

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 22

This document is a supplement to the national decision document for Nationwide Permit (NWP) 22, 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 Nationwide Permit 22:

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 31.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the “Historic Properties” general condition is completed. (Sections 10 and 404)

Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

Note 2: Compliance with general condition 19, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

Summary of changes to NWP 22 from 2007:

With the exception of noting renumbered NWP general conditions in Note 2, NWP 22 is unchanged from its 2007 issuance.

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 NWPs and issue two new NWPs. To solicit comments on its proposed regional conditions for these NWPs, the Los Angeles District issued a public notice on February 25, 2011. The issuance of the NWPs was announced in the February 21, 2012, Federal Register notice (77 FR 10184). After the publication of the final NWPs, 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

3.1.1 Regional Condition 5 would exclude NWP 22 in jurisdictional vernal pools in Los Angeles District. Eliminating the use of NWPs in jurisdictional vernal pool areas that have experienced close to 100 percent loss of vernal pool habitat would ensure minimal impacts to these sensitive wetland areas. However, none of the vernal pools in the region are utilized by watercraft because they are typically very shallow and of very small area (with the exception of Skunk Hollow in western Riverside County), and debris within these pools would not constitute an obstruction to navigation. Therefore this regional condition, though applicable to NWP 22, would have no practical effect on its use in the Los Angeles District

3.2 Waters subjected to additional pre-construction notification requirements

3.2.1 All Perennial Waters and Special Aquatic Sites in Arizona and Desert Regions of California (Regional Condition 4a)

Reason for Pre-Construction Notification Requirement: It is the position of the Los Angeles District that most discharges of dredged or fill material in a special aquatic site or a perennial water body in a desert area warrants the review of Regulatory Division. The loss of approximately 90% of wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region indicate the need for compensatory mitigation to ensure adverse impacts to special aquatic sites are no more than minimal individually and

cumulatively. Special aquatic sites in Los Angeles District support substantial aquatic resources exhibiting relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, migratory birds, and other wildlife.

In addition, past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems.

Two relatively small reaches of the Colorado River have been excluded from this regional condition because these areas exhibit relatively low physical and biological functions. However, due to a large amount of existing infrastructure and ongoing recreational activities, there are a number of small structures and minor projects that require authorization pursuant to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. With this notification requirement, the Los Angeles District can ensure use of the NWP for activities within special aquatic sites would have minimal impacts, both individually and cumulatively. Activities sited within special aquatic sites that are determined to have the potential to exceed the minor impact threshold would be subject to review under the SIP process that requires a rigorous alternatives analysis. As such, further impacts to the special aquatic sites and perennial water bodies in desert areas would be avoided and minimized to the maximum extent practicable. This regional condition has been amended from that included with the 2007 NWPs (Regional Condition 4) to clarify the definition of *desert regions of California* to include specific watersheds as defined by USGS Hydrologic Unit Code (HUC) accounting units. These include Lower Colorado (150301), Northern Mojave (180902), Southern Mojave (181001) and Salton Sea (181002).

For additional information please see the supplemental decision document for Regional Condition 4a.

3.2.2 All areas designated as Essential Fish Habitat (EFH) in the Los Angeles District (Regional Condition 4b)

Reason for Pre-Construction Notification Requirement: The EFH regional condition has been developed to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended. The 2007 NWPs included Regional Condition 5, which required notification for any project located in EFH. Regional Condition 4b would replace Regional Condition 5 and include the additional requirement to include an EFH assessment as part of the notification package. The EFH mandates of the MSFCMA are to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend, and ensure a consultation process by which federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The consultation process for any Federal project or action that may adversely affect EFH requires submission of an EFH assessment to the National Marine Fisheries Service (NMFS). The inclusion of the requirement for applications to provide an EFH assessment places the burden of preparing the assessment on the permit applicant rather than the Corps, however, the Corps has generally relied on permit applicants to provide this information to meet the requirements of the consultation process associated with the permit action. Therefore, the Los Angeles District does not believe this will create an unduly burdensome requirement on permit applicants relative to current procedures.

Regional Condition 4b also includes a link to sample EFH assessments provided by NMFS.

For additional information please see the supplemental decision document for Regional Condition 4b.

3.2.3 Projects located in all watersheds in the Santa Monica Mountains (Regional Condition 4c)

Reason for Pre-Construction Notification Requirement: The Santa Monica Mountains represent an important cultural and natural resource. The region contains a variety of protected areas, and serves as a recreation destination for Los Angeles area residents. Aquatic resources in the Santa Monica Mountains are important in the regional context and are also a center of native biodiversity. Despite their ecological importance, aquatic resources in the Santa Monica Mountains have experienced heavy losses. The Corps' ongoing study of cumulative impacts in the Malibu Creek watershed, the region's largest drainage basin, indicates that most of these impacts have occurred without Corps authorization (Lilien 2001¹). The Santa Monica Mountains have high natural resource values that contain 1066 hectares of aquatic habitat and support a number of federally listed threatened and endangered species. As documented in Lilien 2001, despite their importance, aquatic ecosystems in the Santa Monica Mountains, particularly Malibu Creek, have experienced loss and degradation of riparian habitat and, as a result, this regional condition is required to ensure that the NWP's would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

For additional information please see the supplemental decision document for Regional Condition 4c.

3.2.4 Projects located in the Santa Clara River watershed (Regional Condition 4d)

Reason for Pre-Construction Notification Requirement: The entire Santa Clara River watershed encompasses approximately 1,634 square miles in Los Angeles and Ventura Counties (the upper watershed, which includes 45 miles of the river between its headwaters and the Ventura County line, is 680 square miles, while the lower watershed, between the county line and the ocean is 954 square miles). The river flows approximately 84 miles from its headwaters east of Acton to its delta located between the cities of Ventura and Oxnard. Recent estimates (as of 2005) for the total amount of urbanization, including residential, industrial, and commercial areas, in the entire Santa Clara River watershed vary between 4 and 4.5 percent (approximately 4.5%, with most of the development located in the Santa Clarita area). Between 1988 and 2006, the Corps has issued approximately 228 permits that have resulted in actual impacts to waters of the U.S. (this number excludes permit actions where the same permit was issued multiple times, permits that were never utilized by the applicant, and permits that authorized an activity in the same location multiple times). Of these actions, more were associated with emergency repairs and maintenance than any other type of activity (approximately 25%, more than half of which were for emergency

¹ Lilien, J.P. Cumulative Impacts to Riparian Habitat in the Malibu Creek Watershed. Dissertation, University of California, Los Angeles.

actions). The above 228 permit actions resulted in temporary impacts to approximately 480 acres and permanent impacts to approximately 149 acres of waters of the U.S., including approximately 15 acres of wetlands in the Santa Clara River watershed (temporary impacts are usually addressed with on-site restoration as opposed to compensatory mitigation requirements). As compensatory mitigation for the above permanent impacts to waters of the U.S., the Corps required a total of approximately 518 acres of preservation, creation, enhancement, and restoration of aquatic and riparian habitat in the Santa Clara River watershed.

To assess the current condition of the main stem of the Santa Clara River, an assessment was made to determine the condition for several reaches in the Santa Clara River downstream of the City of Santa Clarita. Based on the results of the fieldwork for the assessment, the main stem of the Santa Clara River exhibits relatively high physical and biological functions immediately downstream of the developed areas in Santa Clarita. The above assessment was completed in the summer of 2004 (and updated in 2007) and supports the results of past and present environmental assessments for Section 404 permit decisions in the Santa Clarita area that have determined that the Santa Clara River exhibits limited physical evidence of direct, indirect, and cumulative impacts from urbanization, agriculture and other land use changes in the watershed. The purpose of this regional condition is to ensure that the NWP's would continue to have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat that exhibits relatively high physical and biological functions in the Santa Clara River watershed.

For additional information please see the supplemental decision document for Regional Condition 4d.

4.0 Alternatives

4.1 No Regional Conditions

NWP 22 authorizes temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of manmade obstructions to navigation. Regional conditions require pre-construction notification in the Santa Clara River and Santa Monica Mountains watersheds, in special aquatic sites and perennial watercourses in desert areas, and in Essential Fish Habitat. NWP 22 already requires pre-construction notification in all special aquatic sites, and certain mud flats and vegetated shallows are located within EFH. Since January 2003, NWP 22 was utilized to authorize four projects, one of which removed a small sailboat embedded in the beach, one project to remove a dilapidated pier and related debris, and two projects in the Ports of Los Angeles and Long Beach to remove debris obstructions to navigation. These projects were located in marine environments, but NWP 22 could be utilized in navigable lakes, ponds and rivers. If a project were to arise that NWP 22 would be the appropriate vehicle by which to authorize removal of vessels or other obstructions to navigation in the Santa Clara River and Santa Monica Mountains watersheds, in perennial watercourses in desert areas, or in other EFH areas not captured by presence of special aquatic sites, lack of pre-construction notification could result in more than minimal impacts to waters of the United States that exhibit high physical and biological functions and documented cumulative impacts in certain portions of these watersheds. Moreover, without

a regional condition requiring pre-construction notification for projects in perennial waterbodies in Arizona and the desert regions of California, impacts to these relatively rare resources could occur without mitigation, resulting in more than minimal impacts, both individually and cumulatively.

No regional conditions for the proposed NWP 22 could have more than minimal impacts in specific geographic areas and certain sensitive habitat types in the Los Angeles district. Therefore, this alternative has been eliminated from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

NWP 22 authorizes minor discharges of dredged or fill material or temporary structures associated with the removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation. Impacts resulting from these discharges or structures do not have acreage limits, but pre-construction notification is required if the activity would be conducted in a special aquatic site or if the vessel proposed for removal is listed or eligible for listing on the National Register. Regional Conditions 4a through 4d require notification for projects in perennial watercourses or waterbodies in the State of Arizona and the desert regions of southern California, in areas designated as essential fish habitat, in watersheds in the Santa Monica Mountains in Ventura and Los Angeles counties, and in the Santa Clara River watershed in Ventura and Los Angeles counties, respectively. By its nature, removal of vessels and obstructions to navigation, NWP 22 would be unlikely to result in permanent impacts to aquatic resources. This NWP authorized four projects in the past nine years resulting in no permanent impacts to aquatic resources. Additional regional conditions that would place additional notification requirements or acreage limits on NWP 22 would not result in an appreciable additional benefit to aquatic resources while increasing workload. NWP 22 as written authorizes the removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation, resulting in a net benefit to the environment and navigation. Due to the above constraints and the documented infrequent use of this nationwide over the past 10 years, NWP 22 would have minimal impacts, both individually and cumulatively in the Los Angeles District.

An alternative regional condition would prohibit the use of the proposed NWP 22 in all special aquatic sites in the Los Angeles District, requiring all projects in special aquatic sites be assessed under standard individual permits, including alternatives analyses. Due to the documented loss of wetland resources and the general scarcity of special aquatic sites in this semi-arid region, an argument could be presented that any project which would discharge dredged or fill material in a special aquatic site be assessed under the 404(b)(1) Guidelines and the public interest factors to determine the severity of the adverse impacts that may occur on or to special aquatic sites. However, projects authorized under NWP 22 would result in minimal impacts in very limited areas to remove beached or sunken vessels or debris shown to be an obstacle to navigation. Notification as required by this NWP for special aquatic sites and regional conditions for the sensitive resource areas described above is sufficient for the Los Angeles District to determine if a proposed project would have undue or greater than minimal impacts to these resources. A review of nine years of data on the use of NWP 22 in Los Angeles District does not enable any prediction on frequency of NWP 22 authorizations. NWP 22 has thus far authorized removal of

one small sailboat embedded on the beach, slumped riprap resulting from a collision with a tugboat, an abandoned fuel pier and associated debris, and concrete pier debris determined to be an obstacle to navigation with associated backfilling with sediment. As a result, a regional condition that precludes all discharges in special aquatic sites would potentially increase our workload by requiring an individual permit review on all projects, including those with small-scale temporary impacts in disturbed areas. This proposed regional condition would not be practicable and would result in minimal environmental benefits to the aquatic ecosystem.

Commenters in the past have requested their agency be notified for any project proposing to impact a special aquatic site under the NWP program. The four projects authorized in the past nine years have had localized impacts with obvious self-defined work area limits. Coordination with other resource agencies outside of considerations for threatened or endangered species would be unlikely to result in appreciable input. Because projects authorized under NWP 22 have minor impacts in small areas, this request would unnecessarily increase our workload without a commensurate return in environmental benefits to the aquatic ecosystem.

With the inclusion of Regional Conditions 4a through 4d, the Los Angeles District would ensure minimal impacts to high value aquatic resources, both individually and cumulatively, without a substantial increase in overall workload. Based on the discussion above, additional regional limits or notification thresholds have been dismissed from further consideration.

4.3 Alternative Regional Nationwide Permit Conditions

Based on identifiable or predictable impacts that may result from the use of NWPs, the Division Engineer considered additional regional conditions as a means of ensuring NWP 22 does not authorize activities with more than minimal adverse effects on the aquatic environment both individually and cumulatively. However, due to the demonstrated infrequent use of the NWP 22 within Los Angeles District, combined with the lack of impacts associated with this use, additional regional conditions would not provide appreciable benefit to aquatic resources within the District. NWP 22 authorizes activities that provide a net environmental benefit to aquatic resources and navigation by authorizing minor discharges or temporary structures associated with the removal of vessels or other structures which are no longer serviceable and which would otherwise deteriorate in situ, posing navigational obstructions as well as possible environmental hazards. With the notification requirement for projects in special aquatic sites inherent to NWP 22, and Regional Conditions 4a through 4d for projects in perennial watercourses and waterbodies in Arizona and desert regions of southern California, in essential fish habitat, and in the Santa Monica Mountains and Santa Clara River watersheds in Los Angeles and Ventura counties, the Los Angeles District would ensure that NWP 22 has minimal impacts on sensitive resources and watersheds without a substantial increase in workload. Therefore, the Los Angeles District has determined additional alternative notification requirements would not be practicable and would result in only negligible additional benefits to aquatic resources, if any.

5.0 Endangered Species Act

The Corps of Engineers must assess whether actions under its control and responsibility may affect a species listed by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service as threatened or endangered under the federal Endangered Species Act (ESA), or may affect designated critical habitat for such species. If a given action is determined to potentially affect a listed species or critical habitat, the Corps must consult with the appropriate Service pursuant to Section 7 of the ESA and comply with any terms and conditions placed on the action by the Service to avoid and minimize take of the listed species.

Compliance with the NWP general conditions, in particular general conditions 2, 3, 4, 18, 19, 22 and 23 would further ensure authorized work has minimal adverse effects on species listed as threatened or endangered under the federal Endangered Species Act.

5.1 General Considerations

In instances where a project may impact a federally listed species or its critical habitat, the applicant should provide appropriate biological investigations and supporting documentation to enable an effects determination be made by the Corps with respect to the Endangered Species Act. If a proposed project requiring authorization from the Corps is 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 federal Endangered Species Act (ESA).

Los Angeles District has established regional conditions to further minimize impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions or have become particularly rare within the District. Regional conditions specify notification pursuant to General Condition 31 for all projects in special aquatic sites or in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California (excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam), in the Santa Clara River watershed in Los Angeles and Ventura counties, in the Santa Monica Mountains watersheds in Los Angeles and Ventura counties, and for projects located in designated Essential Fish Habitat. Many of these aquatic resources harbor species listed as threatened or endangered, or are designated as critical habitat for a number of species.

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. The District has substantial information, including maps, previous studies, and survey data that document areas that support endangered species. 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. If the District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information.

To further 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. With the continuation of existing informal coordination procedures, the development and implementation of standard local operating procedures, and the inclusion of additional notification requirements, use of NWP 22 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

5.2 Local Operating Procedures for Endangered Species

Standard local operating procedures for endangered species, or SLOPES, formalize additional procedures between agencies to enable them to ensure better compliance with the ESA. However, 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. Further discussion is underway to address changes to the Regulatory Program and additional listings of species and designations of critical habitat within the framework of this SLOPES agreement to better coordinate our respective agencies' responsibilities.

6.0 National Historic Preservation Act (NHPA)

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 and an advance copy of the proposed rule were sent to the same set of federally recognized tribes on February 11, 2011 announcing the issuance of the proposed rule and formally requesting government-to-government consultation. One tribe provided a response, indicating they did not foresee a need to utilize the NWPs. 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 through coordination with the SHPO/THPO, recognized Tribes, and the ACHP as appropriate. 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 requests a list of recognized tribes from the Native American Heritage Commission. From that list provided the District Engineer initiates a 30-day coordination period to obtain comments on the project. The District Engineer reviews comments received and addresses matters 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). Marine and estuarine waters within the Los Angeles District contain designated EFH, which are administered by four fishery management plans (FMP): the Pacific Coast Groundfish FMP, the Pacific Coast – Coastal Pelagic Species FMP, the Pacific Salmon FMP, and the U.S. West Coast Highly Migratory 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. By requiring a PCN 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. It is noted that NWP 22, in particular, is likely to have minimal impacts on EFH because actions authorized by this NWP are very infrequent, would generally not recur at a singular location, and would address the immediate need of vessel or navigation obstacle removal.

9.0 Supplement to National Impact Analysis

9.1 Public interest review factors (33 CFR 320.4a(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 22 would only authorize temporary structures or minor discharges of dredged or fill material into waters of the U.S. necessary for the removal of wrecked, abandoned, or disabled vessels or other manmade obstructions to navigation. This NWP is not expected to result in permanent loss of waters of the U.S., but instead authorizes activities that potentially would prevent further degradation of waters. Regional conditions for NWP 22 would and require notification for projects in Essential Fish Habitat and the Santa Clara River and Santa Monica Mountains watersheds. With the inclusion of these notification requirements, minor impacts to conservation in the Los Angeles District would be less than significant.

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

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

(d) General environmental concerns: In addition to the discussion in the national decision document, the additional notification requirements for NWP 22 in essential fish habitat and the Santa Clara River and Santa Monica Mountains watersheds in the Los Angeles District would further diminish potential adverse effects on general environmental concerns to less than significant.

(e) Wetlands: In the Los Angeles District, the arid to semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California, and this scarcity warrants additional review prior to authorizing activities that may adversely affect these resources. To ensure minimal impacts to wetland resources, NWP 22 requires notification for any activity discharging dredged or fill material. Projects authorized under this NWP are anticipated to have very minor and temporary impacts to aquatic resources such as wetlands, and these impacts would likely be self-mitigating in the short term. It is not anticipated there would be a loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to wetlands in Los Angeles District.

(f) Historic properties: Known and unknown historic properties and cultural resources occur in many areas of the Los Angeles District. Those adjacent to watercourses or other aquatic resources may be affected by projects proposed for authorization under NWP 22. 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 to implement mitigation measures appropriate to the situation. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to historic properties in Los Angeles District.

(g) Fish and wildlife values: NWP 22 authorizes activities in all waters of the U.S., virtually all of which provide habitat to numerous species of fish and wildlife. These activities are anticipated to have minor temporary impacts on aquatic resources and be of short duration. NWP 22 requires notification for projects within special aquatic sites. General conditions limit activities that would impact spawning areas, migratory bird breeding areas, and shellfish beds. Other general conditions require notification for projects that may affect species listed under the federal Endangered Species Act, or require permits before conducting an activity that may affect eagles. Many of the other general conditions limit activities to minimize adverse effects for a variety of purposes, and these conditions also benefit fish and wildlife values. Regional Conditions 4a through 4d require notification for any project in perennial waterbodies in Arizona and the deserts of southern California, in essential fish habitat, in the watersheds of the Santa Monica Mountains and the Santa Clara River watershed. Regional Condition 5 excludes use of all NWPs in jurisdictional vernal pools. Due to these constraints, NWP 22 would result in only minimal impacts to fish and wildlife values, both individually and cumulatively, in the majority of the Los Angeles District. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to fish and wildlife values in Los Angeles District.

(h) Flood hazards: With the dynamic storm season typical of southern California and parts of Arizona, large flow events are a normal part of the hydrologic regime. Due to a general lack of soil development and vegetation coverage in semi-arid areas, peak discharges for very high magnitude storm events are potentially larger for dryland basins than similar-sized humid region basins. With the removal of wrecked or abandoned vessels or other man-made obstructions to navigation in navigable stream channels or open waters, NWP 22 would have long-term benefits to the human environment by reducing potential flood hazards in the Los Angeles District. Within areas subject to the fire-flood-mudslide cycle in many parts of Southern California, activities authorized by this NWP would help minimize flood threats after extreme events. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to flood hazards in Los Angeles District.

(i) Floodplain values: Same as discussed in the national decision document.

(j) Land use: Same as discussed in the national decision document.

(k) Navigation: Same as discussed in the national document. The imposition of several regional conditions requiring notification for certain high value aquatic resources (Regional Conditions 4 and 5) may delay the removal of wrecked, abandoned, or disabled vessels for days to weeks due to processing times for Nationwide and Individual Permits. These delays may pose minor navigational hazards related to the prolonged presence of these abandoned or wrecked vessels. However, the protection of locally sensitive, high value waters and resources in the Los Angeles District will provide an overall net environmental benefit. If any environmental hazards were expected to result from these potential processing delays, the Los Angeles District could elect to expedite review of the activities. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to navigation in Los Angeles District.

(l) Shore erosion and accretion: Same as discussed in the national decision document.

(m) Recreation: Same as discussed in the national decision document.

(n) Water supply and conservation: Same as discussed in the national decision document.

(o) Water quality: In many areas of southern California and Arizona, water quality in rivers and streams is impaired by runoff from upland agricultural, residential and industrial sources. NWP 22 would authorize only temporary structures or minor discharges of dredged or fill material to enable a project expected to result in improved water quality of streams, wetlands, or open waters. Due to requirement for notification inherent to NWP 22 for projects in all special aquatic sites, the Corps would be able to assess whether the proposed action would result in minimal adverse impacts to water quality, both individually and cumulatively, in Los Angeles District. Regional Condition 4 would require notification for projects in perennial waterbodies or watercourses in Arizona and the desert regions of California, in essential fish habitat and in the Santa Monica Mountains and Santa Clara River watershed. These notification requirements for these sensitive aquatic resources would ensure impacts to water quality in the Los Angeles

District would be further reduced. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to water quality in Los Angeles District.

(p) Energy needs: Same as discussed in the national decision document.

(q) Safety: Same as discussed in the national decision document.

(r) Food and fiber production: Same as discussed in the national decision document.

(s) Mineral needs: Same as discussed in the national decision document.

(t) Considerations of property ownership: Same as discussed in the national decision document.

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

Please see the attached supplemental analysis (Section I), and the 404(b)(1) guidelines cumulative effects analysis (Section 9.4), below.

9.3 Section 404(b)(1) Guidelines Impact Analysis (Subparts C-F)

(a) Substrate: NWP 22 authorizes temporary structures and minor discharges of dredged or fill material in waters of the U.S. necessary to complete removal of vessels or navigational obstacles. These activities may change the physical, chemical or biological characteristics of the substrate at the project site, but these changes, including temporary covering of the original substrate, are anticipated to be minor, of limited areal extent and of short duration. Projects authorized under NWP 22 would require notification if the activity would occur in a special aquatic site.

Regional conditions for the NWPs further ensure there would be no more than minimal impacts in certain geographic areas and habitat types that exhibit relatively high physical and biological functions. Therefore, NWP 22 would result in only minimal adverse impacts to substrate, individually and cumulatively, in the Los Angeles District.

(b) Suspended particulates/turbidity: Same as discussed in the national decision document.

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

(d) Current patterns and water circulation: The removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation is not expected to adversely affect current patterns and water circulation in waters of the U.S. in the Los Angeles District. The projects authorized by NWP 22 to date have been in harbor or open beach environments subject to ebb and flow of the tides. These projects have not resulted in any obvious effect, adverse or beneficial, to the marine environments. There is limited riverine navigation in the Los Angeles District, primarily on the Colorado River, but with projects anticipated on that water body, such as removal of obstacles (i.e., pier or dock removal, vessel salvaging, etc.), is not anticipated to result in adverse effects on current patterns or water circulation. NWP 22, with applicable

regional conditions, would result in less than significant potential effects to current patterns and water circulation in Los Angeles District.

(e) Normal water level fluctuations: Same as discussed in the national decision document.

(f) Salinity gradients: Same as discussed in the national decision document.

(g) Threatened and endangered species: The purpose of all projects authorized by NWP 22 is to remove abandoned or wrecked vessels or other man-made obstructions to navigation. This removal activity is expected to restore or maintain habitat values considered important for wildlife, including endangered species and their habitat. NWP 22 would only authorize the placement of temporary structures or discharges of dredged or fill material into the minimum acreage waters of the U.S. necessary to complete the project. Standard local operating procedures for endangered species, or SLOPES, formalize additional procedures between agencies to enable them to ensure better compliance with the ESA. Per general condition 19, notification is required if a proposed project would potentially affect a species listed as threatened or endangered under the federal Endangered Species Act, affect a species' designated critical habitat, or affect a species considered for listing, or affect proposed critical habitat. For situations that cannot be addressed by SLOPES, 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 those areas of mutual overlap. Further discussion is underway to address changes to the Regulatory Program and additional listings of species and designations of critical habitat within the framework of this SLOPES agreement to better coordinate our respective agencies' responsibilities. Consultations have not been required for past verifications of authorization under NWP 22 because it was determined for each action that listed species or critical habitat would not be affected by the actions.

With these measures, NWP 22 is anticipated to result in only minimal and not significant adverse impacts to threatened and endangered species, both individually and cumulatively, in the Los Angeles District.

(h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: It is recognized that a specific project may have a well-established assemblage of species that would be adversely affected by the project. Sessile organisms, such as shellfish and sea anenomes, would be destroyed by most project activities, whether by burial with sediments, suffocation or desiccation upon removal from the water. Motile species such as fish would simply depart the area, to return when activities stop for the day or at the conclusion of the project. Sessile benthic species would recolonize the area within a reasonably short period of time following project activities. Projects in riverine systems could impact bottom substrates and riparian communities on adjacent banks. Post-project revegetation of disturbed habitats in freshwater sites, if appropriate, would mitigate temporary impacts resulting from vessel or obstacle removal. Regional conditions for NWP 22 would require notification for projects in perennial waterbodies and watercourses in Arizona and the desert regions of California, in essential fish habitat, and in watersheds of the Santa Monica

Mountains and the Santa Clara River. With the inherent notification requirement for NWP 22 in special aquatic sites, the impacts to fish, crustaceans, molluscs, and other aquatic organisms in the food web in the Los Angeles District would be reduced in many circumstances. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to fish, crustaceans, mollusks, and other aquatic organisms in the food web in Los Angeles District.

(i) Other wildlife: Impacts to general wildlife resources are expected to be temporary, minimal, and potentially beneficial following project conclusion. Resident and transient species, including birds, mammals, reptiles, and amphibians could be destroyed or temporarily displaced by project activities. In areas such as riparian zones or in marine, estuarine and freshwater wetlands, displacement would affect these vertebrate species until suitable habitat quality returns. In the case of tree species, this could be a few years for willows or a decade or more in the case of cottonwoods. This temporary lack of habitat would continue to affect displaced species, resulting in an ever-shifting assemblage of species over time. Temporary impacts, even those affecting the project area for a number of years, would be appropriately mitigated through on-site restoration of disturbed areas. If the area is designated critical habitat for one or more listed species, consultation with the FWS or NMFS would be required to avoid and minimize adverse effects. General condition 4 also requires avoidance of impacts in waters of the U.S. that serve as breeding habitat for migratory birds. Therefore, NWP 22, with applicable general and regional conditions, would result in less than significant potential effects to other wildlife in Los Angeles District.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:

(1) Sanctuaries and refuges: In the Los Angeles District, sanctuaries and refuges are relatively few in number and include:

- Monterey Bay National Marine Sanctuary from approximately Cambria to the San Luis Obispo County/Monterey County boundary;
- Channel Islands National Marine Sanctuary around the four northern Channel Islands and Santa Barbara Island;
- Coachella Valley National Wildlife Refuge;
- Guadalupe-Nipomo Dunes National Wildlife Refuge;
- Havasu National Wildlife Refuge;
- Hopper Mountain National Wildlife Refuge;
- San Diego National Wildlife Refuge;
- San Diego Bay National Wildlife Refuge;
- Seal Beach National Wildlife Refuge;
- Sonny Bono Salton Sea National Wildlife Refuge;
- Tijuana Slough National Wildlife Refuge;
- Bill Williams River National Wildlife Refuge;
- Buenos Aires National Wildlife Refuge;
- Cabeza Prieta National Wildlife Refuge;
- Cibola National Wildlife Refuge;

- Imperial National Wildlife Refuge;
- Kofa National Wildlife Refuge;
- Leslie Canyon National Wildlife Refuge; and
- San Bernardino National Wildlife Refuge.

Several of these sanctuaries and refuges have limited boating traffic and vessels could conceivably sink or run aground, necessitating removal. Authorization under NWP 22 would require notification pursuant to General Condition 31. Removal of the vessel would also require coordination with the appropriate agency with oversight regarding the area in question. In some circumstances, this would also require coordination with NOAA Fisheries pursuant to Regional Condition 4b regarding projects in essential fish habitat. Therefore, NWP 22, with applicable regional conditions, would enable appropriate coordination with resource agencies to minimize impacts to the sanctuary or refuge, resulting in less than significant potential effects to sanctuaries and refuges in Los Angeles District.

(2) Wetlands: In the Los Angeles District, the arid to semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is usually below 10 inches, which precludes the development of wetlands in the majority of these desert regions. Furthermore, approximately 90 percent of wetlands in California have been affected by historic conversion to agricultural uses, grading and filling activities. As a result, wetland areas are relatively rare in the Los Angeles District and generally warrant more rigorous protection. To ensure minimal impacts to wetland resources, the Los Angeles District would require notification for any activity discharging dredged or fill material in any special aquatic site. In addition, if the vessel or man-made obstruction to navigation to be removed is situated in wetlands, the removal of the vessel or obstruction is expected to provide a net overall benefit to jurisdictional wetlands after recovery from disturbance. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to wetlands in Los Angeles District.

(3) Mudflats: The removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation is expected to provide a net overall benefit to mudflats in jurisdictional waters of the U.S. Most of these coastal resources exist in or near estuaries at the terminus of watersheds. In Los Angeles District, historic coastal development activities and agricultural conversion have greatly reduced the extent and number of these mudflat resources. Furthermore, anthropogenic activities within watersheds have resulted in disturbance to coastal mudflat resources through modifications of the sediment delivery cycles inherent to each watershed. To ensure minimal impacts to mudflats, the Los Angeles District would require notification for any activity discharging dredged or fill material in any special aquatic site. In addition, Regional Condition 4b requires notification for any discharge of dredged or fill material in essential fish habitat, a designation often applied to coastal estuaries. With the inclusion of these modifications, NWP 22 would have short-term minor impacts to mudflats in the Los Angeles District. Therefore, NWP 22, with applicable regional conditions, would result in less than

significant potential effects to mudflats in Los Angeles District.

(4) Vegetated shallows: Vegetated shallows exist in shallow water areas in estuaries, lake and pond fringes, and some persistently flooded areas in riparian zones. These resources may be temporarily impacted through the use of this NWP. In the Los Angeles District, historic agricultural and construction activities have greatly reduced the extent of vegetated shallows. Approximately 90 percent of wetlands in California, including vegetated shallows, have been affected by historic conversion to agricultural uses, grading, and filling activities, such as marina construction. As a result, vegetated shallows are relatively rare in the Los Angeles District and warrant more rigorous protection. The removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation is expected to provide a net benefit to jurisdictional vegetated shallows. NWP 22 requires notification pursuant to General Condition 31. Regional Condition 4b also requires notification for any project that may affect essential fish habitat, a designation applicable to vegetated shallows in marine and estuarine environments that often serve as nursery habitat for larval or very young individuals of many species. With the inclusion of this modification, NWP 22 would have minimal impacts on vegetated shallows in the Los Angeles District. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to vegetated shallows in Los Angeles District.

(5) Coral reefs: Generally, the removal of wrecked, abandoned, or disabled vessels or other man-made obstructions to navigation is expected to provide a net benefit by restoring them to a more natural condition and by removing a potentially deleterious source of contaminants. However, coral reefs do not occur in the Los Angeles District and this discussion is moot. Therefore, NWP 22 would result in less than significant potential effects to coral reefs in Los Angeles District.

(6) Riffle-and-pool complexes: In the arid to semi-arid southern California and Arizona areas, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains and foothills of southern California and Arizona, and on the Colorado River. With the construction of these dams, many riffle-and-pool complexes have been eliminated by large reservoirs. Furthermore, construction of the dams also modifies the hydrologic regime of the river, which can degrade downstream riffle-and-pool complexes. Because they often have high production of invertebrate fauna and provide other benefits to riparian aquatic resources such as aeration of the water, provision of substrate for decomposers, and other factors, they warrant a more rigorous review in the permitting process. To ensure minimal impacts to riffle-and-pool complexes, NWP 22 requires notification pursuant to General Condition 31 for projects that may affect any special aquatic site, including riffle-and-pool complexes. Regional Condition 4a also requires notification for discharges of dredged or fill material in perennial waterbodies in Arizona and the desert regions of California. With these constraints, NWP 22 would have minimal impacts to riffle-and-pool complexes in the Los Angeles District. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to riffle-and-pool complexes in Los

Angeles District.

(k) Municipal and private water supplies: Same as discussed in the national decision document.

(l) Recreational and commercial fisheries: NWP 22 authorizes temporary structures and the removal of abandoned vessels or man-made structures posing navigational obstacles. This NWP requires notification for any activity discharging dredged or fill material in any special aquatic site. Regional Condition 4b requires notification for projects in essential fish habitat. Since January 2003, three of four projects occurred in essential fish habitat under one or more fishery management plans, but these activities were of brief duration and were conducted in a manner that did not pose much harm to aquatic resources. Future activities authorized under NWP 22 are anticipated to have similar minor impacts to aquatic environments. In the long term and shortly after the conclusion of projects authorized under NWP 22, these activities are expected to result in an overall benefit to habitat, including recreational and commercial fisheries. See also the discussion in section 8.0 above. With these constraints, NWP 22 would have only minimal impacts on recreational and commercial fisheries in the Los Angeles District. Therefore, with applicable regional conditions and application of terms and conditions of the programmatic EFH consultation between the Los Angeles District and NMFS, NWP 22 would result in less than significant potential effects to recreational and commercial fisheries in Los Angeles District.

(m) Water-related recreation: Same as discussed in the national decision document.

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

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: NWP 22 authorizes the removal of abandoned vessels or other man-made structures posing navigational obstacles, including jurisdictional waters within parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas. In order to reduce impacts to these areas, NWP 22 requires notification for any activity discharging dredged or fill material in any special aquatic site. Regional Condition 4a requires notification for projects in perennial waterbodies in the state of Arizona or desert regions of southern California, and Regional Condition 4b requires notification for projects in Essential Fish Habitat. General condition 21 requires notification prior to work in critical resource waters and adjacent wetlands. Because projects likely to be authorized under NWP 22 in Los Angeles District are anticipated to have minor, short-term impacts to aquatic environments of various types and in most areas, these regional and general conditions would ensure NWP 22 would have only minimal impacts on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas in the Los Angeles District. Therefore, NWP 22, with applicable regional conditions, would result in less than significant potential effects to parks, national and historical monuments, national seashores, wilderness areas, research sites and similar areas in Los Angeles District.

Based on a review of the different public interest factors and resource categories above, the Los Angeles District has concluded that 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 and regional conditions are met. It is noted that imposition of several regional conditions requiring notification for certain high value or sensitive aquatic resources (Regional Conditions Number 4 and 5) may delay the removal of wrecked, abandoned, or disabled vessels for days to weeks. These delays have the potential to result in minor adverse impacts to various aquatic resource characteristics and functions, as well as other public interest factors. However, protection of locally sensitive, high value waters and resources in the Los Angeles District would provide a long-term overall net environmental benefit. If unacceptable environmental hazards or other significant conflicts with public interest would be expected to result from processing delays, the Los Angeles District could elect to review the activities in an expedited manner utilizing existing emergency procedures. It is noted that the District Engineer may add special conditions on a case-by-case basis to further ensure minimal adverse impacts or exercise discretionary authority by requiring an standard 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 would be used.

9.4 Section 404(b)(1) Guidelines Cumulative Effects Analysis (40 CFR 230.7(b)(3))

This document contains a general assessment of the foreseeable effects of activities authorized by NWP 22 in Los Angeles District and the anticipated cumulative effects of those activities. Assessment of these individual and cumulative effects is influenced by the terms and limits of the NWP, notification requirements, the standard NWP general conditions, and the regional conditions that further limit the NWP or require pre-construction notification for projects in sensitive aquatic resources.

The cumulative effects of a given 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. Data regarding NWP 22 cannot be relied on to provide more than a speculative determination of its cumulative effects on aquatic environments in the Los Angeles District. However, based on an analysis of the four projects authorized under NWP 22 by the Los Angeles District since January 2003, the Los Angeles District believes the cumulative effect of NWP 22 on jurisdictional aquatic resources is negligible. The Los Angeles District conservatively estimates NWP 22 may be used up to 1 to 2 times per year, resulting in virtually no loss of waters of the United States on an annual basis. To ensure these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, compensatory mitigation would be required to offset authorized loss 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 as determined appropriate.

Issuance of an NWP is based on a general assessment of the effects on public interest and environmental factors likely to occur as a result of using this NWP to authorize activities in waters of the United States. As such, this assessment is speculative or predictive in general terms. Because NWP 22 would authorize activities in almost all areas within Los Angeles District, projects eligible for authorization under NWP 22 may be constructed in a variety of environmental settings. Therefore, all indirect impacts that may be associated with each activity authorized under NWP 22 are not inclusive. Indication that a factor may not be relevant to a particular NWP does not definitively make the determination factual, but simply indicates that the factor is not readily identified with the authorized activity. In many cases, factors may be relevant but the adverse effects on the aquatic environment are negligible. Only the reasonably foreseeable direct or indirect effects are included in the environmental assessment for this NWP. Regional conditions on NWP authorizations to address locally important factors or to ensure that the authorized activity results in no more than minimal individual and cumulative adverse effects on the aquatic environment have also been developed for NWPs in Los Angeles District. For projects that have greater than minimal impacts, discretionary authority may be exercised by the District Engineer to require the project be considered under standard individual permit procedures. In any case, adverse effects will be controlled by the terms, conditions, and additional provisions of the NWP.

NWP 22 authorizes temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of manmade obstructions to navigation. Since January 2003, NWP 22 authorized the removal of a dilapidated fuel dock and associated debris in Avalon Harbor on Catalina Island, removal of a small sailboat embedded in the sandy beach in the City of Santa Barbara, replacement of disturbed rock riprap struck by a harbor tugboat in the Port of Los Angeles, and removal of a defunct pier and associated debris in the Port of Long Beach. These projects incurred only temporary impacts and it is our understanding the affected areas recovered shortly after project completion.

10.0 List of Final Corps Regional Conditions for NWP 22

10.1 Regional Condition 1

For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

10.2 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 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 a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to 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.

10.3 Regional Condition 4

Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:

- a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
- b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
- c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
- d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

10.4 Regional Condition 5

Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWP 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.

10.5 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 NWP 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 NWP 22, 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 22, 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 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.

It is not anticipated projects authorized under NWP 22 would have greater than minimal impacts because removal of vessels or navigational obstacles is very site specific and typically would

have a precise project description. If the proposed project was not specific to the removal of a vessel or navigational obstacle, the District Engineer would make a determination whether the project would meet the terms and conditions of the NWP and whether the proposed project would likely result in more than minimal impacts. If the project would fail either of these tests, the District Engineer would exercise his discretionary authority and require an individual permit unless the proposed activity could be authorized under other NWP or regional general permit.

If a proposed project does not have an immediate and critical need, it could be postponed to avoid adverse effects on species listed as threatened or endangered, potentially enabling the Corps to make determinations the proposed action would not affect listed species, or would not likely result in adverse effects on listed species. For projects that have temporary impacts that would benefit from revegetation or other restoration at the project site, the District Engineer could impose project-specific conditions to address mitigation of temporary impacts to 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.