



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, JACKSONVILLE DISTRICT
701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207

July 15, 2025

Regulatory Division

ADVISORY PUBLIC NOTICE

MODIFIED REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS IN JACKSONVILLE DISTRICT

On February 25, 2022, Jacksonville District published the final regional conditions for the 2021 Nationwide Permits (NWP). Jacksonville District has modified the regional conditions by removing regional condition 8 and modifying regional condition E.1.a.-b.

Regional condition 8. (*Florida Keys*) required pre-construction notification (PCN) for all activities in the Florida Keys and required prospective permittees to submit a certification from the Florida Keys National Marine Sanctuary (Sanctuary) prior to verification by the Jacksonville District for any activities in the Sanctuary. Jacksonville District reevaluated this regional condition and determined that regional condition 8 should be removed. First, the requirement for PCN is duplicative of NWP general conditions 18, 20 and 22, which collectively result in a PCN being required for most activities in the Florida Keys. Second, the Corps determined that regional condition 8 was unnecessary as certifications from the Sanctuary fall into the category of other authorizations required by law. 33. C.F.R. § 330.4 (b)(2). Consistent with 33. C.F.R. § 330.4 (b)(2), the verification of a NWP does not obviate the need of permittees to obtain a certification from the Sanctuary for activities that will be implemented in the Sanctuary, along with any other legally required federal, state, or local permits, approvals, or authorizations. However, it is unnecessary for the Corps to refrain from issuing NWP verifications until after a Sanctuary certification is provided. Instead, for activities to be conducted in the Sanctuary, permittees are independently responsible for acquiring any required certification from the Sanctuary, which may occur after the issuance of a NWP verification. The removal of this regional condition applies to all NWP activities in the Florida Keys.

Jacksonville District modified regional condition E.1.a.-b. to reflect the modified general water quality certification (WQC) for the 2021 NWPs provided by the Florida Department of Environmental Protection on November 26, 2024. The modified general WQC includes a modified condition. The modified condition removes problematic language that prevented the Corps from relying on the original WQC for many of the 2021 NWPs.

Modified regional condition E.1.a.-b. applies to NWP's 1-7, 9-20, 22-25, 27-46, 48, 49, 51, and 53-59. The 2021 NWP's will expire on 14 March 2026. The modified regional conditions for the 2021 NWP's are enclosed.

Complete information regarding the 2021 NWP's is located on the Jacksonville District Source Book page under "Nationwide Permits"
(<https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>).

QUESTIONS concerning this public notice should be directed to Jessica Cordwell by email at Jessica.L.Cordwell@usace.army.mil, or by telephone at 813-233-6877.



DEPARTMENT OF THE ARMY
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701 SAN MARCO BOULEVARD
JACKSONVILLE, FLORIDA 32207

July 15, 2025

**FINAL REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS
IN JACKSONVILLE DISTRICT (SAJ)**

Effective Date for Regional Conditions for 16 NWP: March 15, 2021
Effective Date for Modified Regional Conditions for 16 NWP: February 25, 2022
Effective Date for Regional Conditions for 41 NWP: February 25, 2022
Expiration Date for Regional Conditions for All NWP: March 14, 2026
Date of Modification to Regional Conditions: July 15, 2025

This Regional Condition document supersedes all prior Regional Condition documents for the Jacksonville District.

A. BACKGROUND/APPLICABILITY.

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Jacksonville District (SAJ) for the following Nationwide Permits (NWP):

a. The NWP published in the January 13, 2021 Federal Register (86 FR 2744) announcing the reissuance of twelve (12) existing NWP (that is, NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and issuance of four (4) new NWP (that is, NWP 55, 56, 57, and 58), as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP were effective on March 15, 2021 and will expire on March 14, 2026; and

b. The NWP published in the December 27, 2021 Federal Register (86 FR 73522) announcing the reissuance of the remaining unmodified forty (40) existing NWP (that is, NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54) and issuance of one (1) new NWP (that is, NWP 59). At this time, NWP 26 and 47 are reserved. These 41 NWP will be effective as of February 25, 2022 and will expire on March 14, 2026.

2. Status of Activities Under Prior NWP and/or Regional Conditions.

a. 16 NWP: The regional conditions that were effective on March 15, 2021 have been modified and are incorporated in this document. (There are three changes to the previous regional conditions. First, Regional Condition 45 (Tribal Rights and Authorities) has been added. Second, Regional Condition 2.b. has been modified to specify that the description of a project location shall include the latitude and longitude. Third, Regional Condition 36 has been modified by adding a superscript that refers to new text at F.3., which clarifies NWP 43's pre-construction notification requirements.) These modified regional conditions must

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be applied on and after February 25, 2022, for the 16 NWPs **except** for the following scenarios:

- (i) NWP verification letters for one or more of the 16 NWPs that were issued **prior** to February 25, 2022; or
 - (ii) NWP activities that did not require a pre-construction notification (PCN), are covered by one or more of the 16 NWPs, and have either commenced, are under contract to commence, or have been completed **prior** to February 25, 2022.
- b. 40 NWPs: For information about whether an activity can continue under the 2017 versions of the 40 existing NWPs (for example, the status of prior permit verifications and pre-construction notifications) and, accordingly, the 2017 Regional Conditions, see the discussion in the Reissuance and Modification of Nationwide Permits at 86 FR 73522 in Section I.D. on page 73525 or contact the Jacksonville District Regulatory Office directly.
3. The following regional conditions will provide additional protection for the aquatic environment that is necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects.
4. As specified under NWP General Condition 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 C.F.R. 330.4(e)) and with any case-specific conditions added by the Corps, or by Florida, Puerto Rico, U.S. Virgin Islands, Miccosukee Tribe of Indians of Florida or Seminole Tribe of Florida in their Section 401 Water Quality Certification, and by Florida, Puerto Rico or the U.S. Virgin Islands in their concurrence with the Corps' Coastal Zone Management Act consistency determination.
5. Superscripts refer to the corresponding number in Section F, Definitions and Acronyms.
6. The acronym "PCN" used throughout this document refers to Pre-Construction Notification as further defined in NWP General Condition 32.
- a. In Florida, the *Nationwide Permit Pre-Construction Notification (PCN)* form (ENG Form 6082) should be used for NWP PCNs.
 - b. PCN for activities in the Antilles⁴ shall be made through the Joint Permit Process using the most recent and valid *Application for Department of the Army Permit* (ENG Form 4345), and the form must indicate it is an NWP Pre-Construction Notification (PCN). The application must also contain the information described in General Condition 32. If the joint process changes before the expiration of these Regional Conditions, then follow the instructions in the announcement for such change.

B. EXCLUDED WATERS AND/OR AREAS.

1. NWPs cannot be used in an exclusion area designated by Regional Condition 4.

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2. Designated Critical Resource Waters.

- a. Synopsis of NWP General Condition 22. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may identify additional critical resource waters after notice and opportunity for public comment. 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, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, a PCN is required for any activity proposed by permittees in the designated critical resource waters, including wetlands adjacent to those waters.
- b. In accordance with General Condition 22, designated critical resource waters in Florida are:
 - (i) Wetlands and other surface waters in National Estuarine Research Reserves, NOAA-managed National Marine Sanctuaries and marine monuments, Biscayne National Park and Everglades National Park;
 - (ii) State natural heritage sites, and the Marjorie Harris Carr Cross Florida Greenway State Recreation and Conservation Area; and
 - (iii) Wetlands and other surface waters in active designated State of Florida Areas of Critical State Concern, including the Green Swamp Area, the Big Cypress Area, and the Apalachicola Bay Area. See, for example, Fla. Stat. §§ 380.055, 380.0551 and 380.0555.

C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs.

1. Endangered Species. In accordance with General Condition 18, a PCN must be submitted if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. The following information is provided to assist prospective Permittees to fulfill their obligations under General Condition 18.
 - a. NMFS Species. There are numerous listed species throughout the estuarine and marine waters in Florida, Puerto Rico, and the U.S. Virgin Islands. Therefore, there is a high potential that one or more of these species or designated critical habitat will be in the vicinity of or affected by the activity. For species for which the NMFS has jurisdiction, web pages for each of the species describing their range, how they can be affected, and other information can be accessed at https://www.fisheries.noaa.gov/species-directory/threatened-endangered?title=&species_category=any&species_status=any®ions=1000001121&items_per_page=25&sort=. That information can be used, along with project and site-specific information, to determine whether a PCN is required by General Condition 18. NMFS species include, but are not limited to, the following:

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sea turtles, smalltooth sawfish, Gulf sturgeon, shortnose sturgeon, and certain corals.

b. USFWS Species. The West Indian manatee, for which the USFWS has jurisdiction, is found in most estuarine and marine waters (as well as some inland freshwaters) in Florida, Puerto Rico and the U.S. Virgin Islands. The USFWS Information for Planning and Consultation (IPaC) web page (<https://ecos.fws.gov/ipac/>) should be used to identify the potential for the presence of and effect on listed species under the jurisdiction of the USFWS. Other tools for effect determination on federally listed species and designated critical habitat are available on ECOS at ecos.fws.gov. For Puerto Rico and the U.S. Virgin Islands, prospective Permittees are encouraged to review the local office's website at <https://www.fws.gov/southeast/caribbean/> for any changes in species lists, status, additions or latest conservation measures that have not yet been incorporated into IPaC. The information from these various sources can be used, along with project and site-specific information, to determine whether a PCN is required by General Condition 18.

2. Historic Properties.

a. Florida. In addition to General Condition 20 (Historic Properties), in Florida, if a PCN is not required (or not voluntarily submitted), the prospective Permittee shall contact the Florida Master Site File (FMSF) to conduct an historic properties search. The prospective Permittee shall provide the FMSF with the project area and Section/Township/Range information by email to sitefile@dos.myflorida.com or contact the FMSF office at (850) 245-6440. If the FMSF identifies any historic property within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the prospective Permittee shall submit a PCN to the Corps, including the information exchanged with the FMSF office, for further review and consultation. Submittal of a PCN is not required when the FMSF report for the property (or all properties if more than one) shows the Florida Department of State, Division of Historical Resources Compliance and Review Section (SHPO) Evaluation ('SHPO Eval' column) to be "Not Eligible" and also shows the property(ies) is/are not listed or proposed for listing on the National Register of Historic Places ('NR Status' column). However, in accordance with General Condition 20, a PCN is required if the prospective Permittee has knowledge of a historic property that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the NRHP, including previously unidentified properties.

b. Seminole Tribe of Florida. In addition to General Condition 20 (Historic Properties), in Florida, for applications that do not require a PCN, the prospective Permittee shall contact the Seminole Tribe's Historic Preservation Compliance Office (THPO) to conduct an historic and cultural resources properties search. The prospective Permittee shall provide the THPO with the project area, to include the latitude and longitude of the project and Section/Township/Range information, to THPOCompliance@semtribe.com (include the uppercase letters

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of the email address). If the THPO's search identifies any historic property or cultural resource within 50 meters of the project area that is listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the prospective Permittee shall submit a PCN to the Corps, including the information exchanged with the THPO, for further review. Submittal of a PCN is not required when the THPO report for the property(ies) shows "Not Eligible" or "None" and also shows the property(ies) is/are not listed or proposed for listing on the National Register of Historic Places ("NR Status" column). However, in accordance with General Condition 20, a PCN is required if the prospective Permittee has knowledge of a historic property that is 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.

3. Florida Prehistoric or Historic Artifacts. In addition to General Condition 21 (Discovery of Previously Unknown Remains and Artifacts), in Florida, if prehistoric or historic artifacts, such as pottery or ceramics, projectile points, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the Permittee shall cease all activities involving subsurface or ground disturbance within a 100 meter diameter of the discovery. The Permittee shall contact the Corps immediately and not later than within the same business day (eight hours). The Corps will contact the SHPO at (850)-245-6333 and the appropriate THPO(s) to assess the significance of the discovery. The Corps shall also follow the *Agreement Between the Jacksonville District, U.S. Army Corps of Engineers, and the Seminole Tribe of Florida Regarding Proposed Actions that may Adversely Affect American Indian Burial Resources*. This agreement emphasizes that the resolution of effects to Native American burial resources will be accomplished whereby avoidance is the first priority and minimization or mitigation is only considered as a last resort. Appropriate actions for the resolution of the adverse effects will be determined following initiation of these steps and under consultation with the SHPO and THPO(s). In addition, in the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the Permittee shall notify the medical examiner, in accordance with Section 872.05, Florida Statutes ("Unmarked human burials"), as well as the Corps and SHPO. On federal or tribal lands, or situations where the Archaeological Resources Protection Act of 1979 or Native American Graves Protection and Repatriation Act of 1990 applies, the Permittee shall notify the Corps who will notify the SHPO and THPO(s). Once activities have ceased as a result of any of the situations identified in this Regional Condition, they shall not resume without written authorization from the Corps.

(Note: Regional Condition 45 applies to all NWPs. It is located for administrative reasons (that is, numbering consistency) at the end of Section D.)

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC ACTIVITIES AND/OR SPECIFIC NWPs.

(Note: The numbering in this section starts at 4 because it is a continuation of conditions based on numbering in Section C above).

4. In the Antilles, Marine Reserves, Marine Protected Areas or Parks.

NWPs 1, 11 and 52. Excluded within the boundaries of Marine Reserves, Marine Protected Areas,⁸ and Parks in the Antilles,⁴ except when used within those areas by the local or federal agency responsible for the management of those areas.

5. Coral assemblages.⁵

a. NWP 1. In the Jacksonville District placement of aids to navigation cannot cause adverse impacts to coral assemblages.⁵

b. NWPs 7, 10, 11, 19, 22 and 28 in Antilles. Activities cannot cause adverse impacts to coral assemblages.⁵

c. <reserved>.

d. <reserved>.

e. NWPs 4, 6, 9 and 23. PCN is required if within coral assemblages in depths less than 250 feet.

f. NWPs 7, 14, 15, 16, 18, 52 and 54 in the Antilles. PCN is required for any activity within coral assemblages.⁵

g. NWPs 3, 10, 28, 35, 48, 55 and 56. PCN is required for any activity within coral assemblages.⁵

h. <reserved>.

6. PCN is required for several NWPs in the Antilles.

NWPs 2, 13, 19, 25, 36. PCN is required for all activities under these NWPs in the Antilles.⁴

7. Activities affecting structures or works built by the United States. In accordance with General Condition 31, a PCN is required when the proposed activity will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project.

a. Synopsis of General Condition 31. A PCN is required when the proposed “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 Corps federally authorized Civil Works project (a ‘USACE project’).”

b. Additional Information on 33 U.S.C. § 408 requirements and procedures are at <https://www.usace.army.mil/Missions/Civil-Works/Section408/>. Descriptions of

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activities that may require Corps review or permission under 33 U.S.C. § 408 are found in paragraph 9 of *Engineer Circular (EC) 1165-2-220*, which is available via that web page. Some examples are those: (1) within the right-of-way for a federal navigation project; (2) that do not meet the Setback Guidance for a federal navigation project; and (3) that cross (above or below) a USACE project levee, dike, dam or other water-retaining structure.

c. Corps project real estate. Any activity within Federal project lands, including within rights-of-way, may require the prospective Permittee to enter into a Consent to Easement or other real estate instrument with the Real Estate Division, U.S. Army Corps of Engineers, Jacksonville or Mobile District, as appropriate, prior to the commencement of any construction activity.

d. For NWP 3. For projects adjacent to a federal channel, if the previously authorized and serviceable structure was destroyed by an act of nature or other event, the project will be reviewed pursuant to the setback guidance in effect at the time of the PCN. It is possible that any authorized reconstruction will not be authorized to be rebuilt with the same dimensions or design as the original structure.

8. <removed>

9. Adjacent to Tribal lands.

a. NWPs 3, 18, 27, 40, 41 and 46. PCN is required when the property on which the proposed activity is occurring is adjacent to Tribal lands.

b. NWP 3, 18, 27, 40, 41 and 46. PCN is required for projects located in these waters. In vicinity of Brighton Reservation: Lake Istokpoga; Istokpoga Creek; Istokpoga Canal; Kissimmee River (C-38) from Istokpoga Creek to Lake Okeechobee. In vicinity of Big Cypress Reservation: Miami Canal from G373 south to S8. In vicinity of Hollywood Reservation: North New River Canal from West Hollywood Canal (C-42) east to South New River Canal (C-11); Dania Cutoff canal from South New River Canal (C-11) east to I-95. In vicinity of Fort Pierce Reservation: Ten Mile Creek from Okeechobee Road east to the I-95. In vicinity of Tampa Reservation: Palm River.

10. Culverts in the Antilles.

NWPs 3 and 14. For projects in the Antilles,⁴ if bottomless culverts or single-span bridges are not feasible, culvert construction must comply with the *Guidance for Repair, Replacement, and Clean-up of structures in Streams and Waterways of Puerto Rico and US Virgin Islands*, which was provided by the USFWS and is available at

<https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/19722>. If compliance is not practical for a particular location, the PCN must include the reason(s) it was not practicable and describe how the activity will maintain necessary life cycle movements of aquatic life indigenous to the water body.

11. Gabions, sediment removal and heavy equipment.

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NWPs 3 and 13. Projects in the Antilles must meet specific design criteria to address gabions, removal of accumulated sediments around bridges, and use of heavy equipment.⁹

12. Projects that capture and store water.

NWPs 3, 18, 27, 40, 41 and 46. Projects that capture and store water, such as Dispersed Water Management Projects, are excluded from this NWP.

13. Live Rock culture.

NWPs 4 and 48. Placement of materials for live rock culture and the harvesting of live rock are not activities authorized by these NWPs.

14. Submerged aquatic vegetation.^{7,10}

a. NWPs 7, 14, 15, 16, 18, 19, 52 and 54 in the Antilles.⁴ PCN is required for any activity occurring within submerged aquatic vegetation.^{7,10}

b. NWPs 3, 10, 12, 22, 28, 35, 48, 55, 56, 57, and 58. PCN is required for any activity occurring within submerged aquatic vegetation.^{7,10}

15. Tidal wetlands.

NWPs 3, 10, 12, 22, 28, 35, 48, 55, 56, 57, and 58. PCN is required for any activity occurring within tidal wetlands.

16. Hardbottom benthic habitat.

NWPs 52 and 54 in the Antilles.⁴ PCN is required for any activity occurring within hardbottom benthic habitat.

17. Salt flats.

NWPs 7, 14, 15, 16, 18 and 19 in the Antilles. PCN is required in salt flats.

18. Forested wetlands.

a. NWPs 7, 14, 15, 16, 18, 19, 29, 39, 40, 42, 51 and 59 in the Antilles. PCN is required for any activity occurring within forested wetlands.

b. NWP 22. PCN is required in forested wetlands.

19. In the Florida Keys, any activity which will result in the discharge of greater than 0.25 acre of dredged or fill material.

NWPs 29, 39 and 59. For projects in the Florida Keys with discharges of dredged or fill material greater than 0.25 acre, the Corps will request comments from U.S. EPA Region 4.

20. Hopper dredging.

NWPs 19 and 35. Hopper dredging is not allowed under this NWP.

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21. In the Antilles, any activity which will result in the discharge of greater than 0.25 acre of dredged or fill material.

NWPs 40, 51 and 59. In the Antilles, for projects that propose the discharge of greater than 0.25 acre of dredged or fill material, the Corps will request comments from the USFWS.

22. Sediment and erosion control plan.

NWPs 41, 44, 45, 46 and 53. The PCN shall include a sediment and erosion control plan.

23. Wind Energy Guidelines.

NWPs 51 and 52. The Corps will consider the information in the USFWS *Land-Based Wind Energy Guidelines* (at https://www.fws.gov/ecological-services/es-library/pdfs/WEG_final.pdf) when reviewing a proposed project for compliance with General Condition 18 (Endangered Species).

24. NWP 2. In Florida, this NWP is limited to the installation and removal of individual, single family docks/piers/swim and observation platforms and/or mooring pilings, davits, and boat lifts at single-family residences.

25. NWP 2. All dock or pier construction over submerged aquatic vegetation,⁷ marsh and/or mangroves shall comply with the joint U.S. Army Corps of Engineers'/National Marine Fisheries Service's *Construction Guidelines in Florida for Minor Piling-Supported Structures Constructed in or over Submerged Aquatic Vegetation (SAV), Marsh or Mangrove Habitat*, dated November 2017, available in the USACE Digital Library at <https://usace.contentdm.oclc.org/digital/collection/p16021coll11/id/1930/> or subsequent updates available at <https://www.saj.usace.army.mil/Missions/Regulatory/Source-Book/>.

26. NWP 2. Structures constructed on canals or channels shall not exceed more than 25% of the canal/channel width, excluding dense areas of shoreline vegetation, such as mangrove, as measured from the project location to the opposite shoreline (in order to maintain no less than 50% of the open-water portion of the waterbody for public use).

27. NWP 3. PCN is required for any work located in the coastal zone of the Antilles,⁴ including the areas specified in F.1. and F.2. below for Puerto Rico¹ and U.S. Virgin Islands,² respectively. For Puerto Rico, the geographic area comprising its coastal zone is the area described in the Puerto Rico Coastal Zone Management Program.

28. NWP 3. PCN is required for all work within the La Parguera Natural Reserve and Culebra Island in Puerto Rico. Reconstruction of structures within the La Parguera Natural Reserve will not be allowed under this nationwide permit.

29. NWP 10. PCN is required for all activities in the Antilles.⁴

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30. NWP 11. PCN is required for any structure proposed in or over submerged aquatic vegetation^{7,10} and/or mangroves.

31. NWP 58. For water intake projects in Puerto Rico, the prospective Permittee must submit a PCN to the District Engineer prior to commencing the activity, in accordance with General Condition 32. The PCN must contain plans and drawings, a description of all waters of the U.S. impacted by the project, the maximum amount of water to be withdrawn in millions of gallons a day (MGDs), and the minimum in-stream flows on any given day in MGDs after water extraction.

32. NWPs 12, 57 and 58. Where the proposed subaqueous utility or transmission line is to be installed in, under, or over navigable waters of the United States, as defined in 33 C.F.R. § 329.4, at least two weeks prior to the start of the authorized work, the Permittee must notify the National Oceanic Atmospheric Administration (NOAA) and the Corps office in writing that the work is commencing, and again upon completion of the work. For pre-construction and post-construction notifications, the Permittee shall notify the District Engineer at the above letterhead address, attention Regulatory Division, and NOAA, at Department of Commerce, NOAA, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, MD 20910-3282. The post-construction notification shall be submitted within 60 days of completion of construction and shall include "as-built plans," signed and sealed by a registered surveyor/engineer licensed in the State of Florida, Puerto Rico, or U.S. Virgin Islands, as appropriate, that certify the project is constructed as authorized, and must include an accurate (within plus or minus one (1) foot) depiction of the location and configuration of the completed activity in relation to the mean high water of the navigable water.

33. NWP 18. In the Antilles⁴ PCN is required for all activities proposed in the areas defined in Section F below for Puerto Rico¹ and U.S. Virgin Islands.²

34. NWP 27. PCN is required for lake restoration projects proposing any type of in-lake disposal of dredged or fill material.

35. NWP 36. PCN is required in areas without existing access to navigation channels where the minimum water depth for ingress to or egress from the navigation channels is less than -3 feet at mean or ordinary low water.

36. NWP 43.³ PCN is required prior to the start of all work in wetlands adjacent to Deer Point Lake and its tributaries in Bay County, Florida.

37. NWP 51. In Puerto Rico, prospective Permittees are encouraged to consider the USFWS Caribbean Ecological Services Field Office document *Wildlife and Habitat Risk Map for Utility-Scale Land-Based Wind Energy Projects*. The current version is at https://www.fws.gov/caribbean/es/documents/PR_Habitat_Risk_for_Wind_Energy_Version_4_22_15.pdf.

38. NWP 52. In the Antilles,⁴ PCN must include a benthic survey,¹⁰ which includes documentation on observed habitat types.

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39. NWP 54. For projects that affect aquatic resources.

- a. The completed project should result in a net gain in aquatic resource function;
- b. The structure(s) shall be maintained as necessary in perpetuity in order to maintain the lift in function and value; and
- c. In Florida, meet the applicable requirements established by the Florida Fish and Wildlife Conservation Commission if and as included in the State of Florida authorization.

40. NWP 54. Materials authorized for use under this NWP must consist mostly of natural material. Biodegradable breakwater stabilization materials, such as coir, may be used in place of plastic materials. However, in certain cases, plastic bags (Naltex) and plastic mats (UV stabilized) may be used. Concrete products (e.g., sprinkler weights) may be allowed to add to the "sufficient weight." Large-scale use of concrete as breakwater or substrate for oyster recruitment is prohibited. Certain metals (e.g., wire mesh) may be used for enclosing stone in gabions for breakwaters. Oyster mats should be used only in special cases (e.g., restoring dead margins of reefs, shoreward of and in association with bags in some cases, and held with cable ties and weights at all mat corners).

41. NWP 54. Sills may be constructed in a non-linear manner to mimic natural reefs.

42. NWP 54. Spacing or gaps between sill material shall be no greater than eight (8) inches to prevent entrapment of marine mammals or marine turtles.

43. NWP 54. Breaks in structures shall be placed at least every 75 feet and shall be five feet in width.

44. NWP 54. The PCN must include a benthic survey.¹⁰

45. Tribal Rights and Authorities. In accordance with General Condition 17, any activity authorized by any NWP cannot impact tribal rights. Furthermore, there may be requirements that are applicable to activities that are proposed to occur on Tribal lands. Permittees should consider the following information to facilitate their compliance with this General Condition and applicable requirements.

a. General Condition 17 (*Tribal Rights*) states, "No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights." The term "tribal rights" is defined as "[t]hose 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." 86 FR at 2877 (definition of *Tribal rights* in section *F. Definitions* of the *Reissuance and Modification of Nationwide Permits*; Final Rule, 86 FR 2744 (January 13, 2021).

b. 33 C.F.R. § 330.4(b)(2) states, "NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law." This principle applies equally to any other permits, approvals or authorizations

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required by law from the Miccosukee Tribe of Indians of Florida and Seminole Tribe of Florida.

E. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS.

1. State of Florida.

- a. WQC is granted with conditions for NWPs 1-7, 9-20, 22-25, 27-46, 48, 49, 51, 53 - 56, 58 and 59. The condition is:

Prior to construction, activities qualifying for this Nationwide permit (NWP) must be authorized by the applicable permit or exemption under Part IV of Chapter 373, F.S. and by any authorization required to use or occupy state-owned submerged lands (SSL) under chapter 253, F.S., and, as applicable chapter 258, F.S.

Therefore, Permittees performing activities under the authority of NWPs 1-7, 9-20, 22-25, 27-46, 48, 49, 51, 53 - 56, 58 and 59 must comply with this condition.

- b. WQC is granted with conditions for NWP 57. The condition is:

Prior to construction, activities qualifying for Nationwide permit 57 (NWP57) must be authorized by a written final order granting certification pursuant to the Florida Electric Transmission Line Siting Act (for electric utility line activities), or authorized by the applicable permit or exemption under Part IV of Chapter 373, F.S. and by any authorization required to use or occupy state-owned submerged lands (SSL) under chapter 253, F.S., and, as applicable chapter 258, F.S. (for telecommunication line activities).

Therefore, Permittees performing activities under the authority of NWP 57 must comply with this condition.

- c. WQC for NWP 8 is denied. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by this NWP that propose a discharge into waters of the U.S.

- d. WQCs for NWPs 21, 50, and 52 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

- e. CZMA consistency concurrence was received for NWPs 1, 2, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 51, 57 and 58 with the following condition included:

Activities qualifying for this NWP must receive applicable Coastal Zone Management Act (CZM) consistency concurrence (CZCC) or waiver/exemption from the appropriate delegated authority. In Florida,

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under 33 C.F.R. § 325.2(b)(2), the Corps may presume CZCC concurrence for the exempted activities by operation of s. 380.23(7), F.S., and the rules of the F.A.C. adopted thereunder.

Therefore, the prospective Permittee must comply with this condition in order for the activity to be authorized by NWP 1, 2, 5, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 25, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 51, 57 or 58.

f. For NWPs 3, 4, 6, 9, 10, 23, 27, 28, 48, 55 and 56, CZMA consistency concurrence was not received. Therefore, in accordance with NWP General Condition 26, “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.”

g. CZMA consistency concurrence was not received for NWPs 21, 49 and 50 since these activities (related to coal mining) are unlikely to occur in Florida. In accordance with NWP General Condition 26, “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.”

h. A CZMA consistency concurrence response has not been received for NWPs 24, 52, 53, 54, and 59. In accordance with NWP General Condition 26, “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.”

i. A CZMA consistency concurrence was denied for NWP 8. In accordance with NWP General Condition 26, “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.”

2. Miccosukee Tribe of Indians of Florida.

a. WQC for NWP 12 is granted with conditions but the conditions are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for an activity under NWP 12.

b. WQCs for NWPs 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58 and 59 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

c. WQC for is granted with conditions for NWP 1. The condition is:

Aids to navigation may not be placed on Tribal lands or waters without prior written permission from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 1 must comply with this condition.

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d. WQC is granted with conditions for NWP 2. The condition is:

A structure may not be located on Tribal lands or in Tribal waters without prior written approval from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 2 must comply with these conditions.

e. WQC is granted with conditions for NWP 5. The condition is:

Scientific measurement devices may not be located on Tribal lands or waters without prior written approval from the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 5 must comply with this condition.

f. WQC is granted with conditions for NWP 6. The condition is:

Seismic exploratory devices or exploratory activities may not be located on Tribal lands or waters without prior written approval of the Miccosukee Tribe. Additionally, the use of ground penetrating radar or isotope technology are not authorized on Tribal lands or waters without the prior written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 6 must comply with these conditions.

g. WQC is granted with conditions for NWP 46. The condition is:

No discharges are authorized on Tribal lands or into Tribal waters without the prior written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 46 must comply with this condition.

h. WQC is granted with conditions for NWP 54. The condition is:

Structures may not be located on Tribal lands or waters without prior written approval of the Miccosukee Tribe. Discharge material must be in accordance with the written approval of the Miccosukee Tribe.

Therefore, Permittees performing activities under the authority of NWP 54 must comply with these conditions.

3. Seminole Tribe of Florida.

a. WQCs for NWPs 4, 5, 6, 15, 16, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 36, 37, 38, 40, 41, 42, 43, 44, 45, 48 and 53 are granted without conditions. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

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b. WQC is granted with conditions for NWPs 3, 7, 13, 14, 17, 33, 46, and 59. The conditions are:

1. Applicants for this NWP shall utilize Best Management Practices, including but not limited to, proper installation of temporary erosion and sediment control measures (for example secured hay bales, silt and turbidity screens) to reduce turbidity and maintain transparency; and
2. Applicants for this NWP shall ensure that any fill placed in Tribal waters be clean fill that is free of solid waste, toxic, or hazardous contaminants.

Therefore, Permittees performing activities under the authority of these NWPs must comply with these conditions.

c. WQCs for NWPs 12, 29, 39, 51, 52, 57 and 58 have been granted with conditions but the conditions are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

d. WQCs for NWPs 21, 50, 55, and 56 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

e. WQCs for NWPs 34, 49 and 54 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

f. WQCs for NWPs 1, 2, 8, 9, 10, 11 and 24 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for their activity.

g. WQC is granted with conditions for NWP 28. The condition is:

Prior written approval from the Seminole Tribe is required before commencing an activity under this NWP.

Therefore, Permittees performing activities under the authority of NWP 28 must comply with this condition.

h. WQC is granted with conditions for NWP 35. The conditions are:

1. Maintenance dredging is authorized to a depth that is within ½ foot of the adjacent access or outlet channel bottom depth or the originally excavated depth, whichever is greater;
2. This permit does not authorize the removal of plugs or connections of any canal to navigable waters of the U.S.;
3. Documentation shall be provided showing the originally authorized depth or showing the current depth of the adjacent access or outlet channel bottom; and

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4. Prior written approval from the Seminole Tribe is required before commencing an activity under this NWP.

Therefore, Permittees performing activities under the authority of NWP 35 must comply with these conditions.

4. Puerto Rico.

a. WQCs for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58 are waived. Therefore, there is no requirement for a prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.

b. NWPs 1, 2, 8, 9, 10, 11, 24, 28 and 35 do not require a WQC. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.

c. WQCs for NWPs 4, 5, 6, 20, 27, 30, 32, 37 and 38 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for the activity.

d. WQCs are granted with conditions for activities under NWPs 3, 7, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 31, 33, 34, 36, 41, 45, 46, 49, 53, 54 and 59 **except for activities conducted in Outstanding National Resources Waters** as defined in Part 11.C of the Puerto Rico Department of Natural and Environmental Resources' (DNER's) *Anti-degradation Policy Implementation Procedure* (Attachment A of the *Puerto Rico Water Quality Standards Regulation* (PRWQSR)) (see paragraph 4.e. below). Prospective permittees must comply with the special conditions established in the attached General Water Quality Certificate (GWQC) that DNER issued for these NWPs for activities that are **not in Outstanding National Resources Waters**. Permittees performing activities under the authority of these NWPs must comply with the special conditions in the GWQC.

e. WQCs are denied for all activities under NWPs 3, 7, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25, 31, 33, 34, 36, 41, 45, 46, 49, 53, 54 and 59 **if the activities are conducted in Outstanding National Resources Waters**. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by these NWPs if there will be a discharge into an Outstanding National Resources Water. Prospective Permittees must follow applicable rules in 40 C.F.R. Part 121, *State Certification of Activities Requiring a Federal License or Permit*.

f. CZMA consistency concurrence was not received for NWPs 29, 39, 40, 42, 44, 46 and 51. In accordance with NWP General Condition 26, "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 Puerto Rico Planning Board states the following:

Applicants of projects that qualify for USACE authorization through these NWPs must fill a Joint Permit Application to obtain a Federal

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Consistency Certificate with the PRCZCMP [Puerto Rico Coastal Zone Management Program]. The PR Planning Board will conduct a regular Federal Consistency review process in these cases and the submitted projects must demonstrate compliance with the state requirements. This Federal Consistency Certification does not exempt the project to comply with other federal or state requirements.

g. CZMA consistency concurrence was granted for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 45, 48, 49, 50, 52, 53, 54, 55, 56, 57, 58, and 59. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual CZMA consistency determination for an activity under these NWPs.

5. U.S. Virgin Islands.

a. WQCs for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58 are waived. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual WQC or waiver for an activity under these NWPs.

b. WQCs are denied for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59. Therefore, in accordance with NWP General Condition 25, the prospective Permittee must obtain an individual WQC or a waiver for activities authorized by these NWPs that propose a discharge into waters of the U.S. by following applicable rules in 40 C.F.R. Part 121, *State Certification of Activities Requiring a Federal License or Permit*.

c. CZMA consistency concurrence was presumed to be granted for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58. Therefore, there is no requirement for the prospective Permittee to obtain and submit to the Corps an individual CZMA consistency determination for an activity under these NWPs.

d. CZMA consistency concurrence was denied for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 and 59. In accordance with NWP General Condition 26, "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."

F. DEFINITIONS AND ACRONYMS.

1. Puerto Rico: Culebra Island; the coastal zone of La Parguera from Punta Jorobado for a distance of approximately twenty kilometers west to Cabo Rojo; Cartagena Lagoon; Tortuguero Lagoons; Mona Island; Forest Reserve Area at Piñones and Torrecilla; Las Cabezas; El Yunque; Jobos Bay; Mar Negro; Río Mameyes; Las Cucharillas Marsh; Caño Tiburones; Río Herrera/Miñi-Miñi/Mediania area; entire Municipality of Cabo Rojo; Caño Boquillas west of PR-2; Cayures Marsh

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in Aguada and its contiguous wetlands; the basin wetlands of Bajuras at Isabela, Camuy, and Carrizales in Arecibo; Prieta wetlands at Vega Alta; San Pedro wetlands in Dorado and Toa Alta; Cienaga Baja in Río Grande; wetlands associated with Herrera and Espiritu Santo Rivers; coastal wetlands of Santa Isabel; and all Commonwealth designated Natural Reserve areas. Also, areas along Martin Pena Channel and associated wetlands; Piñones State Forest wetlands; Torrecilla Alta Pterocarpus Forest, Loiza; El Faro (Cabezas de San Juan), Fajardo; wetlands in the Guanica State Forest; Humacao Swamp and Pterocarpus Forest; Caja de Muertos, Ponce; Jobos Bay, Salinas; Mar Negro, Salinas; Boqueron State Forest, Cabo Rojo; Dorado Pterocarpus Forest; Vieques Bioluminescent Bay; Laguna Tortuguero; Caño Tiburones; Espinar Swamp (Aguada-Aguadilla); Laguna Joyuda mangroves, Cabo Rojo; Pandura and Guardarraya Special Planning Area; and Ceiba State Forest.

2. U.S. Virgin Islands. St. Croix: Annally; Green Cay; Isaac Bay; Cramer's Park and East Point; Sandy Point; Salt River; Teague Bay Reef; Vagthus Point; Altonna Lagoon. St. John: all cays; Lagoon Point Newfound Bay; Chocolate Hole; Fish Bay. St. Thomas: Botany Bay and Sandy Bay; Coki Cliffs; Mangrove Lagoon (in its entirety); Bovoni wetland area; all cays; Cane Bay; Magens Bay; Mandahl Bay; Neltjeberg Bay and Stumpy Bay.

3. For NWP 43, for activities other than in wetlands adjacent to Deer Point Lake and its tributaries in Bay County, Florida, the notification requirements in NWP 43 apply with the clarification in the Notification section that maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities.

4. Antilles: For purposes of these regional conditions, the term "Antilles" means the geographic extents of both the Commonwealth of Puerto Rico and the Territory of the U.S. Virgin Islands.

5. The term "coral assemblage" includes coral reefs and hardbottom communities, which host species of corals listed under the Endangered Species Act, as well as other hard and soft coral communities.

6. <reserved>.

7. The term "submerged aquatic vegetation" means the occurrence of one or more species of seagrass, including, but not limited to, the following: turtle grass (*Thalassia testudinum*), manatee grass (*Syringodium filiforme*), shoal grass (*Halodule wrightii*), and dwarf seagrass (*Halophila spp*).

8. Marine Protected Area (MPA): In accordance with Executive Order 13158 (May 26, 2000), a marine protected area is defined as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein."

9. Use of gabions for flood control, river channelization or bank stabilization shall not provide a permanent or long-term solution (DNER 2009, Guía Para el Manejo de

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Ríos en Puerto Rico). Gabions are subject to mesh failure, scour or undercutting, collapse and hydraulic impacts of the water itself. The use of gabions or reno mattress should not be used in coastal areas or large river systems. The removal of accumulated sediments and debris near bridges is limited to 50 feet upstream and downstream of the bridge. Heavy equipment shall work from existing upland areas (i.e., bridges, upland banks) whenever possible. If heavy equipment must be used within a channel, the removal of riparian vegetation is limited to the access and egress point. The elimination of riverine features, such as point bars and pools, is not authorized pursuant to these NWPs. Post construction, all temporary fords or crossings shall be removed; banks and channel shall be returned to pre-existing contours and depths. The stream banks shall be fully stabilized using stream bank restoration treatments.

10. The optimal window for benthic survey of submerged aquatic vegetation is during the period June 1 through September 30. The Jacksonville District's Source Book should be accessed for guidance and information on benthic survey protocol, such as the NMFS *Submerged Aquatic Vegetation Survey Guidelines* (May 7, 2018).

11. More information on Living Shorelines can be obtained from the following website: http://www.dep.state.fl.us/northwest/ecosys/section/living_shorelines.htm. This website link is provided for information only and does not imply support for, or opposition to, living shorelines.

12. <reserved>.

13. Acronyms Used in Regional Conditions:

Corps: U.S. Army Corps of Engineers
EPA: U.S. Environmental Protection Agency
FDEP: Florida Department of Environmental Protection
NMFS: National Marine Fisheries Service
NOAA: National Oceanic and Atmospheric Administration
PCN: Pre-construction notification
USFWS: U.S. Fish and Wildlife Service

G. DISTRICT POINT OF CONTACT.

Regulatory Division
Jacksonville District, U.S. Army Corps of Engineers
U.S. Mail: PO Box 4970, Jacksonville, FL 32232-0019
Physical: 701 San Marco Blvd, Jacksonville, FL 32207
General inquiry phone (904) 232-1177
General inquiry email: SAJ-RD@usace.army.mil
Inquiries will be routed to the current Project Manager for response.

H. ATTACHMENT.

Puerto Rico General Water Quality Certificate