

STATE OF NEW YORK  
**DEPARTMENT OF STATE**

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KATHY HOCHUL  
GOVERNOR  
ROSSANA ROSADO  
SECRETARY OF STATE

October 07, 2021

*VIA EMAIL ONLY*

Stephan A. Ryba  
Chief, Regulatory Branch  
Department of the Army  
New York District, Corps of Engineers

Steven Metivier  
Chief, Regulatory Branch  
Department of the Army  
Buffalo District, Corps of Engineers

**Re: F-2021-0784** (previously F-2020-0754)  
U.S. Army Corps of Engineers – Supplemental  
Coordination under the Coastal Zone Management Act 15  
CFR 930.46 for the proposed Reissuance and Modification  
of 41 Nationwide Permits as presented in the September 15,  
2020 proposed rule. Statewide Coastal Areas.  
**Recertification of Consistency Decision**

Dear Sirs:

The Department of State (Department or DOS) has reviewed your letter dated August 19, 2021 requesting reaffirmation of this Department's concurrence with the proposed reissuance of the remaining 41 Nationwide Permits that were not finalized on January 12, 2021. Since the activity which was previously reviewed by the Department has not been changed, our previous decision issued on December 10, 2020 for F-2020-0754 (DA) (copy enclosed) remains in effect.

To summarize the Department's decision for the issued and proposed Nationwide Permits, please see the table below:

<b>Nationwide Permits CZM Requirements - NYS DOS CZM #F-2021-0784 (DA) [Previously #F-2020-0754 (DA)]</b>				
<b>NWP #</b>	<b>Title</b>	<b>Effective Date</b>	<b>NYS CZM Decision</b>	<b>Expiration Date</b>
1	Aids to Navigation	TBD	Concurrence - no further review required	14-Mar-26
2	Structures in Artificial Canals	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26



**Department of State**

NWP #	Title	Effective Date	NYS CZM Decision	Expiration Date
3	Maintenance	TBD	Conditioned - Individual CZM Review Required in All 'Tidal Wetlands' <b>EXCEPT</b> within the canals identified by DOS* at: <a href="#">NYS DOS Canals</a> Individual CZM review required in all 'Non-Tidal Wetlands' except when in-place replacement with no increase in footprint or waterward expansion, or for those authorized by New York State Department of Environmental Conservation (DEC) under General Permit GP-0-20-004 Great Lakes Erosion Control General Permit.	14-Mar-26
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	TBD	Concurrence - no further review required	14-Mar-26
5	Scientific Measurement Devices	TBD	Objection - Individual CZM Review Required	14-Mar-26
6	Survey Activities	TBD	Conditioned - Individual CZM Review Required <b>EXCEPT</b> where the activities to be authorized would be limited to sample plots or transects for wetland delineations and historic resources surveys.	14-Mar-26
7	Outfall Structures and Associated Intake Structures	TBD	Objection - Individual CZM Review Required	14-Mar-26
8	Oil and Gas Structures on the Outer Continental Shelf	TBD	Objection - Individual CZM Review Required	14-Mar-26
9	Structures in Fleeting and Anchorage Areas	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26
10	Mooring Buoys	TBD	Concurrence - no further review required	14-Mar-26
11	Temporary Recreation Structures	TBD	Conditioned - Individual CZM Review Required <b>EXCEPT</b> where the activities to be authorized are for structures that are in place for no more than 30 days in a given calendar year and are for non-residential purposes.	14-Mar-26
12	Oil or Natural Gas Pipeline Activities (previously 'Utility Line Activities')	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
13	Bank Stabilization	TBD	Conditioned - Individual CZM Review Required <b>EXCEPT</b> where the activities would be authorized under General Permit GP-0-20-004 Great Lakes Erosion Control General Permit, or would occur within the canals identified by DOS* at: <a href="#">NYS DOS Canals</a>	14-Mar-26

<b>NWP #</b>	<b>Title</b>	<b>Effective Date</b>	<b>NYS CZM Decision</b>	<b>Expiration Date</b>
14	Linear Transportation Projects	TBD	Objection - Individual CZM Review Required	14-Mar-26
15	U.S. Coast Guard Approved Bridges	TBD	Concurrence - no further review required	14-Mar-26
16	Return Water from Upland Contained Disposal Facilities	TBD	Concurrence - no further review required	14-Mar-26
17	Hydropower Projects	TBD	Concurrence - no further review required	14-Mar-26
18	Minor Discharges	TBD	Concurrence - no further review required	14-Mar-26
19	Minor Dredging	TBD	Concurrence - no further review required	14-Mar-26
20	Response Operations for Oil or Hazardous Substances	TBD	Concurrence - no further review required	14-Mar-26
21	Surface Coal Mining Activities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
22	Removal of Vessels	TBD	Concurrence - no further review required	14-Mar-26
23	Approved Categorical Exclusions	TBD	Objection - Individual CZM Review Required	14-Mar-26
24	Indian Tribe or State Administered Section 404 Program	TBD	Concurrence - no further review required	14-Mar-26
25	Structural Discharges	TBD	Objection - Individual CZM Review Required	14-Mar-26
26	[Reserved]	TBD	[Reserved]	14-Mar-26
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	TBD	Objection - Individual CZM Review Required	14-Mar-26
28	Modification of Existing Marinas	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26
29	Residential Developments	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
30	Moist Soil Management for Wildlife	TBD	Concurrence - no further review required	14-Mar-26
31	Maintenance of Existing Flood Control Facilities	TBD	Concurrence - no further review required	14-Mar-26
32	Completed Enforcement Actions	TBD	Objection - Individual CZM Review Required	14-Mar-26
33	Temporary Construction, Access, and Dewatering	TBD	Objection - Individual CZM Review Required	14-Mar-26
34	Cranberry Production Activities	TBD	Concurrence - no further review required	14-Mar-26
35	Maintenance Dredging of Existing Basins	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26
36	Boat Ramps	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26
37	Emergency Watershed Protection and Rehabilitation	TBD	Concurrence - no further review required	14-Mar-26
38	Cleanup of Hazardous and Toxic Waste	TBD	Conditioned - Individual CZM Review Required <b>ONLY</b> in New York City	14-Mar-26

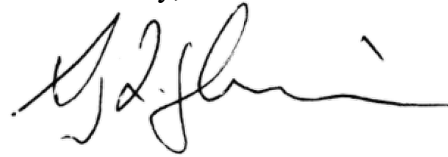
<b>NWP #</b>	<b>Title</b>	<b>Effective Date</b>	<b>NYS CZM Decision</b>	<b>Expiration Date</b>
39	Commercial and Institutional Developments	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
40	Agricultural Activities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
41	Reshaping Existing Drainage Ditches	TBD	Concurrence - no further review required	14-Mar-26
42	Recreational Facilities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
43	Stormwater Management Facilities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
44	Mining Activities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
45	Repair of Uplands Damaged by Discrete Events	TBD	Objection - Individual CZM Review Required	14-Mar-26
46	Discharges in Ditches	TBD	Concurrence - no further review required	14-Mar-26
47	[Reserved]	TBD	[Reserved]	14-Mar-26
48	Commercial Shellfish Mariculture Activities (formerly 'Commercial Shellfish Aquaculture Activities')	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
49	Coal Remining Activities	TBD	Objection - Individual CZM Review Required	14-Mar-26
50	Underground Coal Mining Activities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
51	Land-Based Renewable Energy Generation Facilities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
52	Water-Based Renewable Energy Generation Facilities	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
53	Removal of Low-Head Dams	TBD	Concurrence - no further review required	14-Mar-26
54	Living Shorelines	TBD	Objection - Individual CZM Review Required	14-Mar-26
55	Seaweed Mariculture Activities (proposed NWP A)	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
56	Finfish Mariculture Activities (proposed NWP B)	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
57	Electric Utility Line and Telecommunications Activities (proposed NWP C)	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
58	Utility Line Activities for Water and Other Substances (proposed NWP D)	15-Mar-21	Objection - Individual CZM Review Required	14-Mar-26
59	Water Reclamation and Reuse Facilities (proposed NWP E)	TBD	Objection - Individual CZM Review Required	14-Mar-26

TBD: These permits will go into effect 60 days AFTER they are published in the Federal Register.

\* Full Link for the DOS Identified Canals: <http://opdgig.dos.ny.gov/#/map/0/3345C51F-A8E3-4662-87B2-4780F59C73CC/-81.939,38.194,-69.590,45.406/topo/1>

Please feel free to contact Jennifer Street ([Jennifer.Street@dos.ny.gov](mailto:Jennifer.Street@dos.ny.gov)) or Matthew Maraglio ([Matthew.Maraglio@dos.ny.gov](mailto:Matthew.Maraglio@dos.ny.gov)) at (518) 474-6000 and reference file no. F-2021-0784 (DA).

Sincerely,



Gregory L. Capobianco  
Office of Planning, Development and  
Community Infrastructure

Enclosure

ecc: COE/New York District – [Christopher.S.Mallery@usace.army.mil](mailto:Christopher.S.Mallery@usace.army.mil)  
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DEC/Central Office – [Scott.Sheeley@dec.ny.gov](mailto:Scott.Sheeley@dec.ny.gov)

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ANDREW M. CUOMO  
GOVERNOR

ROSSANA ROSADO  
SECRETARY OF STATE

December 10, 2020

Mr. Stephan A. Ryba  
Chief, Regulatory Branch  
Department of the Army  
New York District, Corps of Engineers  
Jacob K. Javits Federal Building  
New York, New York 10278-0090

Ms. Diane Kozlowski  
Chief, Regulatory Branch  
Department of the Army  
Buffalo District, Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207-3199

Re: **F-2020-0754 (DA)**  
U.S. Army Corps of Engineers – Proposed 2020  
New York and Buffalo Districts’ Regional Conditions, the  
Reissuance and Modification of the Nationwide Permit  
Program, the issuance of five new Nationwide Permits.  
Statewide Coastal Areas

Dear Sir and Madam:

The Department of State (DOS) has completed its review of the U.S. Army Corps of Engineers (Corps) consistency determination indicating that the proposed reissuance and modification of its nationwide permits (NWPs) and issuance of five (5) new NWPs and proposed regional conditions, pursuant to 33 CFR Part 330 is and will be conducted in a manner consistent to the maximum extent practicable with the New York State Coastal Management Program.

**I. Pursuant to 15 CFR § 930.41, DOS concurs with the Corps consistency determination for the following NWPs anywhere in the New York State coastal area**

1. Aids to Navigation
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities
10. Mooring Buoys
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 and Hazardous Substances



**Department  
of State**

- 22. Removal of Vessels
- 24. Indian Tribe or State Administered Section 404 Programs
- 30. Moist Soil Management for Wildlife
- 31. Maintenance of Existing Flood Control Facilities
- 34. Cranberry Production Activities
- 37. Emergency Watershed Protection and Rehabilitation
- 41. Reshaping Existing Drainage Ditches
- 46. Discharges in Ditches
- 53. Removal of Low-Head Dams

**II. Pursuant to 15 CFR § 930.41 and § 930.43 DOS concurs with the Corps' consistency determination for those NWP's with the additional condition(s), as follows:**

3. Maintenance

DOS concurs with the Corps' consistency determination for NWP 3;

- For projects outside of Marine and Coastal District Waters (all tidal waters south of the Governor Mario M. Cuomo Bridge) within or affecting the NYS Coastal Area where the activities to be authorized primarily involve the repair/replacement in-place or landward of a lawful structure or fill, with no waterward expansion or increase in footprint;
- for projects authorized by New York State Department of Environmental Conservation (DEC) under [General Permit GP-0-20-004 Great Lakes Erosion Control General Permit](#);
- for projects proposed solely within the artificial canals identified by DOS at: <https://www.dos.ny.gov/opd/atlas/>.

6. Survey Activities

DOS concurs with the Corps' consistency determination for NWP 6 where the activities to be authorized would be limited to sample plots or transects for wetland delineations and historic resources surveys.

11. Temporary Recreational Structures

DOS concurs with the Corps' consistency determination for NWP 11 where the activities to be authorized are for structures that are in place for no more than 30 days in a given calendar year and are for non-residential purposes.

13. Bank Stabilization

DOS concurs with the Corps' consistency determination for NWP 13 where the activities would be authorized under [General Permit GP-0-20-004 Great Lakes Erosion Control General Permit](#) or would occur within the canals identified by DOS at: <https://www.dos.ny.gov/opd/atlas/> .

**III. Pursuant to 15 CFR § 930.41 and § 930.43, DOS concurs with the Corps' consistency determination for the following NWP's where the activities would occur outside of the New York City Waterfront Revitalization Program:**

- 2. Structures in Artificial Canals
- 9. Structures in Fleeting and Anchorage Areas
- 28. Modifications of Existing Marinas
- 35. Maintenance Dredging of Existing Basins
- 36. Boat Ramps

38. Cleanup of Hazardous and Toxic Waste

**IV. Pursuant to 15 CFR § 930.41 and § 930.43 DOS objects to the Corps' consistency determination for the following NWP's anywhere in the New York coastal area:**

- 5. Scientific Measuring Devices
- 7. Outfall Structures and Associated Intake Structures
- 8. Oil and Gas Structures on the Outer Continental Shelf
- 12. Oil or Natural Gas Pipeline Activities
- 14. Linear Transportation Projects
- 21 Surface Coal Mining Activities
- 23. Approved Categorical Exclusions
- 25. Structural Discharges
- 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 29. Residential Developments
- 32. Completed Enforcement Activities
- 33. Temporary Construction, Access, and Dewatering
- 39. Commercial and Institutional Developments
- 40. Agricultural Activities
- 42. Recreational Facilities
- 43. Stormwater Management Facilities
- 44. Mining Activities
- 45. Repair of Uplands Damaged by Discrete Events
- 48. Commercial Shellfish Aquaculture 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
- 54. Living Shorelines
  - A. Seaweed Mariculture Activities
  - B. Finfish Mariculture Activities
  - C. Electric Utility Line and Telecommunications Activities
  - D. Utility Line Activities for Water and Other Substances
  - E. Water Reclamation and Reuse Facilities

**Basis for Decision**

The nationwide permits listed in **II, III, and IV** above could authorize activities which would be inconsistent with one or more of the State's CMP policies and federally approved amendments to the CMP. First, in II, where the listed conditions are not complied with, the activities should not be subject to a nationwide permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11, #12, #13, #14, #15, #16, #17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21, #22); preventing the impairment of scenic resources (Policies #24 and #25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39).



These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Next, in **III**, where the activities would be located within the CMP special management area New York City Waterfront Revitalization Program (NYC WRP), the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the NYC WRP policies pertaining to: water dependent uses (Policies #1, #2, #3, and #8); appropriate development in appropriate areas (Policies #1, #2, #3, #8, #9, and #10); the protection, preservation, and where practicable restoration of designated significant coastal fish and wildlife habitats (Policy #4); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #4, #5, and #7); flooding and erosion hazards and increasing climate resilience (Policy #6); infringements on the public use of coastal waters and water related recreational uses (Policies #3, and #8); preventing the impairment of scenic resources (Policy #9); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policies #4, and #5); and the protection of the quality of coastal waters (Policies #4, #5, and #7).

Further, in **IV**, the activities should not be subject to a nationwide or regional permit and if so conducted, would be inconsistent with the CMP. These activities would affect the State's CMP policies pertaining to: water dependent uses (Policies #1, #2, #3, #4, #20, #21); appropriate development in appropriate areas and expediting permits for that development (Policies #1, #2, #5, #6); the protection, preservation, and where practicable restoration of State designated significant coastal fish and wild life habitats (Policy #7); the protection of fish and wildlife from pollutants and hazardous wastes (Policies #8, #31, #34, #35, #36, #38, #40); flooding and erosion hazards (Policies #11 , #12, #13, # 14, # 15, # 16, # 17); infringements on the public use of coastal waters and water related recreational uses (Policies #19, #20, #21 , #22); preventing the impairment of scenic resources (Policies 24 and 25); the conservation of agricultural lands (Policies #26, #35); the preservation and protection of freshwater and tidal wetlands and the benefits derived from them (Policy #44); and the protection of the quality of coastal waters (Policies #30, #31, #33, #34, #35, #36, #39). These activities would also affect these policies as they are reflected in the Long Island Sound Regional Coastal Management Program and federally approved Local Waterfront Revitalization Programs.

Finally, the NWP's listed in **II**, where the listed conditions are not complied with, **III**, where the activities would be located within the NYC Waterfront Revitalization Program, and **IV** above were determined not to be consistent to the maximum extent practicable with the State CMP policies for several reasons: 1) the specific nature of the authorized activity is unknown (e.g. structures in fleeting and anchorage areas, residential developments, approved categorical exclusions, completed enforcement actions); 2) the size, extent and duration of the authorized activity is limitless (e.g. utility line backfill and bedding, structural discharges, maintenance dredging of existing basins); 3) the established thresholds for an activity are excessive (e.g. bank stabilization, headwaters and isolated waters discharges, 1/2 acre loss of waters); 4) the provisions of the permits do not reflect the existing conditions of the geographic areas in which the authorized activity would occur; 5) coordinated review of authorized activities will be limited and expedited review by the Corps would exclude valuable local knowledge of on- site conditions and potential effects on local resources (e.g. water-based renewable energy); 6) the mitigation condition does not advocate "avoidance" and viable alternatives or advocating activities that would advance relevant CMP policies as the principal means of minimizing adverse effects on coastal waters, habitats, wetlands, scenic areas, special aquatic sites (mitigation banks vs. on-site mitigation) ; and 7) the authorized activities could be inconsistent with locally adopted and State and federally approved plans as expressed in federally approved amendments to the CMP.

### **Alternative Measures - Regional Conditions**

Pursuant to 15 CFR § 930.43(a)(3), DOS should describe alternative measures which, if adopted by the Corps, would allow the Corps to proceed with the reissuance, modification, and issuance of new NWP's in a manner consistent to the maximum extent practicable with the CMP. According to 33 CFR § 330.4(d)(2), the Division or District Engineers may establish regional conditions for NWP's that would make them consistent with the CMP and as such, DOS is committed to developing regional conditions with the appropriate districts.

To ensure that the Corps' NWP's and activities authorized by them would be consistent with the CMP and approved LWRPs, the following condition applies to:

- 1) the NWP's listed in **II** above that do not meet the stated conditions and
- 2) the NWP's listed in **III** when the activity to be authorized would occur within the NYC Waterfront Revitalization Program

And

- 3.) the NWP's listed in **IV** above

Activities authorized pursuant to these Nationwide Permits shall be submitted to DOS for review by the applicant. DOS will review the proposed activities pursuant to 15 CFR Part 930 Subpart D. DOS concurrence with an applicant's consistency certification shall not be presumed unless DOS fails to concur with or object to an applicant's consistency certification within six (6) months of commencement of DOS' review of an applicant's consistency certification and all necessary data and information in accordance with 15 CFR § 930.62 or § 930.63.

Should you have any questions regarding this consistency decision please contact Matthew Maraglio ([matthew.maraglio@dos.ny.gov](mailto:matthew.maraglio@dos.ny.gov)) or Jennifer Street ([jennifer.street@dos.ny.gov](mailto:jennifer.street@dos.ny.gov)).

Sincerely



Kisha Santiago-Martinez  
Deputy Secretary of State  
Office of Planning, Development and Community  
Infrastructure

KSM/rf

cc: OCM – Jeffery L. Payne - via e-mail  
OCM – Kerry Kehoe, David Kaiser – via e-mail  
COE/HQ – David B. Olson - via e-mail  
COE/Buffalo District -Bridget Brown -via e-mail  
COE/New York District -Amanda Regan-via e-mail  
NYSDEC/Central Office – Scott Sheeley via e-mail