponds on the saltmarsh surface.
- d. The project proposes permanent water impoundments, dam removal, or fish ladders.
- e. The conversion of: (a) a stream or natural wetlands to another aquatic habitat type (e.g., stream to wetland or vice versa, wetland to pond, etc.) or uplands, (b) one wetland type to another.
- f. Any project that includes activities associated with stream channelization, relocation, or artificial reefs.

17. NWP 31 (Maintenance of Existing Flood Control Facilities)

- a. Any project applying for authorization under NWP 31.

18. NWP 32 (Completed Enforcement Actions)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

19. NWP 33 (Temporary Construction, Access, and Dewatering)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

20. NWP 34 (Cranberry Production Activities)

- a. Any project applying for authorization under NWP 34.

21. NWP 35 Maintenance Dredging of Existing Basins

- a. Any project applying for authorization under NWP 35.

22. NWP 36 (Boat Ramps)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

23. NWP 37 (Emergency Watershed Protection and Rehabilitation)

- a. Any project applying for authorization under NWP 37, except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur.

24. NWP 45 Repair of Uplands Damaged by Discrete Events

- a. Any project applying for authorization under NWP 45.

25. NWP 48 (Commercial Shellfish Mariculture Activities)

- a. Discharges of fill material associated with aquaculture $\geq 5,000$ square feet
- b. Research, educational, commercial-viability, or experimental aquaculture gear activities $\geq 1,000$ square feet.
- c. Activities in water depths ≥ 10 feet mean low lower water (MLLW).
- d. In tidal waters, expansions of existing lease sites that exceed 2 acres for the entire site (e.g., a 1-acre lease site increasing to a 2-acre lease site does not require notification to CZM).
- e. The project includes new, or expansions of, impoundments and semi-impoundments of tidal and non-tidal waters for the culture or holding of motile species such as lobster with an impounded area $> \frac{1}{2}$ acre.
- f. The project includes the cultivation of a nonindigenous species, unless that species has been previously cultivated in the waterbody.
- g. The project includes the cultivation of an aquatic nuisance species.
- h. The project includes stockpiles, staging areas, or the deposition of shell material back into tidal and non-tidal waters as waste.

26. NWP 54 (Living Shorelines)

- a. The combined permanent and temporary impacts extending beyond the original footprint are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts extending beyond the original footprint $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.
- c. The activity is $\geq 1,000$ linear feet along the bank ($\geq 2,000$ linear feet along both banks).
- d. The activity is ≥ 30 feet channelward of mean low water in tidal waters
- e. The project includes upland reclamation activities.
- f. The project includes stream channelization or relocation activities.
- g. The project includes breakwaters, groins, jetties, or artificial reefs.

27. NWP 55 (Seaweed Mariculture Activities)

- a. Any project applying for authorization under NWP 55.

28. NWP 57 (Electric Utility Line and Telecommunications Activities)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

29. NWP 58 (Utility Line Activities for Water and Other Substances)

- a. The combined permanent and temporary impacts are $\geq 5,000$ square feet in tidal waters.
- b. The combined permanent and temporary impacts are $\geq 1,000$ square feet in mudflats and/or natural rocky habitat.

30. NWP A. Activities to Improve Passage of Fish and Other Aquatic Organisms

- a. Any project applying for authorization under NWP A.

III. Notification for Projects Exceeding a Threshold

A Section 10 and/or Section 404 applicant proposing work that exceeds any threshold set out in this conditional concurrence must notify CZM of their proposed project as provided in this section.

Notification shall be provided via email to the CZM Federal Consistency General Inbox (czm.fedcon@mass.gov). Notification to CZM may be made at any time but shall be made no later than the date when the applicant submits to USACE for Section 10/404 approval. CZM will determine whether the notification is complete within 7 days and will provide a response within 14 days after a determination that the notification is complete, or such other time as CZM may agree with the applicant. The response will indicate that: (i) federal consistency review is not required; (ii) federal consistency review is required; or (iii) that additional consultation is required to determine whether federal consistency review will be required. Where additional consultation is required, CZM will work with the applicant to reach a final resolution within a reasonable time. A CZM determination that federal consistency review is not required (or completion of federal consistency review, as applicable) is required prior to the start of work.

Projects that require notification to CZM shall include at least the following information:

1. A description of the proposed project, including resource area delineations, preferably illustrated with map(s) and site plan(s) depicting both existing and proposed conditions, and an analysis and quantification of the temporary and permanent impacts of the project on the resource areas.
2. A copy of the Section 10/404 application.
3. The Massachusetts Environmental Policy Act (MEPA) number, if applicable.
4. A copy of the Section 401 permit or permit application, if applicable.
5. A copy of the Chapter 91 Waterways license or application, if applicable. Additionally, any previous authorizations for the project or structures on the project site should be provided.
6. A description of the proposed activities associated with the project, the coastal effects, and any information relied upon by the applicant to develop project design and permit applications. Maps, diagrams, and technical data may be submitted when a written description alone will not adequately describe the proposed project.
7. A copy of the latest design plans developed for the project.
8. Any other information that CZM may require to determine if federal consistency review is required.

CZM will determine whether the proposed work requires federal consistency review on the basis of the information provided and any other information that CZM determines is relevant. In the event that CZM initiates federal consistency review for a project, it will notify the proponent by email at the address used for the submission.

If USACE does not agree with these conditions, then pursuant to 15 CFR 930.4, the conditional concurrence automatically becomes an objection. In the event of an objection, USACE may consider using the dispute resolution mechanisms described in 15 CFR 930.44.

Thank you for your cooperation with CZM.

Sincerely,



Alison Brizius

Director

cc: Christine Jacek, USACE
Katelyn Rainville, USACE
Roberta Budnick, USACE
Tyler Soleau, CZM
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