

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 8

This document is a supplement to the national decision document for Nationwide Permit (NWP) 8, and addresses the regional modifications and conditions for this NWP. The South Pacific Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications of this NWP by the establishment of regional conditions to ensure that those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified in this document. These regional conditions are being required to ensure that this NWP authorizes activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which this NWP should be regionally conditioned or excluded from NWP eligibility, as described below, to further ensure that the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

Text of NWP 8:

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Section 10)

Summary of changes to NWP 8 from 2007:

This NWP was modified to update the name of the former Minerals Management Service to the Bureau of Ocean Energy Management Regulation, and Enforcement (BOEMRE). Additional citations were added regarding Corps review being limited to effects on navigation and national security.

1.0 Background

In the February 16, 2011, issue of the Federal Register (76 FR 9174), the Corps of Engineers (Corps) published its proposal to reissue 48 existing NWP's and issue two new NWP's. To solicit comments on its proposed regional conditions for these NWP's, the Los Angeles District issued a public notice on February 25, 2011. The issuance of the NWP's was announced in the February 21, 2012, Federal Register notice (77 FR 10184). After the publication of the final NWP's, the Los Angeles District considered the need for regional conditions for this NWP. The Los Angeles District's findings are discussed below.

2.0 Consideration of Public Comments

2.1 General Comments

Please See the attached response to comments document (Section III)

2.2 Comments on Proposed Regional Conditions

2.2.1 Proposed Regional Condition 1

Please see the attached response to comments document.

2.2.2 Proposed Regional Condition 2

Please see the attached response to comments document.

2.2.3 Proposed Regional Condition 3

Please see the attached response to comments document.

2.2.4 Proposed Regional Condition 4

Please see the attached response to comments document.

2.2.5 Proposed Regional Condition 5

Please see the attached response to comments document.

2.2.6 Proposed Regional Condition 6

Please see the attached response to comments document.

2.2.7 Proposed Regional Condition 7

Please see the attached response to comments document.

2.2.8 Proposed Regional Condition 8

Please see the attached response to comments document.

2.2.9 Proposed Regional Condition 9

Please see the attached response to comments document.

2.2.10 Proposed Regional Condition 10

Please see the attached response to comments document.

3.0 Waters Excluded from NWP or Subject to Additional Pre-Construction Notification Requirements

3.1 Waters excluded from use of this NWP

None of the Los Angeles District's proposed regional conditions that exclude NWPs from specific waters and geographic regions include the outer continental shelf. Therefore this section does not apply to NWP 8.

3.2 Waters subjected to additional pre-construction notification requirements

The permittee must always submit a pre-construction notification to the district engineer prior to commencing any activity under NWP 8, therefore this section does not apply to NWP 8.

4.0 Alternatives

4.1 No Regional Conditions:

Although NWP 8 requires notification regardless of acreage of impacts, it could result in more than minimal impacts to special aquatic sites or in Pacific Fishery Management Council-designated EFH in the Los Angeles District, without the proposed Regional Conditions 3 and 10 in place. Without Regional Condition 3 and 10, which address pre-notification and compensatory mitigation, project impacts would result in more than minimal impacts, both individually and cumulatively. In addition, these impacts would not be off-set by compensatory mitigation.

As the Regional Conditions above would ensure specific review and ensure projects result in no more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions, including special aquatic sites, EFH and other aquatic resources, and will not substantially increase the LAD workload, the "No Regional Conditions" alternative has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds:

Limits placed on structures and work in waters of the U.S., including the placement of navigation aids and markers, prohibit that which unduly obstructs navigation or endangers sensitive aquatic sites.

General and Special Conditions for NWP 8 further limit the potentially harmful use of NWP 8 while allowing for normal maritime activities. Additional limits are unnecessary and additional notification requirements are not possible. Lesser limits and/or notification thresholds may increase the likelihood of impacts to sensitive aquatic sites and are therefore not proposed. With the currently proposed constraints, NWP 8 would generally result in minimal impacts, both individually and cumulatively, in the majority of the LAD. However, more stringent regional limits that would limit the use of NWP 8 could substantially increase workload without a commensurate benefit to the aquatic environment.

The “Regional Limits or Notification Thresholds” alternative, based on the analysis above, has been dismissed from further consideration.

4.3 Alternative Regional Nationwide Permit Conditions:

To further ensure NWP 8 would have minimal impact on aquatic resources, both individually and cumulatively, the LAD could propose alternative Regional Conditions that prohibit the use of NWP 8 in all special aquatic sites and EFH.

Considering the inclusion of the constraints on NWP 8 from the General Conditions, a Regional Condition that precludes use of NWP 8 in special aquatic sites and EFH would not be necessary. In addition, this change would unfairly burden applicants by forcing them to utilize the Standard Individual Permit process for even relatively low impact projects. This would increase the District’s workload without commensurate benefit to the aquatic ecosystem. A review of cumulative impacts resulting from the use of NWP 8 bears this out.

As the majority of projects that could be authorized under NWP 8 would likely have minimal impacts on the aquatic ecosystem and the proposed Regional Conditions would further ensure that NWP 8 has minimal impacts on sensitive resources without a substantial increase in workload, the “Regional Nationwide Permit Conditions” alternative has been dismissed from further consideration.

5.0 Endangered Species Act

5.1 General Considerations

NWP 8 authorizes the placement of structures within leased areas on the outer continental shelf for the purpose of gas, oil, and mineral exploration, production, or transportation. The placement of such structures shall be in areas outside the limits of designated shipping safety fairway or traffic separation schemes, except temporary anchors as pursuant to [33 CFR 322.5(l);] and

outside the limits of established danger zones, restricted areas, or Corps or EPA designated dredged material disposal areas (Section 10).

No NWP 8 authorizations would be allowed except if the proposed project meets the applicable general conditions. Especially important for this NWP are the General Conditions that ensure that structures associated with oil and gas facilities do not have more than minimal impact to navigation, water quality, and aquatic life movements. General Condition 18 insures that consultation with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) is required where endangered species may be affected. Other General Conditions further ensure that the use of this NWP will not result in more than minimal impacts.

With these constraints, NWP 8 would result in minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the majority of the Los Angeles District. With no Regional Conditions for NWP 8, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The Regional Conditions for NWP 8 specify notification pursuant to General Condition 31 and Regional Condition 3 for all projects in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, as well as for projects located in designated Essential Fish Habitat. With the inclusion of these proposed notification requirements for NWP 8, the above long-term minor impacts to endangered and threatened species in the Los Angeles District would be further reduced. In addition, given the large number of listed species in Los Angeles District, continued coordination with USFWS and NMFS is required to ensure minimal impacts to endangered species. With the continuation of the existing informal coordination procedures, the development and implementation of SLOPES, and the inclusion of additional notification requirements, the use of NWP 8 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

In southern California, the large number of listed species has made the public more aware of the need to contact the USFWS and NMFS for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The District has substantial information, including maps, previous studies and survey data that document areas that support endangered species. The District is also very careful to inform all prospective applicants of the need to comply with the ESA. If the District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. When the District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the USFWS or NMFS is contacted early in the review process. To facilitate compliance with the ESA, the District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

As proposed, the NWP general and regional conditions ensure that other federal statutory requirements are met. For example, in instances where a project may impact a federally listed species or its critical habitat, the applicant would be required to submit to the Corps appropriate

biological investigations and supporting documentation for an “effects determination” with respect to the Endangered Species Act (ESA). Per General Condition 18, if the Federal Action were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWP comply with the ESA and use of the NWP shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. SLOPES formalize additional procedures between agencies to enable the agencies to ensure better compliance with the ESA. With the implementation of SLOPES, these procedures could be formally documented, facilitating the compliance the NWP with the ESA. It is anticipated there will be many situations that will not be addressed by SLOPES and a case-by-case determination will be made regarding consultation with the USFWS or NMFS pursuant to Section 7 of the ESA. In January 2003, the Corps of Engineers, Los Angeles District, Regulatory Branch and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some the activities authorized by the NWP that may adversely affect Essential Fish Habitat have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory Branch and NOAA’s National Marine Fisheries Service. The District has completed conducted several preliminary meetings with USFWS and NMFS staff to determine the direction of further SLOPES discussions, and additional meetings will be conducted in the future.

As proposed, the NWP general and regional conditions ensure that other federal statutory requirements are met. For example, in instances where a project may impact a federally listed species or its critical habitat, the applicant would be required to submit to the Corps appropriate biological investigations and supporting documentation for an “effects determination” with respect to the Endangered Species Act (ESA). Per General Condition 17, if the Federal Action were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWP comply with the ESA and use of the NWP shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

6.0 National Historic Preservation Act

6.1 General Considerations

The Los Angeles District would ensure that activities authorized by NWP 14 would comply with the National Historic Preservation Act (NHPA). The District would review the latest version of the National Register of Historic Places (NRHP) to make an effect determination that activities verified under NWP 14 would have on Historic Properties. Once an effects determination has

been made the District will coordinate with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), recognized Tribes, and, if necessary, the Advisory Council on Historic Preservation (ACHP) as appropriate. The District has considered the requirement of pre-construction notification for NWP activities in geographic areas of high site potential, or known locations of cultural resources including prehistoric sites, historic sites, tribal lands, traditional cultural properties, state landmarks or National Historic Landmarks. In areas where there is a high likelihood of cultural resources within the Corps' area of potential effect (APE), the district engineer may: (1) consult with SHPO, THPO, or Tribes during the NWP review process or (2) the district engineer may assert its discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. Option 2 would only be used if there is value added that compensates for the increase in workload due to processing more SIPs. If the consultation would be conducted under the NWP process without the district asserting discretionary authority to require an SIP, then the applicant would be notified that the activity could not be verified under the NWP until all Section 106 requirements have been satisfied.

6.2 Local Operating Procedures for National Historic Preservation Act

The district engineer would ensure that NWP 14 complies with section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulation 36 C.F.R. Part 800: Protection of Historic Properties (amended August 5, 2004), and Appendix C (33 U.S.C. 325): Procedures of Historic Properties. Under section 106, federal agencies are prohibited from approving any federal "undertaking" (e.g., the issuance of any license, permit, or approval) without taking into account the effects of the undertaking on the historic properties, and affording the ACHP a reasonable opportunity to comment on the undertaking. In order to comply with section 106, the Corps, if evaluating an undertaking, must go through the process outlined in the ACHP's regulations at 36 C.F.R. Part 800 and Appendix C. Pursuant to 36 C.F.R. § 800.4, 800.5, and 800.6, the Los Angeles District is required to consult with the SHPO, or tribal equivalent, THPO, if the undertaking would result in a "No Effect", "No Adverse Effect", or "Adverse Effect" to Historic Properties. The district engineer must (a) determine the permit area/APE; (b) identify historic properties within the permit area/APE; and (c) determine whether those properties are listed or eligible for listing in the NRHP. If the district engineer determines that NWP 14 would have no potential to cause effects to Historic Properties a memorandum for the record would be prepared and no further consultation with the SHPO/THPO or recognized tribes would need to occur.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

Prior to the issuance of the Los Angeles District's public notice announcing the proposed rule for the 2012 NWPs and our proposed regional conditions, all federally recognized tribes within LAD were contacted via letter dated December 13, 2010 to provide advance notification of the Corps' intent to issue the 2012 NWPs and upcoming opportunity to engage in government-to-government consultation. Follow-up letters were sent to the same set of federally recognized

tribes February 11, 2011 announcing the issuance of the proposed rule and formally requesting government-to-government consultation. An advance copy of the proposed rule was also included. One tribe provided a response, indicating they did not foresee a need to utilize the NWP. No requests for government-to-government consultation were received.

7.2 Local Operating Procedures for Protecting Tribal Resources

The Los Angeles District will avoid or minimize adverse effects to tribal lands, historic properties, sacred sites, or trust resources. This may involve identifying categories of activities that require pre-construction notification and/or conducting consultation with Tribes for specific activities in a particular geographic area. If coordination with recognized tribes is required the District Engineer will obtain a list of recognized tribes from the Native American Heritage Commission. From that list provided the District Engineer will initiate a 30-day coordination period to obtain comments on the project. The District Engineer will review comments and address as appropriate.

8.0 Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Management and Conservation Act, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) for actions that may adversely affect essential fish habitat (EFH). The marine and estuarine waters within the Los Angeles District contain designated EFH, which are administered by four fishery management plans (FMP): the Pacific Groundfish FMP, the Highly Migratory Species FMP, the Pacific Coast Salmon FMP, and the Coastal Pelagic Species FMP. The Los Angeles District's Regional Condition 4b requires submission of a PCN for any NWP authorization in EFH. A similar PCN requirement has been in place since the issuance of the 2002 NWPs. The current proposed regional condition includes the additional requirement that applicants include an EFH assessment with the PCN. By requiring a PCN with an EFH assessment for all activities within designated EFH, the Los Angeles District ensures the appropriate level of consultation with NMFS is conducted and effects to EFH are adequately addressed prior to verification.

To facilitate the consultation process, the Los Angeles District has developed an EFH general concurrence with Southwest Region of the NMFS. The general concurrence establishes a coordination procedure between NMFS and the Los Angeles District and covers a variety of Corps-regulated activities with minimal and/or temporary adverse effects to EFH. In addition, the Los Angeles District has developed a programmatic consultation with the Southwest Region of the NMFS that covers a broader range of activities that do not fit within the scope of the general concurrence. In summary, the inclusion of Regional Condition 4b, in conjunction with Los Angeles District's well-established set of procedures for addressing the effects of regulated activities within EFH (including conducting coordination with the NMFS as appropriate) will ensure the effects to EFH from the implementation of the 2012 NWPs will be minimal.

9.0 Supplement to National Impact Analysis

9.1 Public interest review factors (33 CFR 320.4(a)(1))

In addition to the discussion in the national decision document for this NWP, the Los Angeles District has considered the local impacts expected to result from the activities authorized by this NWP, including the reasonably foreseeable cumulative effects of those activities.

(a) Conservation: NWP 8 would only authorize structures or work within areas on the outer continental shelf leased for the purpose of obtaining oil, gas, and mineral resources. The NWP 8 requires notification for impacts to waters of the U.S. With the inclusion of notification requirements for NWP 8 in desert special aquatic sites and EFH, the associated short-term minor impacts to conservation in the LAD would be further reduced by enhancing the effectiveness of existing limitations on the use of NWP 8 in waters of the U.S. Due to the above constraints, NWP 8 would result in minimal impacts to conservation, both individually and cumulatively, in the majority of the LAD.

(b) Economics: Same as discussed in the national document.

(c) Aesthetics: Same as discussed in the national document.

(d) General environmental concerns: In the LAD, numerous threatened or endangered species require extensive coordination with USFWS and NMFS. With the inclusion of the notification requirements for NWP 8 in desert special aquatic sites and EFHs, adverse effects on general environmental concerns in the LAD would be the same or further reduced.

(e) Wetlands: Same as discussed in the national decision document. *document.*]

(f) Historic properties: Section 106 of the National Historic Preservation Act requires any federal action agency to determine the eligibility of any known or discovered cultural resources that may be affected by the agency's action, and coordinate with the SHPO/THPO, as appropriate. Because projects that may potentially be authorized under NWP 8 are brought to the attention of the Corps only when there is a specific project proposed, and because the project's relationship to the cultural resource may not be known until appropriate surveys are conducted, greater specificity cannot be determined at this time; however, through coordination with the State Historic Preservation Officer and the implementation of mitigation measures, the Corps would ensure that NWP 8 would result in minimal impacts to historic properties.

(g) Fish and wildlife values: NWP 8 would only authorize the placement of oil and gas structures on the outer continental shelf. Notification is required for NWP 8. The new General Conditions would enhance the existing limitations on the use of NWP 8 in waters of the U.S. Thus, NWP 8 would result in minimal impacts to fish and wildlife values, both individually and cumulatively, in the majority of the LAD. With the inclusion of the proposed notification requirements for NWP 8 in desert special aquatic sites and EFH, the above short-term minor impacts to fish and wildlife values in the LAD would remain the same or be further reduced.

- (h) Flood hazards: [Same as discussed in the national document.
- (i) Floodplain values: Same as discussed in the national document.
- (j) Land use: Same as discussed in the national document.
- (k) Navigation: Same as discussed in the national document.
- (l) Shore erosion and accretion: Same as discussed in the national document.
- (m) Recreation: Same as discussed in the national document.
- (n) Water supply and conservation: Same as discussed in the national document.
- (o) Water quality: With the inclusion of the proposed notification requirements for NWP 8 in special aquatic sites and EFH, the above short-term minor impacts to fish and wildlife values in the LAD would remain the same or be further reduced.
- (p) Energy needs: Same as discussed in the national document.
- (q) Safety: Same as discussed in the national document.
- (r) Food and fiber production: Same as discussed in the national document.
- (s) Mineral needs: Same as discussed in the national document.
- (t) Considerations of property ownership: Same as discussed in the national document.

9.2 National Environmental Policy Act Cumulative Effects Analysis (40 CFR 1508.7)

Based on a review of the different public interest factors and resource categories above, the LAD has concluded that activity use of this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment, assuming the NWP program terms and conditions are met as well as the Regional Conditions above. The Regional Conditions, though, are expected to ensure that projects within sensitive areas will not have more than minimal impacts. Again, it should be mentioned that, during the process, the DE may add special conditions on a case-by-case basis to ensure minimal adverse impacts or exercise discretionary authority by requiring an individual permit for those activities resulting in more than minimal individual and cumulative adverse effects on the aquatic environment. If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually and cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

The cumulative impacts of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to

the activities authorized by this NWP. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM (OMBIL Regulatory Module) database. This includes both temporary and permanent impacts, as well as any compensatory mitigation required. Impact and mitigation data was collected for the period of Fiscal Year 2009 through 2011 to provide a reasonable basis to examine the cumulative effects of each NWP as well as the NWP Program as a whole within the Los Angeles District.

Based on an analysis of the types of activities authorized by the Los Angeles District during previous years, the Los Angeles District estimates that this NWP will be used approximately 0 times per year, resulting in the loss of approximately 0 acres of waters of the United States. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that approximately 0 acres of compensatory mitigation will be required to offset the authorized losses of waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

In addition, please see the attached supplemental analysis (Section I).

10.0 List of Final Corps Regional Conditions for NWP 8

10.1 Regional condition 3

When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at:

<http://www.spl.usace.army.mil/regulatory>. In addition, the PCN shall include:

- a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
- b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the project site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

- c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

10.2 Regional condition 10

The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

Pursuant to Section 401 of the Clean Water Act (CWA), tribal or state Water Quality Certification, or waiver thereof, is required for activities authorized by NWPs that may result in a discharge of fill material into waters of the U.S. In addition, any state with a federally-approved Coastal Zone Management (CZM) plan must concur with the Corps determination that activities authorized by NWPs that are either within the state's coastal zone, or will affect any land or water uses, or natural resources within the state's coastal zone, are consistent with the CZM plan. In accordance with Corps regulations at 33 CFR 330.5 (c) and (d), any state 401/CZM conditions for a particular NWP become regional conditions for that NWP. The Corps recognizes that in some tribes or states there will be a need to add regional conditions, or for individual tribal or state review for some activities to ensure compliance with water quality standards or consistency with CZM plans.

The Los Angeles District announced the proposal to reissue the Nationwide Permits and our proposed regional conditions in a Special Public Notice dated February 25, 2011. The Los Angeles District also sent letters dated March 9, 2011 to the seven federally recognized tribes within the Los Angeles District (Big Pine Tribe, Bishop Paiute Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, White Mountain Apache Tribe, and Twenty-nine Palms Band of Mission Indians) and the Arizona Department of Environmental Quality announcing the proposed rule and our proposed regional conditions, and requesting the State of Arizona and each tribe review the information for purposes of providing water quality certification pursuant to section 401 of the Clean Water Act. Similarly, acting on behalf of the three Corps Districts in California the Sacramento District provided the same letter on February 23, 2011 to the California State Water Resources Control Board (SWRCB) and EPA requesting 401 certification in the State of California and tribal lands within EPA Region 9, respectively (excluding those tribes with delegated 401 authority). The San Francisco District provided a letter to the California Coastal Commission (CCC) on behalf of both coastal districts in California on March 3, 2011, requesting Coastal Zone Management Act (CZMA) consistency certification. Additional discussions were held among the three Corps Districts in California and the SWRCB in an effort to strategize options for certifying a broader range of NWPs or NWP-eligible activities than under the 2007

NWPs.

Upon publication of the final rule in the February 21, 2012, issue of the Federal Register (77 FR 10184), the Los Angeles District again provided letters to each of the seven tribes with 401 authority, and the State of Arizona requesting final 401 certification of the 2012 NWPs within their respective geographic areas of responsibility. Copies of the final regional conditions for the Los Angeles District were also provided. Similarly, the Los Angeles District provided a letter to the CCC on behalf of both coastal districts in California requesting final CZMA consistency certification of the 2012 NWPs and the respective regional conditions (copies of the letters are provided in Section IV). Each tribe and the State of Arizona have 60 days to issue, waive or deny certification for any or all of the 2012 NWPs. The CCC has 90 days to make their final determination. Due to the fact that the final rule was published on February 21, 2012, there is not sufficient time to allow the full 60- or 90-day review period before the 2012 NWPs are scheduled to go into effect on March 19, 2012. Therefore, the final outcome of 401 and CZMA certification within in the Los Angeles District is uncertain. Individual certifications will be required for any action authorized under the 2012 NWPs where applicable (i.e. projects within or affecting the Coastal Zone and/or projects that may affect water quality) until final determinations are provided by the respective state/tribal authorities.

The Los Angeles District believes, in general, that these NWPs and our regional conditions comply with State Water Quality Certification standards and are consistent with the Coastal Zone Management Plans.

12.0 Measures to Ensure Minimal Adverse Environmental Effects

The terms and conditions of the NWP, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 25, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to an NWP authorization to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

If, at a later time, there is clear, unequivocal evidence that use of the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

13.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.