

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 1, AIDS TO NAVIGATION

This document is a supplement to the national decision document for Nationwide Permit (NWP) 1, Aids to Navigation, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 1 time per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 5 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 1

Under the applicable circumstances, regional conditions A, B, C, and F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 2, STRUCTURES IN ARTIFICIAL CANALS

This document is a supplement to the national decision document for Nationwide Permit (NWP) 2, Structures in Artificial Canals, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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.

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

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 0 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 2

Under the applicable circumstances, regional conditions A, B, C, E, and F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 3, MAINTENANCE

This document is a supplement to the national decision document for Nationwide Permit (NWP) 3, Maintenance, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 74 times per year, resulting in the loss of approximately 4.95 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 Alaska District estimates that approximately 0.02 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. It is expected that this NWP will be used 370 times, resulting in 24.75 acres of impact, until it expires in March 2017.

To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 0.10-acre 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 3

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determinations

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able.

ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 4, FISH AND WILDLIFE HARVESTING,
ENHANCEMENT, AND ATTRACTION DEVICES AND ACTIVITIES**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 4, Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (o) Water quality: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 1 time per year, resulting in the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 5 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 4

Under the applicable circumstances, regional conditions A, B, and C will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 5, SCIENTIFIC MEASUREMENT DEVICES

This document is a supplement to the national decision document for Nationwide Permit (NWP) 5, Scientific Measurement Devices, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

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6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

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9.0 Supplement to National Impact Analysis

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

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NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

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these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

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- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 6 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 30 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 5

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, and I will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 6, SURVEY ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) 6, Survey Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 21 times per year, resulting in the loss of approximately 6.10 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 Alaska District estimates that approximately 0.20 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. It is expected that this NWP will be used 105 times, resulting in 30.50 acres of impact, until it expires in March 2017.

To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 1.00 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.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 6

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 07 - Outfall Structures and Associated Intake Structures**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 07, Outfall Structures and Associated Intake Structures, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 6 times per year, resulting the loss of approximately 0.06 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 30 times, resulting in 0.30 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 7

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 08 – Oil and Gas Structures on the Outer Continental Shelf

This document is a supplement to the national decision document for Nationwide Permit (NWP) 8, Oil and Gas Structures on the Outer Continental Shelf, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 1 time per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 5 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 8

Under the applicable circumstances, regional conditions A and B will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP's in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 09 – Structures in Fleeting and Anchorage Areas**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 9, Structures in Fleeting and Anchorage Areas, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species they manage.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. 2 Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an IP for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used Zero times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 9

Under the applicable circumstances, regional conditions C and F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 10 – Mooring Buoys

This document is a supplement to the national decision document for Nationwide Permit (NWP) 10, Mooring Buoys, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species they manage.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. 2 Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an IP for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 2 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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. It is expected that this NWP will be used 10 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 10

Under the applicable circumstances, regional condition F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 11 – Temporary Recreational Structures

This document is a supplement to the national decision document for Nationwide Permit (NWP) 11, Temporary Recreational Structures, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species they manage.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. 2 Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an IP for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 16 times per year, resulting the loss of approximately 0.00 acres of waters of the United States. It is expected that this NWP will be used 80 times, resulting in 0.00 acres of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 11

Under the applicable circumstances, regional conditions C and F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able.

ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 12 – Utility Line Activities

This document is a supplement to the national decision document for Nationwide Permit (NWP) 12, Utility Line Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 48 times per year, resulting the loss of approximately 22 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 Alaska District estimates that approximately 3 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.

It is expected that this NWP will be used 240 times, resulting in 110 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 15 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 12

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able.

ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 13 - Bank Stabilization

This document is a supplement to the national decision document for Nationwide Permit (NWP) 13, Bank Stabilization, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 13- The Environmental Protection Agency (EPA) proposed restricting the use of this NWP to those activities utilizing bioengineering and that all other methods require evaluation via an individual permit.

Regional condition A requires a PCN for all activities not proposing a bioengineered method along with an alternatives analysis consisting of the bioengineered methods considered and

rationale as to why those alternatives are not part of the applicant's proposal. Additionally, all activities under NWP 13 that require a PCN, will require agency coordination under regional condition B if the activity is in an anadromous and/or marine water, or if the activity requires a DE waiver. We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. Special conditions may include compensatory mitigation requirements to reduce the project impacts to the minimal level. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of aquatic habitats, as well as the establishment and maintenance of riparian areas next to streams and other open waters. Compensatory mitigation can be provided through permittee responsible mitigation, mitigation banks, or in-lieu fee programs.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such

as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, "We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWPs. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act."

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures

in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska's State Historic Preservation Officer's (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

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impacts to jurisdictional waters of the U.S. including wetlands represent adverse effects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.

- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 51 times per year, resulting the loss of approximately 0.64 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 Alaska District estimates that approximately 0.01 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.

It is expected that this NWP will be used 255 times, resulting in 3.2 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 0.05 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 13

Under the applicable circumstances, regional conditions A, B, C, E, F, G and H will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 14 - Linear Transportation Projects

This document is a supplement to the national decision document for Nationwide Permit (NWP) 14, Linear Transportation Projects, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 59 times per year, resulting the loss of approximately 0.15 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 Alaska District estimates that approximately 0.29 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.

It is expected that this NWP will be used 295 times, resulting in 0.75 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 0.29 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 14

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 15 - U.S. Coast Guard Approved Bridges

This document is a supplement to the national decision document for Nationwide Permit (NWP) 15, U.S. Coast Guard Approved Bridges, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 15 – EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential

to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B),

activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWPs. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.

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

- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (i) Floodplain values: Same as discussed in the national decision document.
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- (k) Navigation: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District

Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP have been issued, the District verified NWP were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP were used in Alaska over the past five year period. Of the thirty-five different NWP used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.

- (2) Mud flats: Same as discussed in the national decision document.
- (4) Vegetated shallows: Same as discussed in the national decision document.
- (5) Coral reefs: Same as discussed in the national decision document.
- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0.4 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 2 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 15

Under the applicable circumstances, regional conditions C, D, E, F, G, H and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 16 –Return Water from Upland Contained Disposal Areas**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 16, Return Water from Upland Contained Disposal Areas, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

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6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

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We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
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Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

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these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

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- (b) Suspended particulates/turbidity: Same as discussed in the national decision document.
- (c) Water: Same as discussed in the national decision document.
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- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used zero times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 16

Under the applicable circumstances, regional conditions G and H will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not

reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 17 – Hydropower Projects

This document is a supplement to the national decision document for Nationwide Permit (NWP) 17, Hydropower Projects, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 17 – NMFS recommended revoking use of NWP 17 Hydropower. The District declines to issue a regional condition revoking NWP 17 for several reasons. First, not all hydropower projects that are proposed may occur in waters designated as EFH. Second all activities proposed under NWP 17 required PCN to the district engineer and regional condition B further requires that any potential hydropower project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as

well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP authorization to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require the hydropower project be evaluated under a different form of permit authorization if the proposed activity would result in more than minimal adverse effects on the aquatic environment, including EFH such as vegetated shallows and fish spawning and feeding areas.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 17. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We are confident NMFS can internally coordinate these specific actions with Ms. Walker using our current coordination process. If we elect to structure our agency coordination to send specific NWP coordination notices to specific agency staff for NMFS we believe we would be obligated to offer this for all coordinating agencies and our coordination procedures would become unmanageable with regard to which NWP actions go to which specific staff in which agency. Alternatively we are more than willing to add her name to our coordination list, however Ms. Walker would get all NWP coordination notices not just NWP 17.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times

prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, "We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWPs. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act."

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when

necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska's State Historic Preservation Officer's (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore,

the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP's have been issued, the District verified NWP's were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP's were used in Alaska over the past five year period. Of the thirty-five different NWP's used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse effects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 2 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 10 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 17

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 18 – Minor Discharges

This document is a supplement to the national decision document for Nationwide Permit (NWP) 18, Minor Discharges, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 46 times per year, resulting the loss of approximately 0.11 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 230 times, resulting in 0.55 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 18

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 19, MINOR DREDGING

This document is a supplement to the national decision document for Nationwide Permit (NWP) 19, Minor Dredging, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

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We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

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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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.

- (e) Wetlands: Same as discussed in the national decision document.
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NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

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²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 2 times per year, resulting in the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 10 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 19

Under the applicable circumstances, regional condition F will apply to this NWP.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 20,
RESPONSE OPERATIONS FOR OIL AND HAZARDOUS SUBSTANCES**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 20, Response Operations for Oil and Hazardous Substances, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.

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

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

(d) General environmental concerns: Same as discussed in the national decision document.

- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 3 times per year, resulting the loss of approximately 22 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 15 times, resulting in 110 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 20

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 21, SURFACE COAL MINING ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) 20, Surface Coal Mining Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.

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

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

(d) General environmental concerns: Same as discussed in the national decision document.

- (e) Wetlands: Same as discussed in the national decision document.
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9.2 National Environmental Policy Act Cumulative Effects Analysis (40 CFR 1508.7)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0.2 times per year, resulting in the loss of approximately 0.6 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 Alaska District estimates that approximately 0.36 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.

It is expected that this NWP will be used 1 time, resulting in 3 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 1.8 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 21

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 22, REMOVAL OF VESSELS

This document is a supplement to the national decision document for Nationwide Permit (NWP) 22, Removal of Vessels, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

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6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0.2 times per year, resulting in the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 1 time, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 22

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able.

ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 23, APPROVED CATEGORICAL EXCLUSIONS

This document is a supplement to the national decision document for Nationwide Permit (NWP) 23, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 23 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by

this NWP would be no more than minimal, individually and cumulatively.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the

proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWPs. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District

has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.

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

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

- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33

CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP's have been issued, the District verified NWP's were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP's were used in Alaska over the past five year period. Of the thirty-five different NWP's used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP's since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.

- (4) Vegetated shallows: Same as discussed in the national decision document.
- (5) Coral reefs: Same as discussed in the national decision document.
- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 20 times per year, resulting the loss of approximately 2.9 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 100 times, resulting in 14.5 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 23

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 24,
INDIAN TRIBE OR STATE ADMINISTERED SECTION 404 PROGRAMS**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 24, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.

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

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP's have been issued, the District verified NWP's were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP's were used in Alaska over the past five year period. Of the thirty-five different NWP's used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP's since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

managed species. The District expects that the convenience and time savings associated with the use of the NWP will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 0 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 24

Under the applicable circumstances, regional conditions A, B, and C will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for

activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 25, STRUCTURAL DISCHARGES

This document is a supplement to the national decision document for Nationwide Permit (NWP) 25, Structural Discharges, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 25 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential

to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B),

activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWPs. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

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We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

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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 Alaska 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: Same as discussed in the national decision document.

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

- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
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- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (l) Shore erosion and accretion: Same as discussed in the national decision document.
- (m) Recreation: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District

Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP have been issued, the District verified NWP were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP were used in Alaska over the past five year period. Of the thirty-five different NWP used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than

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²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.

- (2) Mud flats: Same as discussed in the national decision document.
- (4) Vegetated shallows: Same as discussed in the national decision document.
- (5) Coral reefs: Same as discussed in the national decision document.
- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0.2 times per year, resulting the loss of approximately 0.002 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 Alaska 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.

It is expected that this NWP will be used 1 time, resulting in 0.01 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 25

Under the applicable circumstances, regional conditions A, B, C, E, and F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 27, AQUATIC HABITAT
RESTORATION, ESTABLISHMENT, AND ENHANCEMENT ACTIVITIES**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 25 times per year, resulting in the loss of approximately 6.4 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 Alaska District estimates that approximately 3.87 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. It is expected that this NWP will be used 125 times, resulting in 32 acres of impact, until it expires in March 2017.

To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 19.35 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 27

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 28, MODIFICATIONS OF EXISTING MARINAS

This document is a supplement to the national decision document for Nationwide Permit (NWP) 28, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 1.2 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 6 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 28

Under the applicable circumstances, regional conditions A, B, and C will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 29, RESIDENTIAL DEVELOPMENTS

This document is a supplement to the national decision document for Nationwide Permit (NWP) 29, Residential Developments, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.

- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 29 times per year, resulting the loss of approximately 4.59 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 Alaska District estimates that approximately 1.01 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.

It is expected that this NWP will be used 145 times, resulting in 22.95 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 5.05 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 29

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 30, MOIST SOIL MANAGEMENT FOR WILDLIFE

This document is a supplement to the national decision document for Nationwide Permit (NWP) 30, Moist Soil Management for Wildlife, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.

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

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

(d) General environmental concerns: Same as discussed in the national decision document.

- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.

(5) Coral reefs: Same as discussed in the national decision document.

(6) Riffle and pool complexes: Same as discussed in the national decision document.

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

(l) Recreational and commercial fisheries: Same as discussed in the national decision document.

(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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0 times per year, resulting the loss of approximately 0.00 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 Alaska District estimates that approximately 0.00 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.

It is expected that this NWP will be used 0 times, resulting in 0.00 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 30

Under the applicable circumstances, regional conditions E AND F will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 31, MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) NWP number 31, Maintenance of Existing Flood Control Facilities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately zero 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 Alaska District estimates that approximately zero 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.

This NWP has not been used once in the past five years; therefore it is expected that this NWP will likely not be used before the next expiration in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 31

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able.

ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 32, COMPLETED ENFORCEMENT ACTIONS

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 32, Completed Enforcement Actions, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately two times per year, resulting the loss of approximately 0.2 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used ten times, resulting in 1.0 acre of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 32

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 33, TEMPORARY CONSTRUCTION, ACCESS, AND
DEWATERING**

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 33, Temporary Construction, Access, and Dewatering, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately one time per year, resulting the loss of approximately 0.9 acre of waters of the United States. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately zero acre 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. The reason for this is that site restoration would be a major component of reducing the impacts, which would be temporal.

It is expected that this NWP will be used 5 times, resulting in 4.5 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States. The reason for this is that site restoration would be a major component of reducing the impacts, which would be temporal.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 33

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on

February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 34, CRANBERRY PRODUCTION ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 34, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
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- (j) Land use: Same as discussed in the national decision document.
- (k) Navigation: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately zero 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will not be used before it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States, as we anticipate this NWP will not be used during the next five years.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 34

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 35, MAINTENANCE DREDGING OF EXISTING BASINS

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 35, Maintenance Dredging of Existing Basins, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act

The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.

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

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP's have been issued, the District verified NWP's were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP's were used in Alaska over the past five year period. Of the thirty-five different NWP's used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats. According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP's since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

managed species. The District expects that the convenience and time savings associated with the use of the NWP will encourage applicants to design their projects within the scope of the NWP rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 7 times per year, resulting in the alteration of approximately 6 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 Alaska District estimates that approximately zero acres of compensatory mitigation will be required to offset the authorized dredging 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.

It is expected that this NWP will be used 35 times, resulting in 32 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized dredging of waters of the United States, as there would be no loss of waters, only the maintenance dredging of previously dredged substrate.

The terms and conditions of the NWP and the RCs described in Part 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 35

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 36, BOAT RAMPS

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 36, Boat Ramps, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (o) Water quality: Same as discussed in the national decision document.
- (p) Energy needs: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 8 times per year, resulting the loss of approximately 0.2 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used 40 times, resulting in 1.0 acre of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 36

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 37, EMERGENCY WATERSHED PROTECTION AND
REHABILITATION**

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 37, Emergency Watershed Protection and Rehabilitation, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

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6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

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9.0 Supplement to National Impact Analysis

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¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used less than once a year, resulting the loss of less than 0.1 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used 2 times, resulting in 0.3 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 37

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 38, CLEANUP OF HAZARDOUS AND TOXIC WASTE

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 38, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 3 times per year, resulting the loss of approximately 0.9 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used 15 times, resulting in 4.5 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States, as the clean up activity in itself would be a mitigation activity.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 38

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 39, COMMERCIAL AND INSTITUTIONAL
DEVELOPMENTS**

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 39, Commercial and Institutional Developments, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 14 times per year, resulting the loss of approximately 2.75 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 Alaska District estimates that approximately 4 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.

It is expected that this NWP will be used 70 times, resulting in 14 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 21 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 39

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 40, AGRICULTURAL ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 40, Agricultural Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

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6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

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9.0 Supplement to National Impact Analysis

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

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NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

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these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately zero 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will not be used before it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 40

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP, as well as with RC L.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 41, RESHAPING EXISTING DRAINAGE DITCHES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 41, Reshaping Existing Drainage Ditches, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately zero 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will not be used before it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 41

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determinations

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 42, RECREATIONAL FACILITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 42, Recreational Facilities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
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- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (o) Water quality: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 7 times per year, resulting the loss of approximately 0.7 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used 35 times, resulting in 3.5 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately zero 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 42

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian

Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 43, STORMWATER MANAGEMENT FACILITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 43, Stormwater Management Facilities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

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6.0 National Historic Preservation Act

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6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

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9.0 Supplement to National Impact Analysis

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

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 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately zero times per year, resulting the loss of approximately zero 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 Alaska District estimates that approximately zero 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.

It is expected that this NWP will be used one time, resulting in less than 0.1 acre of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 43

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final

decision must be submitted by April 20, 2012 (60 days after publication of the final NWP in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWP within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 44, MINING ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 44, Mining Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used less than one time per year, resulting in the loss of approximately 0.03-acre of waters of the United States.

It is expected that this NWP will be used 3 times, resulting in 0.09-acre of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 0.01-acre 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 44

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP, as well as with RC M.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 45, REPAIR OF UPLANDS DAMAGED BY DISCRETE
EVENTS**

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 45, Repair of Uplands Damaged by Discrete Events, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of

comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.

- (f) Historic properties: Same as discussed in the national decision document.
- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWPs in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWPs are used, and the quantity and quality of the waters lost due to the activities authorized by NWPs. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWPs, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type

NWPs issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 1 time per year, resulting the loss of approximately 0.24-acre of waters of the United States.

It is expected that this NWP will be used 5 times, resulting in 1.2 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 45

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 46, DISCHARGES IN DITCHES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 46, Discharges in Ditches, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

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We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

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9.0 Supplement to National Impact Analysis

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

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- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
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- (k) Navigation: Same as discussed in the national decision document.
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- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
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 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 2 times per year, resulting the loss of approximately 0.01-acre of waters of the United States. It is expected that this NWP will be used 10 times, resulting in 0.1-acre of impact, until it expires in March 2017.

The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 46

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is

waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 48, EXISTING COMMERCIAL SHELLFISH
AQUACULTURE ACTIVITIES**

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 48, Existing Commercial Shellfish Aquaculture Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

In the March 4, 2011, SPN, this NWP was proposed to be revoked. A regional condition, similar
No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

N/A

3.2 Waters subjected to additional pre-construction notification requirements

N/A

4.0 Alternatives

N/A

5.0 Endangered Species Act

5.1 General Considerations: N/A

6.0 National Historic Preservation Act

6.1 General Considerations: N/A

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

N/A

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 Alaska 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: N/A
- (b) Economics: N/A
- (c) Aesthetics: N/A
- (d) General environmental concerns: N/A
- (e) Wetlands: N/A
- (f) Historic properties: N/A
- (g) Fish and wildlife values: N/A
- (h) Flood hazards: N/A
- (i) Floodplain values: N/A
- (j) Land use: N/A
- (k) Navigation: N/A
- (l) Shore erosion and accretion: N/A
- (m) Recreation: N/A
- (n) Water supply and conservation: N/A
- (o) Water quality: N/A
- (p) Energy needs: N/A
- (q) Safety: N/A

(r) Food and fiber production: N/A

(s) Mineral needs: N/A

(t) Considerations of property ownership: N/A

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

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP have been issued, the District verified NWP were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP were used in Alaska over the past five year period. Of the thirty-five different NWP used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

² Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

(a) Substrate: N/A

(b) Suspended particulates/turbidity: N/A

(c) Water: N/A

(d) Current patterns and water circulation: N/A

(e) Normal water level fluctuations: N/A

- (f) Salinity gradients: N/A
- (g) Threatened and endangered species: N/A
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: N/A
- (i) Other wildlife: N/A
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: N/A
 - (2) Wetlands: N/A
 - (2) Mud flats: N/A
 - (4) Vegetated shallows: N/A
 - (5) Coral reefs: N/A
 - (6) Riffle and pool complexes: N/A
- (k) Municipal and private water supplies: N/A
- (l) Recreational and commercial fisheries: N/A
- (m) Water-related recreation: N/A
- (n) Aesthetics: N/A
- (o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: N/A

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will not be used as it is being revoked in Alaska.

10.0 List of Final Corps Regional Conditions for NWP 39

Regional condition N will apply to this NWP.

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

N/A

12.0 Measures to Ensure Minimal Adverse Environmental Effects

N/A

13.0 Final Determination

The Alaska District has a Regional General Permit (RGP) that allows for the type of activities authorized by this NWP. Both the RGP and NWP 48 are similar in that they both prohibit the farming of fin-fish. Working with local State and Federal agencies, the RGP has allowed the Alaska District to better manage Aquatic Farm Structures located in state managed waters in a manner that minimizes impacts to navigation and has no more than minimal adverse impacts, both individually and cumulatively, on the aquatic environment.

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, will be revoked in Alaska

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 49, COAL REMINING ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 49, Coal Remining Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWP and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0 times per year, resulting the loss of approximately 0 acres of waters of the United States.

It is expected that this NWP will be used 0 times, resulting in 0 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 49

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 50, UNDERGROUND COAL MINING ACTIVITIES

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 50, Underground Coal Mining Activities, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

No comments were received regarding this NWP.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWPs and regional conditions that are applicable to this NWP, are

summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWPs authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWPs, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWPs (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, “We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP. If this consultation is not completed prior to the effective date of these NWPs, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may also impose regional conditions on any of the NWPs to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District's proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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 Alaska 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: Same as discussed in the national decision document.
- (b) Economics: Same as discussed in the national decision document.
- (c) Aesthetics: Same as discussed in the national decision document.
- (d) General environmental concerns: Same as discussed in the national decision document.
- (e) Wetlands: Same as discussed in the national decision document.
- (f) Historic properties: Same as discussed in the national decision document.

- (g) Fish and wildlife values: Same as discussed in the national decision document.
- (h) Flood hazards: Same as discussed in the national decision document.
- (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 decision document.
- (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: Same as discussed in the national decision document.
- (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)

The cumulative impacts of NWP in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP are used, and the quantity and quality of the waters lost due to the activities authorized by NWP. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP issued and the acres of impacts to waters of the U.S. In the past five year period¹ the

¹ March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

NWPs have been issued, the District verified NWPs were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWPs were used in Alaska over the past five year period. Of the thirty-five different NWPs used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWPs. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

these NWP's expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.

- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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. Based on an analysis of the types of activities authorized by the Alaska District during previous years, the Alaska District estimates that this NWP will be used approximately 0 times per year, resulting the loss of approximately 0 acres of waters of the United States.

It is expected that this NWP will be used 0 times, resulting in 0 acres of impact, until it expires in March 2017. The Alaska District estimates that no compensatory mitigation will be required to offset the authorized losses of waters of the United States.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 50

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 51, LAND-BASED RENEWABLE ENERGY GENERATION PROJECTS

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 51, Land-Based Renewable Energy Generation Projects, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NWP 51 - NMFS recommended the District revoke part or all of NWP 51 (initially proposed as NWP A) Land-Based Renewable Energy Generation Facilities and require evaluation of these projects under an individual permit process. NMFS cited concern over the potential for elements such as mercury, boron, lithium, and arsenic at elevated levels to be released into waterways for geothermal energy projects that do not recycle water in a closed system under NWP 51.

The District elects not to revoke these new NWP's on the basis of a potential for adverse or unknown impacts to aquatic resources for several reasons. Regarding NWP 51, not all proposed projects may involve impacts to aquatic resources designated as EFH or involve geothermal energy projects that result in discharges of elevated contaminants to waters designated as EFH. Additionally, discharges of dredged or fill material are limited to non-tidal waters and discharges into non-tidal wetlands adjacent to tidal waters are not authorized. Finally, all activities proposed under NWP 51 require PCN to the district engineer and regional condition B further requires that any potential land based renewable energy generation project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 51 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require land based renewable energy generation projects be evaluated under a different form of permit authorization if the proposed activity would result in more than minimal adverse effects on the aquatic environment.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 51. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWP's. We are confident NMFS can internally coordinate these specific actions with Ms. Walker using our current coordination process. If we elect to structure our agency coordination to send specific NWP coordination notices to specific agency staff for NMFS we believe we would be obligated to offer this for all coordinating agencies and our coordination procedures would become unmanageable with regard to which NWP actions go to which specific staff in which agency. Alternatively we are more than willing to add her name to our coordination list, however Ms. Walker would get all NWP coordination notices not just NWP 51.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWP's and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP's authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP's, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP's (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

The February 21, 2012, Federal Register notice states, "We have reinitiated programmatic Section 7 Endangered Species Act consultation for the NWP's. If this consultation is not completed prior to the effective date of these NWP's, district engineers will consult, as necessary on a case-by-case basis with the U.S. Fish and Wildlife Service and National Marine Fisheries Service in accordance with general condition 18, endangered species. Division engineers may

also impose regional conditions on any of the NWP's to facilitate compliance with the requirements of the Endangered Species Act.”

On a case-by-case basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the District Engineer includes information provided by the USFWS and NMFS regarding threatened and endangered species as well as critical habitat. The District Engineer can consult with USFWS or NMFS during the NWP review process and consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest or when necessary, assert discretionary authority to require an individual permit (IP) for proposed work and initiate consultation through the IP process.

6.0 National Historic Preservation Act

6.1 General Considerations

6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWPs). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWPs and our effort to reauthorize them.

7.2 Local Operating Procedures for Protecting Tribal Resources

On December 1, 2010, the Alaska District Engineer, Colonel Reinhard W. Koenig, wrote to the 229 Federally recognized Tribes in Alaska to reiterate the Corps desire to formally consult with each Tribe over the Alaska District’s proposed RCs.

We did not receive any comments in response to these letters, and no Tribes contacted the Corps regarding Government-to-Government consultation.

8.0 Essential Fish Habitat

On February 24, 2012, we provided NMFS our Essential Fish Habitat (EFH) Assessment and requested a General Concurrence (GC) under the Magnuson-Stevens Fishery Conservation and Management Act. Some of the changes to the RCs as discussed in Section 2.2, and Appendix A, have been a result of the EFH consultation and add necessary protections to EFH. Furthermore, the agency coordination required in proposed RC B will allow the district engineer to consider imposing special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. We have asked that NMFS provide concurrence on the 2012 NWPs and Alaska District Regional Conditions pursuant to 50 CFR 600.920(g).

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

The cumulative impacts of NWP's in Alaska generally depend on the type of activities authorized, the location of the project and the number of times the NWP's are used, and the quantity and quality of the waters lost due to the activities authorized by NWP's. Division or District Engineers have the authority to require individual permits where the cumulative adverse effects are more than minimal, or add conditions to the NWP either on a case-by-case (i.e. special conditions) or regional basis (i.e. regional conditions) to ensure that the individual and cumulative adverse effects on the aquatic environment are minimal. When Division or District Engineers determine that a geographic area is subject to more than minimal cumulative adverse effects due to the use of the NWP's, they will use the revocation and modification procedure at 33 CFR 330.5.

The USACE maintains a data tracking system (ORM) which captures the number and type NWP's issued and the acres of impacts to waters of the U.S. In the past five year period¹ the NWP's have been issued, the District verified NWP's were used approximately 2,255 times, resulting in permanent impacts to approximately 299 acres of waters of the U.S., including jurisdictional wetlands. Temporary impacts to aquatic resources also occurred to approximately 186 acres primarily from the installation of utilities under NWP 12. Approximately 82 acres of permittee responsible compensatory mitigation (primarily preservation) was conducted and an additional 94 compensatory mitigation credits² were secured through in-lieu fee (ILF) programs and/or mitigation banks. Compensatory mitigation at a minimum ratio of one-for-one was required under general condition 20 to compensate for unavoidable impacts to wetlands from

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

individual projects exceeding wetlands loss of greater than 1/10 acre.

Thirty-five different NWP's were used in Alaska over the past five year period. Of the thirty-five different NWP's used seven (NWP 3, 6, 12, 14, 27, 29, and 35) of these accounted for approximately 81% of the permanent impacts. It is also important to understand that not all reported permanent impacts to aquatic resources represent a loss of waters of aquatic resources, for example NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities impacted 32 acres of aquatic resource that resulted in net benefits to EFH and/or aquatic habitats.

According to Hall et al. (1994), there are more than 204 million acres of wetlands and deepwater habitats in the State of Alaska, including approximately 174.7 million acres of wetlands. Wetlands and deepwater habitats comprise approximately 50.7 percent of the surface area in Alaska (Hall et al. 1994). The more than 204 million acres of wetlands and deepwater habitats identified by Hall et al. (1994) included all Cowardian classifications except marine subtidal habitats.

Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWP's since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWP's the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP's. Using the current trend, a similar number of activities (2,255 \pm) is expected to be authorized over the next five year period until these NWP's expire, resulting in impacts to a similar number of acres (299 \pm) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWP's will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWP's will encourage applicants to design their projects within the scope of the NWP's rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.
 - (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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.

Due to the fact this is a new NWP, it is projected that this NWP will be used 3 times, resulting in 1.5 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 1 acre 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 51

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 52, WATER BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS

This document is a supplement to the national decision document for Nationwide Permit (NWP) number 52, Water-Based Renewable Energy Generation Pilot Projects, and addresses the regional modifications and conditions for this NWP. The Pacific Ocean 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.

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 Alaska District issued a public notice on March 4, 2011. Additional meetings with the local resource agencies (National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), the Alaska Department of Fish and Game (ADF&G), the Alaska Department of Environmental Conservation (ADEC) and the U.S. Environmental Protection Agency (EPA)) took place on March 22, 2011, September 28, 2011, and November 30, 2011. Additional meetings took place on July 5, 2011, January 12, 2012, January 20, 2012 and January 27, 2012 with individual agencies to discuss specific issues related to their missions. 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 Alaska District considered the need for regional conditions for this NWP. The Alaska District findings are discussed below.

2.0 Consideration of Public Comments

2.1 NWP Specific Comments

NMFS recommended the District revoke part or all of NWP 52 (initially proposed as NWP B) Water-Based Renewable Energy Generation Pilot Projects and require evaluation of these projects under an individual permit process. NMFS cited concerns over potential for unknown effects without site-specific baseline or monitoring data for projects potentially authorized under NWP 52.

Emphasis is added that this NWP authorization is only for “pilot projects”. USACE has added a provision to this NWP that defines the term “pilot project.” The definition is similar to how the Federal Energy Regulatory Commission describes hydrokinetic pilot projects in their April 2008 white paper on licensing hydrokinetic pilot projects. The definition in the NWP focuses on the experimental nature of pilot projects, and their use in collecting data on the performance of the device in generating energy for other uses and the effects of the devices on the environment, including the aquatic environment. USACE believes that due to the recent development of this technology it is necessary to limit these water-based renewable energy generation facilities to pilot projects, to provide more information on potential adverse effects to the aquatic environment. We believe this will address NMFS concerns regarding unknown effects by requiring data collection on the effects of the devices on the environment, including the aquatic resources.

An individual permit, with a public notice and comment process, will be required for larger-scale water-based renewable energy generation facilities that are not pilot projects and involve activities that require DA authorization. A PCN is required for all activities authorized by this NWP, so that district engineers can evaluate the proposed work and make a project specific determination that the adverse effects on navigation, the aquatic environment, and other public interest review factors would be minimal, individually and cumulatively. Regional condition B further requires that any water based renewable energy generation project affecting EFH (marine waters, anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 52 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. Finally, USACE added a paragraph to NWP 52 that requires the permittee to remove the generation units, transmission lines, and other structures or fills associated with the pilot project once the pilot project is completed, unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 52. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We are confident NMFS can internally coordinate these specific actions with Ms. Walker using our current coordination process. If we elect to structure our agency coordination to send specific NWP coordination notices to specific agency staff for NMFS we believe we would be obligated to offer this for all coordinating agencies and our coordination procedures would become unmanageable with regard to which NWP actions go to which specific staff in which agency. Alternatively we are more than willing to add her name to our coordination list, however Ms. Walker would get all NWP coordination notices not just NWP 52.

2.2 Comments on Proposed Regional Conditions

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), consideration of comments related to the NWP and regional conditions that are applicable to this NWP, are summarized in Appendix A of this document.

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

3.1 Waters excluded from use of this NWP

There are no waters excluded from this NWP.

3.2 Waters subjected to additional pre-construction notification requirements

There are no waters subjected to additional pre-construction notification requirements, however, there are specific activities (i.e., pile driving and/or blasting in anadromous or marine waters), that require PCN (see Appendix A, Regional Condition (RC) A for specific activities).

4.0 Alternatives

4.1 No Regional Conditions

The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. The RCs are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

As stated in 3.2, certain activities require additional PCN. This is to ensure that activities, such as pile driving and/or blasting, are not verified through a non-notifying NWP process, when there is potential for the activity to have more than minimal impacts. As described in Appendix A, there are various activities that could be completed under various NWP, and the specific activities have the potential to have more than minimal impacts. By having additional PCN requirements, it ensures that impacts from permitted activities are no more than minimal.

4.3 Alternative Regional Nationwide Permit Conditions

The Alaska District's regional conditions (RCs) are either process oriented (RCs A and B), activity based (RCs A, C, D, E F, G, H, I, and J), and/or specific to individual NWP (RC A, B, K, L, M, and N). The applicability of each RC on a case-by-case basis is determined by the proposed construction techniques, materials, and project location. For example, regional condition C (Wood Preservatives) would not apply to this NWP when the proposal does not involve the use of any treated wood products.

5.0 Endangered Species Act

5.1 General Considerations

HQ USACE conducted programmatic consultation in conjunction with reissuance of the nationwide permits. NMFS and FWS staff participated in the development of the RCs. They did not suggest any RCs pertaining to threatened or endangered species under their management.

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6.1 General Considerations: On a project-by-project basis, the Alaska District has procedures in place requiring an effect determination be made for all NWP verification requests. Information available to the district engineer includes Alaska’s State Historic Preservation Officer’s (SHPO) database of cultural resources in Alaska. The district engineer may: (1) consult with SHPO or Tribes during the NWP review process or, (2) the district engineer may assert its discretionary authority to require an IP for proposed work and initiate consultation through the IP process. Option 2 would only be used if there is value added that compensates for the added workload due to processing more IPs. If the consultation is conducted under the nationwide permit process without the district asserting discretionary authority, then under general condition 20, the applicant may not proceed until the consultation is complete.

6.2 Local Operating Procedures for National Historic Preservation Act: The Alaska District has not identified a need to develop these procedures with SHPO. The Alaska District will take the necessary steps to create this tool with SHPO should the need arise.

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

On October 22, 2010, Major General Grisoli instructed each District Commander to engage Tribal Nations regarding our effort to reauthorize the nationwide permits (NWP). The first step was for each District Commander to send Tribal Nations within his/her area of responsibility a letter with information about the NWP and our effort to reauthorize them.

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Since 2002 a total of approximately 620 acres of waters of the U.S., including jurisdictional wetlands have been permanently impacted as a result of NWP activities. While not all of these impacts to jurisdictional waters of the U.S. including wetlands represent adverse affects to EFH this clearly represents a very small proportion of the more than 204 million acres of wetlands and deepwater habitats estimated to exist in Alaska. Since 2002, an estimated 28% of these impacts have been offset by compensatory mitigation (82 acres of permittee responsible compensatory mitigation and an additional 94 credits of compensatory mitigation through ILF and/or mitigation banks). Approximately 72 acres of the 620 acres of permanent impacts associated with NWPs since 2002 have also resulted in net benefits to aquatic resources through activities authorized under NWP 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities. This level of impact to aquatic resources in Alaska from NWP activities does not exceed more than minimal cumulative impacts even when other past, present, and reasonably foreseeable future actions are considered.

Of the 2,255 NWPs the District verified from 2007 through 2011 the District added special conditions to approximately 35% (800) to further ensure that adverse effects to aquatic resources

¹March 19, 2007 through December 31, 2011. Cumulative impacts analysis is based on extrapolation of fiscal year 2010 NWP data and comparison across all five years between 2007 and 2011.

²Number of credits does not equal acreage in all case. Credits are purchased to offset functional loss of aquatic resources

were avoided or minimized. The demand for these types of activities could increase or decrease over the five year duration of the proposed 2012 NWP. Using the current trend, a similar number of activities (2,255 ±) is expected to be authorized over the next five year period until these NWPs expire, resulting in impacts to a similar number of acres (299 ±) of waters of the United States, including jurisdictional wetlands. The combination of compensatory mitigation requirements, special conditions attached to individual NWP verifications, NWP thresholds, general conditions, and Alaska regional conditions will ensure the effects on the aquatic environment resulting from the activities authorized by NWPs will continue to be minimal and will attenuate any potential adverse cumulative impacts on EFH and Fishery Management Plan managed species. The District expects that the convenience and time savings associated with the use of the NWPs will encourage applicants to design their projects within the scope of the NWPs rather than request individual permits for projects which could result in greater adverse impacts to the aquatic environment.

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

- (a) Substrate: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.
- (h) Fish, crustaceans, mollusks, and other aquatic organisms in the food web: Same as discussed in the national decision document.
- (i) Other wildlife: Same as discussed in the national decision document.
- (j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:
 - (1) Sanctuaries and refuges: Same as discussed in the national decision document.
 - (2) Wetlands: Same as discussed in the national decision document.
 - (2) Mud flats: Same as discussed in the national decision document.
 - (4) Vegetated shallows: Same as discussed in the national decision document.
 - (5) Coral reefs: Same as discussed in the national decision document.

- (6) Riffle and pool complexes: Same as discussed in the national decision document.
- (k) Municipal and private water supplies: Same as discussed in the national decision document.
- (l) Recreational and commercial fisheries: Same as discussed in the national decision document.
- (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: Same as discussed in the national decision document.

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

The cumulative effects 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.

Due to the fact this is a new NWP, it is projected that this NWP will be used 3 times, resulting in 1.5 acres of impact, until it expires in March 2017. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Alaska District estimates that approximately 1 acre 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.

The terms and conditions of the NWP, including the pre-construction notification (PCN) requirements (to include RC A), agency coordination procedures (contained in general condition 31 and RC B), and the RCs described in 4.3 above, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

10.0 List of Final Corps Regional Conditions for NWP 52

Under the applicable circumstances, regional conditions A, B, C, D, E, F, G, H, I, and J will apply to this NWP.

11.0 Water Quality Certification determination

A letter was sent to the Alaska Department of Environmental Conservation (ADEC) and EPA on February 22, 2012, requesting water quality certification (WQC) as soon as they are able. ADEC's 401 WQC applies to all areas of the State of Alaska except the Annette Island Indian Reservation which is handled by EPA.

ADEC and EPA have not yet made a decision on the WQC. They have been told that their final decision must be submitted by April 20, 2012 (60 days after publication of the final NWPs in the

Federal Register) as provided by Corps regulations. Additionally, if either ADEC or EPA do not reach a final position on WQC by April 20, 2012, the Corps will presume that the WQC is waived.

As discussed in the February 21, 2012, Federal Register notice, until April 20, 2012, authorization by NWP is contingent upon the permittee obtaining an individual WQC or a case-specific WQC waiver.

In accordance with Corps regulations at 33 CFR 330.4(c), if ADEC or EPA denies WQC for activities authorized by the NWPs within the State of Alaska or Annette Island Indian Reservation, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must first obtain a project specific WQC or waiver thereof from you before proceeding under the NWP.

The Corps will generally defer to ADEC and EPA regarding conditions for WQCs. Any conditions of the WQC provided by the ADEC or EPA become conditions of issued NWP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion on those conditions. Moreover, if a WQC condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

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 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Alaska 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.



SUPPLEMENTAL DECISION DOCUMENT APPENDIX A

**2012 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Alaska District**

March 2012

Appendix A- Regional Condition Evaluation and Consideration of Comments

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Appendix A- Regional Condition Evaluation and Consideration of Comments

1.0 Regional Condition Development for 2012 Nationwide Permits

1.1 Development of Proposed Alaska District Regional Conditions: Regional Conditions (RCs) are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. Information pertaining to the use, modification, or deletion of the Alaska District's ten RCs for the 2007 NWPs, the fourteen proposed RCs for the 2012 NWPs, and the comments received on the regional issues are discussed below.

1.2 Consideration of the Alaska District's 2007 NWP Regional Conditions: Due to some of the NWPs and their general conditions (GCs) and definitions having substantial modifications, the Alaska District reviewed the ten RCs from the 2007 NWPs with the 2012 NWPs in mind, to develop proposed RCs for the 2012 NWPs.

Some of the RCs developed for the 2007 NWPs work well, and if the applicable NWPs did not change, no modifications or slight modifications were proposed (e.g., RC E 2007 remained RC E 2012).

1.3 Proposed Regional Conditions: The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. On March 4, 2011, we published Special Public Notice (SPN) 2011-6 to solicit comments on the proposed RCs. Based on that coordination, the RCs proposed for 2012 are a combination of conditions carried forward from 2007, modified from 2007, or newly proposed. Below is a summary of the changes to the RCs proposed for 2012. (For the complete proposal see SPN 2011-6 in the Administrative Record).

2.0 Consideration of Public Comments and Alternative Regional Conditions

In response to SPN 2011-6, comments were received from the National Marine Fisheries Service (NMFS) (April 14, 2011), Environmental Protection Agency (EPA) (April 18, 2011), the Alaska Department of Fish and Game (ADFG) (April 28, 2011), and the U.S. Fish and Wildlife Service (FWS) (April 18, 2011). Additionally, the City and Borough of Juneau (CBJ) provided comments on November 4, 2011; after it was determined they had not been on the mailing list for the special public notice. On-going coordination occurred in an effort to address agency concerns up until the issuance of the NWPs in the federal register.

Commenters suggested alternative language for specific RCs, additional agency notification requirements and additional PCN requirements for some NWPs, as well as proposed new RCs. We considered all comments received in response to SPN 2011-6. Comments and the consideration they were given follow.

2.1 Comments on Regional Conditions Proposed in SPN 2011-6 (Corps response is *italicized*):

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Regional Condition A – NMFS recommended: “and blasting” be added to A3. and a new PCN requirement (A4.) “Any activity involving the discharge of dredged or fill material to fish spawning areas.”

The Corps agrees that there are concerns relating to blasting and not just pile driving and modified the condition to incorporate this recommendation. The concern regarding the fish spawning areas is adequately covered by GC 3, therefore this modification will not be adopted.

ADF&G recommended: encouraging the use of an expedited procedure (as opposed to the alternatives analysis described above) for ADOT&PF projects, that would encourage the use of new bank stabilization technologies, including composite vegetated riprap-while still allowing the activity to proceed under NWP. They also stated we should continue to provide a PCN for all proposals involving bank stabilization in anadromous and resident fish streams.

ADOT&PF has not expressed concern over providing an alternatives analysis for bank stabilization projects and the process is still working efficiently. The Corps noted we do not currently require PCN for all proposals involving bank stabilization in anadromous and resident fish streams and if we were to, it is highly unlikely impacts to the aquatic resource would change as a result of this additional notification process.

EPA recommended: adding NWP 3, Maintenance: Projects involving stream channel modification (including through expansion of previous footprint). The PCN shall contain information detailing how stream channel modification is the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill. EPA also recommends deleting A2 as it pertains to bank stabilization (adding a bank stabilization RC later) and inserting into 3. “the use of impact hammers or blasting” instead of “pile driving.”

USFWS recommended: Deleting A2 as it pertains to bank stabilization (adding a bank stabilization RC later), modifying A3 to read, “Any activity proposing the use of impact hammers to drive steel piles in marine waters, anadromous lakes or anadromous streams,” and adding a PCN requirement for projects that involve stream channel modification.

The concerns raised by EPA and USFWS regarding stream channel modification is addressed within the language of NWP 3, as it only allows for maintenance of previously permitted activities and any changes should be minor, as well as GC 9, which addresses stream modifications, and GC 22, which specifically addresses minimization. The concern regarding the use of impact hammers was addressed by requiring all pile driving or blasting activities be coordinated.

The City and Borough of Juneau comment: The types of projects that require the applicant to contact the Corps is not clear.

The Corps believes Footnote 1 of RC A clarifies this.

Regional Condition B – ADF&G recommended revisions to the names listed in the agency coordination list due to changes in agency names. *The changes were made due to the coastal management program expiring in July 2011, and projects no longer being coordinated through*

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their office. Though not specific to this RC, both EPA and USFWS expressed concern over not having the ability to comment on projects that may be verified as a result of a waiver from the District Engineer. Specifically, bank stabilization projects that exceed the limits outlined in the NWP or loss of stream bed that may exceed 300 feet. Both agencies also felt there should be a mechanism in place to review projects that proposed relocation of stream beds. Currently, a project could be verified with a waiver from the District Engineer, authorizing the loss of greater than 300 feet of stream bed and in some circumstances, would not be coordinated with resource agencies. By adding an agency coordination requirement, all activities requiring waivers (e.g., bank stabilization projects exceeding 500 feet, stream bed losses exceeding 300 feet) or stream relocations, are coordinated with the resource agencies so they have an opportunity to provide site specific recommendations, if appropriate.

The condition will be modified to include a requirement for agency coordination for projects requiring written waivers and/or stream relocations.

City and Borough of Juneau (CBJ) recommended: Adding culvert installation in fish-bearing streams to your list of projects subject to General Permit Agency Coordination (GPAC). CBJ has a serious problem with applicants installing culverts that are not adequate for fish passage. Agencies need an opportunity to provide culvert design information that is appropriate on a stream by stream basis. In addition, they requested local agencies be identified as requiring coordination and they noted the expiration of the Alaska Coastal Management Program.

The Corps concern with incorporating this as an agency coordination requirement is that unless streams are mapped in ADF&Gs catalog, we have no way of identifying if they are fish bearing. Proposed RC J was developed because an ADF&G permit is required for ALL culverts and crossings in fish bearing waters and the criteria for a culvert installation is based on site specifics that ADF&G works with the applicant on, we believe that by adding a condition stating they are required to install culverts in accordance with ADF&G criteria, it will ensure that they are working closely with ADF&G and give us an enforcement mechanism if they did not install it in accordance with the site specific criteria. GC 31 outlines who we are required to coordinate with by law which is why those specific agencies are listed in the RC. We do have internal mailing lists that we try and coordinate with geographic regions, as it would be cumbersome to try and incorporate every individual community into the GPAC mailing lists. Reference to the coastal zone and Alaska Coastal Management Plan was removed.

Regional Condition C – NMFS recommended: changing C1c) to read: “In marine waters, wood structures treated with pentachlorophenol preservative shall not be used. For marine installations with more than 20 pilings, or where current velocities are less than 10 cm/sec, an individual permit will be required.”

EPA recommended: adding d) For marine installations with more than 50 pilings, or where current velocities are less than 10 cm/sec, a site-specific risk assessment shall be conducted to determine the potential adverse effects of using creosote or copper-treated wood products.

Further consultation took place with EPA and NMFS and both agencies stated that site specific risk assessments were recommended for marine installations with more than 50 pilings. This is

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consistent with NMFS guidance of recommending risk assessments for installations with large numbers of creosote and copper-treated pilings (50 to 100 pilings), or where current velocities are less than 10cm/sec. Creosote and copper-treated wood products leach contaminants into the aquatic environment. This recommendation was adopted as proposed.

Regional Condition D – EPA recommended: adding “Excavated material temporarily sidecast into wetlands shall be underlain with geotextile to allow for its complete recovery. Sidecast material shall be completely removed at the earliest practicable date, and may not remain longer than 30 days. Trenching within emergent wetlands or flowing waters requires authorization via individual permit.”

USFWS recommended: changes to place more enforceable limits on the amount of “minor trench over-fill” allowed on wetlands, and to help assure that wetlands are protected from impacts from the placement of “temporary” sidecast material. They also proposed to add, “All excavated material temporarily sidecast into wetlands shall be underlain with geotextile to allow for its complete recovery. Sidecast material shall be completely removed at the earliest practicable date, and may not remain longer than 30 days. Trenching within emergent wetlands or flowing waters requires authorization via individual permit.”

The comments from EPA and USFWS were very similar. Currently, the NWP requirements for temporarily sidecast material to be removed within 90 days seems appropriate given the growing season, resource impacts, and limited window in which to work. The Corps disagrees with the recommendation to require an individual permit for trenching within emergent wetlands or flowing waters, since those activities are typically done during freeze up and/or requires stream diversions. Trenching in forested wetlands is much more likely to result in the largest permanent impacts. It was agreed that in cases where it is practicable, to assist in the removal of temporarily sidecast material, it should be underlain with geotextile, ice pads or similar material. The Corps is modifying the condition to include: “Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.” The regional condition is adopted with the modifications discussed above.

Regional Condition E – There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

Regional Condition F – There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

Regional Condition K (formerly Regional Condition G) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

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Regional Condition L (formerly Regional Condition H) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This condition is adopted as proposed.

Regional Condition M (formerly Regional Condition I) - EPA and USFWS recommend adding: The PCN shall include a reclamation plan that includes a description of baseline site conditions, a schedule for removing stockpiles and restoring pre-project contours, and identifies the usual seasonal high water events for the waterbody.

Due to the abundant amount of waters of the U.S. in Alaska, and the size hard rock mines tend to be, the Alaska District does not expect many hard rock mines would qualify for the NWP. Reclamation plans are required by other statutes (State Alaska Division of Mining and Bureau of Land Management), therefore a reclamation plan is required with PCN per the terms of the NWP. This NWP was only verified 3 times in the past five years, with a cumulative impact of 0.08-acre. The condition was adopted as proposed.

This condition is required to prevent degradation of existing waters of the U.S. and riparian areas, to facilitate reclamation of tailing piles and to prevent sedimentation outside the permitted area (33 CFR 320.4(b), 40 CFR PART 230.21, 40 CFR PART 230.23, 40 CFR PART 230.24, 40 CFR 230.72 and 40 CFR 230.73). The regional condition is adopted as proposed

Regional Condition N (formerly Regional Condition J) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

The Alaska District has a Regional General Permit (RGP) that allows for these types of activities. Both the RGP and NWP 48 are similar in that they both prohibit the farming of fin-fish. Working with local State and Federal agencies, the RGP has allowed the Alaska District to better manage Aquatic Farm Structures located in state managed waters in a manner that minimizes impacts to navigation and has no more than minimal adverse impacts, both individually and cumulatively, on the aquatic environment. We believe that revoking the NWP in the Alaska District is appropriate to ensure these impacts are properly evaluated. The regional condition is adopted as proposed.

2.2 New Regional Conditions Proposed by Resource Agency(ies), Adopted in Full or Part:

New Regional Condition G – EPA and USFWS proposed the following: Project boundaries shall be staked, flagged, or otherwise clearly delineated prior to the commencement of the authorized activity.

This was a regional condition to the 2002 NWPs, and was eliminated when the NWPs were reauthorized in 2007 due to the fact that where the permittee causes a loss of waters greater than the amount authorized, the potential non-compliance enforcement action would hinge primarily on the excess acreage of lost waters of the U.S., not for the failure to identify the project limits. While this is still the case, after careful reconsideration, we believe it is a proven successful tool

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for compliance purposes and provides protection to the aquatic resource by ensuring that fill does not exceed the project footprint.

The new regional condition was adopted as proposed.

New Regional Condition H – EPA and USFWS proposed the following: Site preparation, excavation, and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures to prevent ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance with this condition. “Excessive” is defined as a measurable and long-term change in site hydrology or drainage from the pre-project condition.

The Corps agrees that additional language to support maintaining hydrology patterns that would compliment general conditions 8. (Adverse Effects from Impoundments), and 9. (Management of Water Flows), is warranted. The proposed condition provides a performance based measure to ensure compliance. The new regional condition is adopted as proposed.

New Regional Condition I – EPA and USFWS proposed the following: Authorized activities shall not result in the net loss of perennial stream bed length. Relocated stream channels shall approximate the length, meander pattern, gradient, channel cross-section, substrate and flow velocity of the original stream channel. Relocated stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the stream channel. The relocation of stream channels shall include establishment of an associated floodplain. The floodplain shall be of similar dimension and form as the original, or sized to convey the 100-year flood while retaining the channel, substrate, and floodplain characteristics without significant down- or head-cutting.

The Corps disagrees that authorized activities should never result in the net loss of perennial stream bed length and there may be instances where such activities occur, and the project impacts are still considered minimal. However, the Corps agrees language to compliment general condition 9. (Management of Water Flows) is necessary for protection of streams, and is critical in maintaining the integrity of existing stream systems, particularly when a relocation activity is occurring. The new regional condition will be adopted but will omit the first sentence.

New Regional Condition J – Stream Crossing Structures

EPA proposed the following, which was supported by NMFS: Stream crossing structures within/over entrenched channels with narrow floodplains (i.e. ratio of floodprone width/ OHWM width < 2.2) are restricted to: 1) full-span bridges without structures or fill below the stream’s ordinary high water (OHW) mark or; 2) a single metal culvert or bottomless arch of at least 130% of the channel width at the OHW mark. Stream crossing structures other than above; or within/over channels with extensive flood plains or associated wetlands (i.e. ratio of floodprone width/ OHWM width > 2.2) require authorization via individual permit. Floodprone width is the width of the floodplain at an elevation twice the bankfull depth.

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On January 27, 2012, EPA proposed the following after various coordination efforts:

Adding to Regional Condition A - Additional pre-construction notification requirements for: Any activity proposing a stream crossing structure (i.e., culverts and bridges) in fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing.

Adding to RC B - Additional agency coordination requirements for: Any activity proposing a stream crossing structure (i.e., culverts and bridges) in fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing.

EPA proposed the specific stream crossing structure condition to read: Stream crossing structures (i.e., culverts and bridges) within/over entrenched channels with narrow floodplains (i.e. ratio of floodprone width/ ordinary high water mark (OHWM) width < 2.2) are restricted to:

1) full-span bridges without structures or fill below the stream's OHW mark

or

2) a single embedded metal culvert or a bottomless arch with a minimum effective culvert width of at least 120% of the channel width at the OHW mark.

The bottom (invert) of circular culverts shall be countersunk at least 30% of the culvert diameter below the surface of the streambed. The invert of squash pipe arches shall be countersunk at least 20% of the culvert rise below the surface of the streambed. Stream crossing structures other than above (e.g., culverts with an effective width less than 120% of the channel width); or within/over channels with extensive flood plains or associated wetlands (i.e. ratio of floodprone width/ OHWM width > 2.2) require authorization via individual permit. The District Engineer may verify the use of a NWP in specific cases where a proposed activity does not meet the above criteria, if they determine in writing that the proposed activity will result in only minimal adverse impacts and comply with the NWP General Conditions, including for Aquatic Life Movements.

USFWS stated the following: Stream crossing structures such as bridges and culverts are authorized by several NWPs (2, 3, 12, 14, etc.). Alaska's streams provide important fish and wildlife habitats. The hydrologic and habitat functions of streams are dependent on the maintenance of not only channel processes, but riparian and floodplain integrity and processes as well. These riparian and floodplain processes include the transport of sediment and bed material, the conveyance of debris and flood flows, and the assimilation of nutrient inputs from the watershed. Full functioning of these riparian and floodplain processes requires connectivity from a stream's headwaters to its mouth. Full functioning also requires continuity and connectivity of the stream-floodplain-riparian corridor.

Stream crossing design criteria should protect stream health by maintaining a dynamic stable channel, including riparian and floodplain processes. In particular, road crossings should maintain the normative physical processes within the stream-floodplain-riparian corridor by:

- allowing for natural sediment transport patterns,
- providing unaltered fluvial debris movement, and

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- maintaining or restoring functional continuity and connectivity of the stream-floodplain-riparian corridor.

Ideally, all crossings should consist of a bridge or culvert that spans the floodplain, provides for long-term dynamic channel stability, retains existing spawning habitats, maintains food (benthic invertebrate) production, and minimizes risk of failure. In general, fill should not be placed or replaced within the channel or floodplain. All crossing designs should be based on site-specific information such as: estimates of peak discharge, flow velocities and patterns; channel stability; sediment and bed load transport; flooding regime (50-year to 100-year flood frequency and magnitude); cross-section profiles of channel morphology and water surface elevations. The Service supports use of the *National Marine Fisheries Service (NMFS) Anadromous Salmonid Passage Facility Design* guidelines for road crossings over streams (chapter 7, 2008).

Currently, the NWP language, the General Conditions (GC) and Alaska's Regional Conditions do not provide adequate sidebars to ensure that only activities with minimal impacts to stream habitats and systems are permitted. For example, NWP 3, Maintenance, allows for identical replacement of an existing crossing structure, even if it is currently restricting flow or debris movement. General Condition 2, the Aquatic Life Movements GC, only provides basic transport of organisms, but no protections of other important aquatic functions such as unaltered debris movement or maintenance of habitats (e.g., rearing habitat, prevention of impoundments, etc.).

We recommend that a new Regional Condition or Conditions be developed that incorporate(s) the generally-accepted current crossing standards for maintenance of full hydrologic functioning of flowing waters. Projects permitted under NWPs should be limited to those which maintain or restore the naturally dynamic stable channel, including riparian and floodplain processes, at low flow conditions. Projects which do not meet these criteria should be reviewed under the Individual Permit process. We recognize that crossing technology is a still-developing field and there are many variables in stream type and conditions and project type. Therefore, we have not yet developed draft language for this Regional Condition(s) but look forward to working with the Corps and others to do so.

NMFS proposed the following condition on January 20, 2012, following an EFH consultation meeting: Crossing design by culvert should have sufficient channel complexity to provide passage condition. If a channel is not fully entrenched (entrenchment ratio restriction of 2.2 or less) the minimum culvert bed width should be at least 130% of the OHW channel width. The minimum culvert bed width for entrenched culverts must be OHW width or greater. The slope of the reconstructed streambed within the culvert should not exceed 125% of the approximate average slope of the adjacent stream. If embedment of the culvert is not possible, the maximum slope should not exceed 0.5%. Crossings that meet these standards would be authorized by NWP.

USFWS proposed the following in a February 16, 2012, letter, following a discussion on our consideration of comments to date:

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They recommended the Alaska District establish criteria for stream crossing structures in all fish-bearing streams. A Regional Condition that would provide adequate fish passage should incorporate the following standards, at a minimum:

- Application to all fish bearing waters;
- Requirement for pre-construction notification and resource agency coordination;
- Crossing structures must maintain the channel width, grade, substrate composition, and sediment transport conditions of the natural streambed.

After the initial comments from EPA and USFWS responding to SPN-2011-6, the Corps coordinated with EPA, USFWS, NMFS, and ADF&G, to identify if there was appropriate language to include that would meet the primary concern, which is to maintain fish passage. There was general concern that the language in general condition 2 was not prescriptive enough to ensure adequate culvert installation and that by prescribing a method, the Corps would have a mechanism to ensure fish passage and the integrity of the stream was maintained. We have not adopted NMFS, FWS, or EPA's recommendations. Although we seriously considered a regional condition that required implementation of design standards suggested, we believe the existing performance based general conditions (e.g. 2 Aquatic Life Movements, 3 Spawning Areas, and 9 Management of Water Flows) provide performance based standards that are protective of all fish species under all crossing scenarios regardless of the specific design criteria or guidelines that are used.

Installation of culverts in fish bearing waters also requires an ADF&G fish habitat permit. After extensive discussions with the state and NMFS the District was unable to reconcile differences between NMFS recommendations and ADF&G fish habitat permit review procedures to create a single set of stream crossing criteria or guidelines that would be applicable statewide. It is our understanding that ADF&G evaluates each individual applicant's proposed crossing and may require site specific crossing design features. These site specific crossing designs required by ADF&G may not always follow the NMFS recommended guidance. Adopting the NMFS design guidance would be problematic in terms of NWP compliance whenever compliance with the required state fish habitat permit deviates from the NMFS recommended guidelines. As such we elect to continue with the performance based NWP general conditions which we believe limit impacts to EFH to no more than minimal individual or cumulative impacts. General condition 2 minimizes the potential for adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the necessary life cycle movements of indigenous aquatic species. General conditions 3 requires that activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable and also prohibits activities that result in the physical destruction of spawning areas. General condition 9 requires the preconstruction course, condition, capacity, and location of open waters to be maintained unless the purpose of the project is to manage high flows or impound water. The Corps decided to retain the language that was drafted after the resource agency meeting on the regional conditions on November 30, 2011 (Culverts in fish bearing waters must be installed in accordance with a valid Alaska Department Fish and Game, Fish Habitat Permit). After further consideration and discussion about what our measure of compliance would be (fish passage and maintaining water flows), we determined the general conditions and proposed RC J were comprehensive enough to maintain fish passage and water flows and having a prescriptive culvert installation requirement could pose problems with compliance. Additionally, after

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reviewing sample fish habitat permits, it was clear that there would be instances where the requirements of the proposed regional conditions from the resource agencies would not make sense for the integrity of the stream (e.g., when there is heavy stream bank erosion, and stream restoration work is required). The regional condition is adopted as Regional Condition J, as described in Section 3.0.

2.3 Resource Agency Proposed Regional Conditions Not Adopted and General Comments:

EPA and USFWS proposed the following regional conditions that were not adopted (*Corps response is italicized*):

2.3.1 Activity Based Proposals:

Fills within 100-Year Floodplains - Discharges within 100-year floodplains, within the braidplains of braided streams and rivers, or within 100 feet horizontally, of the ordinary high water (OHW) mark or high tide line of any open water body, (including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, and permanently flooded emergent wetlands) may only be authorized by the following NWP: 3, 5, 6, 7, 12, 13, 14, 15, 17, 19, 20, 22, 23, 25, 27, 31, 32, 33, 36, 37, 38, 45. Other categories of activities require authorization via individual permit.

The Corps coordinated with the resource agencies in an attempt to identify areas where this was an issue and creating a regional condition critical to protecting the resource. No specific geographic areas were identified. The Corps' primary concern with adopting a similar requirement would be that it would eliminate the use of certain NWPs in large areas of Alaska where the communities are entirely surrounded by wetlands and open waters (e.g., Western Alaska). The Corps is not adopting this as a regional condition, and does not believe it is necessary to ensure impacts to the aquatic resources are minimal, both individually and cumulatively.

Losses of Intermittent and Ephemeral Stream Beds - District Engineer waivers issued to extend the 300 linear foot thresholds found in NWPs: 21, 29, 39, 40, 42, 43, 44, 50, A and B are limited to an additional 30 linear feet. Stream bed losses that exceed 330 linear feet require authorization via individual permit.

The Corps is confident that waivers issued to extend these thresholds have not resulted in more than minimal impacts, individually or cumulatively. To ensure those instances where the loss may be to a resource that requires other mitigation measures to ensure impacts are minimal, coordination of all projects that require a District Engineer waiver was added to regional condition B (general permit agency coordination). We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. Special conditions may include compensatory mitigation requirements to reduce the project impacts to the minimal level. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of aquatic habitats, as well as the establishment and maintenance of riparian areas next to streams and other open waters.

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Compensatory mitigation can be provided through permittee responsible mitigation, mitigation banks, or in-lieu fee programs.

Impoundment of Flowing Waters - The impoundment of flowing waters may only be authorized via NWP 17, Hydropower Projects. The PCN shall detail: 1) how the impoundment will alter the hydrology of the site and the conveyance of bedload, fluvial debris, and flood flows from the pre-project condition; and 2) how adverse effects have been minimized. Impoundments that substantially disrupt the life cycle movements of species of aquatic life indigenous to the waterbody (e.g., that do not provide specific measures and/or structures to allow aquatic organisms to move around or over dams) require authorization via individual permit.

The Corps believes the requirements of general conditions 2. (Aquatic Life Movement), and 9. (Management of Water Flows), adequately addresses these concerns. The Corps coordinated with the resources agencies to identify those areas where this may be an issue, and concluded the language of the NWPs themselves, as well as the language in the general conditions provided the protection to the aquatic resources to ensure impacts to the aquatic resources were no more than minimal. The Corps is not adopting this as a regional condition.

Pile Driving - Pile installation/driving shall be via vibratory hammer. Impact hammers may only be used to “finish” piles and test refusal when design specifications require piles to be driven to refusal.

The Corps believes this language is too prescriptive as in some areas of the state, this is not logistically practicable. To ensure those instances where there may be a concern regarding noise from impact hammers, regional condition A was modified to include a requirement for PCN for all activities that involve pile driving or blasting. In addition, RC B requires agency coordination to occur on all projects that require PCN and fall in a sensitive habitat area (i.e., marine or anadromous waters, etc.), or geographic area designated as needing additional review (i.e. Municipality of Anchorage, etc.). This will allow resource agencies to recommend mitigation measures to ensure impacts to these resources are in fact no more than minimal.

Activities in Spawning Areas-The discharge of dredged or fill material to the spawning aggregation areas of resident or anadromous fish requires authorization via individual permit. *Note:* In many cases, the location of spawning areas has been previously documented, is commonly known, or is obvious (e.g., presence of adult fish or fish carcasses). Where uncertainty exists whether an area is used for fish spawning, the Alaska Department of Fish and Game should be consulted.

General condition 3 (Spawning Areas) requires activities in spawning areas during spawning seasons be avoided to the maximum extent practicable. In addition, activities that result in the destruction of an important spawning area are not authorized. All activities in fish bearing waters require an Alaska Department of Fish and Game fish habitat permit. These measures all offer the necessary protection for spawning areas to ensure any impacts to this critical resource are minimal.

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Compensatory Mitigation-Compensatory mitigation shall be required for all wetland losses that exceed 1/10 acre and for all losses of intermittent and ephemeral stream channel length.

General Condition 23 requires compensatory mitigation for all wetland losses that exceed 1/10-acre unless the district engineer determines that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. The Corps will retain this flexibility as there have been numerous instances where the Corps has found other forms of mitigation to be appropriate (an example would be requiring avoidance and minimization for a wastewater treatment facility in a remote village in western Alaska). Retaining this ability is critical for being able to make balanced decisions in various parts of Alaska where compensatory mitigation may not be practicable and/or where avoidance and minimization is appropriate mitigation.

Bank Stabilization-Bank stabilization activities authorized under this NWP are restricted to those utilizing bioengineering. Bioengineering is defined as the use of vegetation and biodegradable materials (e.g., coir logs and fabrics) as structural components to provide stabilization that is deformable by river processes in the long term. Rock may only be used as scour protection below the ordinary high water (OHW) mark at the base (toe) of the bioengineering. Vegetated rip rap is not considered bioengineering. The use of methods and techniques included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) or its future revisions is encouraged. The Guide is available at <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>. Bank stabilization activities that: 1) involve armoring the bank with material such as sheet pile, riprap, gabion baskets, concrete, etc.; 2) substantially change bank contours (e.g., bulkheads); or 3) involve flow modification with dikes, rock barbs, weirs, vanes, etc., require authorization via individual permit.

Regional condition A requires a PCN for all activities not proposing a bioengineered method along with an alternatives analysis consisting of the bioengineered methods considered and rationale as to why those alternatives are not part of the applicant's proposal. Additionally, all activities under NWP 13 that require a PCN, will require agency coordination under regional condition B if the activity is in an anadromous and/or marine water, or if the activity requires a DE waiver. We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest.

Footprint Minimization - Side slopes of fills shall be no greater than 2:1 horizontal to vertical. Fill areas shall be minimized by consolidating activities and uses of fill to the maximum extent practicable. For example, utility lines (water, electrical, telephone, sewer, etc.) should be located within pad, road or driveway fills.

General condition 22(Mitigation) requires that the activity be designed and constructed to avoid and minimize adverse effects, to waters of the U.S. to the maximum extent practicable at the project site.

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Activities in Permafrost Areas-If permafrost is present, sufficient depth of fill or other means of insulation shall be used to provide thermal stability. Signs of thermokarsting (depressions formed by localized soil thawing) or standing water indicate non-compliance with this condition.

No rationale was provided to support this as a necessary regional condition to ensure impacts to the aquatic resources are minimal. Additionally, no specific examples were provided that demonstrated that this was an impact that was occurring as a result of NWP verifications. This could be incorporated as a special condition as necessary, in those areas where thermokarsting may be an issue.

Open Waters to Upland Conversions-Non-structural discharges that convert open waters, including lakes, ponds, streams and marine waters, to uplands for the purpose of reclaiming or creating new uplands require authorization via individual permit. Examples include discharges for dock construction, for yards, or to meet local setback requirements.

This type of activity is not authorized by nationwide permits, therefore, would not be necessary as a regional condition.

2.3.2 NWP Specific Proposals:

NWP 15 – EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively.

NWP 17 – NMFS recommended an RC revoking use of NWP 17 Hydropower Projects to protect EFH.

The District declines to issue a regional condition revoking NWP 17 for several reasons. First, not all hydropower projects that are proposed may occur in waters designated as EFH. Second all activities proposed under NWP 17 required PCN to the district engineer and regional condition B further requires that any potential hydropower project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP authorization to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require the hydropower project be evaluated under a different form of permit authorization if the

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proposed activity would result in more than minimal adverse effects on the aquatic environment, including EFH such as vegetated shallows and fish spawning and feeding areas.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 17. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

NWP 23 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively. The Corps is not adopting this recommendation.

NWP 25 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively. The Corps is not adopting this recommendation.

NWP 29 – EPA and FWS recommended wetland losses associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc.) shall not exceed ¼ acre.

This limitation would result in requiring individual permits for many subdivisions and would not generate more meaningful evaluation of these developments. If the impacts occur in more sensitive resource areas (e.g., areas with high cumulative impacts, within 500 feet of anadromous waters, etc.), then they are coordinated with resource agencies per regional condition B. We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. The Corps is not adopting the agencies recommendation.

NWP 51 - NMFS recommended the District revoke part or all of NWP 51 (initially proposed as NWP A) Land-Based Renewable Energy Generation Facilities and require evaluation of these

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projects under an individual permit process. NMFS cited concern over the potential for elements such as mercury, boron, lithium, and arsenic at elevated levels to be released into waterways for geothermal energy projects that do not recycle water in a closed system under NWP 51.

The District elects not to revoke these new NWPs on the basis of a potential for adverse or unknown impacts to aquatic resources for several reasons. Regarding NWP 51, not all proposed projects may involve impacts to aquatic resources designated as EFH or involve geothermal energy projects that result in discharges of elevated contaminants to waters designated as EFH. Additionally, discharges of dredged or fill material are limited to non-tidal waters and discharges into non-tidal wetlands adjacent to tidal waters are not authorized. Finally, all activities proposed under NWP 51 require PCN to the district engineer and regional condition B further requires that any potential land based renewable energy generation project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 51 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require land based renewable energy generation projects be evaluated under a different form of permit authorization if the proposed activity would result in more than minimal adverse effects on the aquatic environment.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 51. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

NWP 52 - NMFS recommended the District revoke part or all of NWP 52 (initially proposed as NWP B) Water-Based Renewable Energy Generation Pilot Projects and require evaluation of these projects under an individual permit process. NMFS cited concerns over potential for unknown effects without site-specific baseline or monitoring data for projects potentially authorized under NWP 52.

Emphasis is added that this NWP authorization is only for "pilot projects". USACE has added a provision to this NWP that defines the term "pilot project." The definition is similar to how the Federal Energy Regulatory Commission describes hydrokinetic pilot projects in their April 2008 white paper on licensing hydrokinetic pilot projects. The definition in the NWP focuses on the experimental nature of pilot projects, and their use in collecting data on the performance of the device in generating energy for other uses and the effects of the devices on the environment, including the aquatic environment. USACE believes that due to the recent development of this technology it is necessary to limit these water-based renewable energy generation facilities to pilot projects, to provide more information on potential adverse effects to the aquatic environment. We believe this will address NMFS concerns regarding unknown effects by requiring data collection on the effects of the devices on the environment, including the aquatic resources.

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An individual permit, with a public notice and comment process, will be required for larger-scale water-based renewable energy generation facilities that are not pilot projects and involve activities that require DA authorization. A PCN is required for all activities authorized by this NWP, so that district engineers can evaluate the proposed work and make a project specific determination that the adverse effects on navigation, the aquatic environment, and other public interest review factors would be minimal, individually and cumulatively. Regional condition B further requires that any water based renewable energy generation project affecting EFH (marine waters, anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 52 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. Finally, USACE added a paragraph to NWP 52 that requires the permittee to remove the generation units, transmission lines, and other structures or fills associated with the pilot project once the pilot project is completed, unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 52. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

3.0 Final Alaska District Regional Conditions and Rationale: These RCs are being required to ensure that the NWPs 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 NWPs that require a PCN will be coordinated with the agencies beyond the requirements of general condition 31(d), to further ensure that NWPs do not authorize activities that may exceed the minimal adverse effects threshold.

REGIONAL CONDITION A - Additional Pre-Construction Notification (PCN) Requirements¹

1. NWP 6, Survey Activities: 3-D seismic surveys employing ocean bottom cables.
2. NWP 13, Bank Stabilization: Projects require a PCN when specified by NWP 13 and/or the proposed methods and techniques are not included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions.

The Guide is available at <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>

Furthermore, applicants proposing projects not contained in the Guide may still qualify for NWP

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13 but they shall provide an alternative analysis to the district engineer with the PCN consisting of the bioengineered methods that were considered and rationale as to why these alternatives are not in the applicant's preferred alternative. Applicants subject to the PCN due to a design that is not included in the Guide are encouraged to include measures that minimize impacts to the aquatic environment including methods that improve fish habitat such as vegetated riprap.

3. Any activity proposing pile driving and/or blasting in marine waters, anadromous lakes or anadromous streams.

4. Proposed projects that qualify for NWPs 3, 12, 13, 14, and 18 within the Municipality of Anchorage.

¹ Where required by the terms of the NWP or Regional Condition A, a prospective permittee must notify the district engineer by submitting a preconstruction notification (PCN) as early as possible. See General Condition 31 of the NWPs for the contents of the PCN or visit www.poa.usace.army.mil/reg/NWPs.

Rationale: *This regional condition is necessary to verify impacts are minimal both individually and cumulatively, and where appropriate, consider special conditions to mitigate impacts to aquatic resources (33 CFR 330.4(e) and 33 CFR 330.5(d)).*

REGIONAL CONDITION B – General Permit Agency Coordination

*This Regional Condition establishes geographic and habitat areas that will require agency coordination for projects that are less than 1/2 acre.*¹

For projects requiring a Pre-Construction Notification (PCN) **and** occurring within any of the following geographic/habitat areas, the Corps will conduct agency coordination with the appropriate agencies according to General Condition 31, regardless of the amount of loss of waters of the U.S.

- 1) The Municipality of Anchorage.
- 2) Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan.
- 3) Areas designated as "High" or "Moderate" value wetlands in the Homer Wetland Functional Assessment.
- 4) Anadromous lakes or anadromous streams including, but not limited to catalogued streams identified in the *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* (available at <http://www.adfg.alaska.gov/sf/SARR/AWC/>)
- 5) Jurisdictional areas within 500 feet (measured from OHW or HTL) of anadromous lakes or anadromous streams as identified above.
- 6) Marine waters

Agency coordination will also occur if the proposed activity:

- 1) is authorized by NWP 51

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- 2) requires a written waiver by the District Engineer; and/or
- 3) involves stream relocation

Local, State or Federal applicants may choose to conduct agency coordination in accordance with this regional condition for projects in the above geographic areas having less than 1/2 acre loss of waters of the U.S. The documentation of agency coordination shall be supplied with the PCN and if the Corps determines the applicant's proposal adequately addresses agency concerns, the project will not be coordinated again.

The Corps (or local, State or Federal applicant, as described above) will coordinate such projects with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and State Historical Preservation Officer or Tribal Historical Preservation Officer. Additionally, project coordination will occur with the State of Alaska's Department of Environmental Conservation and the Department of Fish and Game.

¹ For activities requiring a PCN that result in the loss of greater than 1/2-acre of waters of the U.S., agency coordination will occur according to general condition 31(d) but also include the agencies as specified above.

Rationale: *This regional condition is necessary after consultation with the resource agencies to verify impacts are minimal both individually and cumulatively, and where appropriate, consider special conditions to mitigate impacts to aquatic resources (33 CFR 330.4(e) and 33 CFR 330.5(d)).*

REGIONAL CONDITION C - Wood Preservatives

This Regional Condition applies to all NWP's when the regulated activity involves the use of wood preservative products in waters of the U.S. ¹

1. For new materials²:

- a) Preservatives for wooden structures shall be applied by pressure treatment.
- b) In fresh waters, wood structures treated with creosote or pentachlorophenol preservative shall not be used.
- c) In marine waters wood structures treated with pentachlorophenol preservative shall not be used.
- d) For marine installations with more than 50 pilings, or where current velocities are less than 10 cm/sec, a site-specific risk assessment shall be conducted to determine the potential adverse effects of using creosote or copper-related wood products.

2. For the reuse of previously treated wood products in marine waters the wood preservative product's use shall be consistent with its original use and may not be treated with any additional wood preservative. (e.g. the reuse for dock piling of creosote treated wood for dock piling is

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allowable, the reuse for a retaining wall of creosote treated railroad ties is not allowed, etc.).

¹ Wood preservative products allowed for use in the aquatic/marine environments is determined by the Environmental Protection Agency.

² Treated wood products are produced and installed in accordance with the “Best Management Practices for the Use of Treated Wood in Aquatic and Other Sensitive Environments” (August 2006), including amendments published by the Western Wood Preservers Institute (WWPI) (www.wwpinstitute.org) including the standards set forth by the American Wood-Preservers Association (AWPA) (www.awpa.com), the Timber Piling Council (TPC) (www.timberpilingcouncil.org) and/or the American Lumber Standards Committee as appropriate.

Rationale: *This regional condition is necessary to minimize potential impacts to water quality, and aquatic species and habitats, by reducing the potential for toxic leachate entering the water column (33 CFR 320.4(c and d)) and 33 CFR 320.4(r)).*

REGIONAL CONDITION D - Activities Involving Trenching

Trenches cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to an upland location. The backfilled trench shall achieve the original surface condition, within a year of disturbance unless climatic conditions warrant additional time and is approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

Revegetation of the trench should follow the process outlined in RC E.

Rationale: *This condition is required to maintain normal drainage patterns and water fluctuation, as well as to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4(r), 40 CFR 230.23, 40 CFR 230.24 (b), 40 CFR 230.41, 40 CFR 230.70, 40 CFR 230.74, 40 CFR 230.75, and 40 CFR 230.77).*

REGIONAL CONDITION E - Site Restoration for Projects with Ground Disturbing Activities

Disturbed areas shall be stabilized immediately after construction to prevent erosion. Revegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and soils removed for project construction shall be stockpiled

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separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used only if identified in the PCN and approved in the NWP verification. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Revegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area. (33 CFR 320.4(b), 33 CFR 320.4(r), 40 CFR 230.73 and 40 CFR 230.75).*

REGIONAL CONDITION F - Equipment Standards

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g. ice roads, compacted snow, low psi ground bearing weight, etc) must be taken to prevent soil disturbance.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b), 40 CFR 230.72 and 40 CFR 230.73(c)).*

REGIONAL CONDITION G – Delineation of Project Boundary

Project boundaries shall be staked, flagged, or otherwise clearly delineated prior to the commencement of the authorized activity for projects that involve the placement of fill.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b) and 40 CFR 230.73(c) and 40 CFR 230.74).*

REGIONAL CONDITION H – Maintenance of Hydrology Patterns

Site preparation, excavation, and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures to prevent ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance with this condition. “Excessive” is defined as a measurable change in site hydrology or drainage from the pre-project condition.

Rationale: *This condition is required to (a) prevent degradation of existing waters of the U.S. and riparian areas, which could change the functions of wetlands adjacent to the permitted area (33 CFR 320.4(b), 40 CFR 230.21, 40 CFR 230.23), and (b) maintain the integrity and functions of the riparian buffer adjacent to anadromous lakes or streams (40 CFR 230.21 and 40 CFR 230.31).*

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REGIONAL CONDITION I – Relocation of Stream Beds

Relocated stream channels shall approximate the length, meander pattern, gradient, channel cross-section, substrate and flow velocity of the original stream channel. Relocated stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the stream channel. The relocation of stream channels shall include establishment of an associated floodplain. The floodplain shall be of similar dimension and form as the original, or sized to convey the 100-year flood while retaining the channel, substrate, and floodplain characteristics without significant down- or head-cutting.

Rationale: *This condition is required to (a) prevent degradation of existing waters of the U.S. and riparian areas, which could change the functions of wetlands adjacent to the permitted area (33 CFR 320.4(a and b), 33 CFR 320.4(l), 40 CFR 230.21, 40 CFR 230.22, and 40 CFR 230.23), and (b) maintain the integrity and functions of riparian areas (40 CFR 230.21 and 40 CFR 230.31).*

REGIONAL CONDITION J – Culvert Installation

Culverts in fish bearing waters must be installed in accordance with a valid Alaska Department of Fish and Game, Fish Habitat Permit.

Rationale: *This condition is required to prevent degradation of existing waters of the U.S. and riparian areas (33 CFR 320.4(b), 33 CFR 320.4(c), 40 CFR 230 Subpart C, 40 CFR 230.31, and 40 CFR 230.45)*

REGIONAL CONDITIONS K-N APPLY TO SPECIFIC NWPs

REGIONAL CONDITION K - Seasonal Docks Authorized by NWP 11, Temporary Recreational Structures

Small, seasonal docks shall not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less.

Rationale: *This condition is required to maintain navigation(33 CFR 320.4(a, g and o).*

REGIONAL CONDITION L – NWP 40 Agricultural Activities

The following activities are not authorized by NWP 40: a. Drain tiles, ditches, or levees or; b. Mechanized land clearing and land leveling in wetlands within 500’ of anadromous lakes or anadromous streams.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b), 40 CFR 230.31, and 40 CFR 230.73(c)).*

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REGIONAL CONDITION M – NWP 44 Mining Activities

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit 2006-1944. In Alaska, NWP 44 will only authorize the following activities:

1. Hard rock mining, not including trenching, drilling, or access road construction. Applicable to Section 404 only.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, and/or prior to equipment being removed from site, whichever comes first.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(a and b), 33 CFR 320.4 (r), and 40 CFR 230.21(b)).*

REGIONAL CONDITION N – NWP 48 Existing Commercial Shellfish Aquaculture Activities

NWP 48 is revoked in Alaska. Applicants seeking authorization for this work are encouraged to apply for Regional General Permit POA-2006-1035, Aquatic Farm Structures within the State of Alaska.

Rationale: *The Alaska District has a Regional General Permit (RGP) that allows for these types of activities. Both the RGP and NWP 48 are similar in that they both prohibit the farming of fin-fish. Working with local State and Federal agencies, the RGP has allowed the Alaska District to better manage Aquatic Farm Structures located in state managed waters in a manner that minimizes impacts to navigation and has no more than minimal adverse impacts, both individually and cumulatively, on the aquatic environment. We believe that revoking the NWP in the Alaska District is appropriate to ensure these impacts are properly evaluated. (33 CFR 330.5)*

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Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(a and b), 33 CFR 320.4 (r), and 40 CFR 230.21(b)).*

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SUPPLEMENTAL DECISION DOCUMENT APPENDIX A

**2012 Nationwide Permits Re-Issuance
U.S. Army Corps of Engineers
Alaska District**

March 2012

Appendix A- Regional Condition Evaluation and Consideration of Comments

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1.0 Regional Condition Development for 2012 Nationwide Permits

1.1 Development of Proposed Alaska District Regional Conditions: Regional Conditions (RCs) are necessary to address important regional issues relating to the aquatic environment to ensure that the NWP's authorize activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. Information pertaining to the use, modification, or deletion of the Alaska District's ten RCs for the 2007 NWP's, the fourteen proposed RCs for the 2012 NWP's, and the comments received on the regional issues are discussed below.

1.2 Consideration of the Alaska District's 2007 NWP Regional Conditions: Due to some of the NWP's and their general conditions (GCs) and definitions having substantial modifications, the Alaska District reviewed the ten RCs from the 2007 NWP's with the 2012 NWP's in mind, to develop proposed RCs for the 2012 NWP's.

Some of the RCs developed for the 2007 NWP's work well, and if the applicable NWP's did not change, no modifications or slight modifications were proposed (e.g., RC E 2007 remained RC E 2012).

1.3 Proposed Regional Conditions: The intent of the Alaska District is to develop RCs that are: 1. applicable across all activities with similar potential adverse effects and, 2. goal-oriented rather than prescriptive, since many times prescriptive measures are not applicable across all project types nor are they effective across all areas of the state. On March 4, 2011, we published Special Public Notice (SPN) 2011-6 to solicit comments on the proposed RCs. Based on that coordination, the RCs proposed for 2012 are a combination of conditions carried forward from 2007, modified from 2007, or newly proposed. Below is a summary of the changes to the RCs proposed for 2012. (For the complete proposal see SPN 2011-6 in the Administrative Record).

2.0 Consideration of Public Comments and Alternative Regional Conditions

In response to SPN 2011-6, comments were received from the National Marine Fisheries Service (NMFS) (April 14, 2011), Environmental Protection Agency (EPA) (April 18, 2011), the Alaska Department of Fish and Game (ADFG) (April 28, 2011), and the U.S. Fish and Wildlife Service (FWS) (April 18, 2011). Additionally, the City and Borough of Juneau (CBJ) provided comments on November 4, 2011; after it was determined they had not been on the mailing list for the special public notice. On-going coordination occurred in an effort to address agency concerns up until the issuance of the NWP's in the federal register.

Commenters suggested alternative language for specific RCs, additional agency notification requirements and additional PCN requirements for some NWP's, as well as proposed new RCs. We considered all comments received in response to SPN 2011-6. Comments and the consideration they were given follow.

2.1 Comments on Regional Conditions Proposed in SPN 2011-6 (Corps response is *italicized*):

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Regional Condition A – NMFS recommended: “and blasting” be added to A3. and a new PCN requirement (A4.) “Any activity involving the discharge of dredged or fill material to fish spawning areas.”

The Corps agrees that there are concerns relating to blasting and not just pile driving and modified the condition to incorporate this recommendation. The concern regarding the fish spawning areas is adequately covered by GC 3, therefore this modification will not be adopted.

ADF&G recommended: encouraging the use of an expedited procedure (as opposed to the alternatives analysis described above) for ADOT&PF projects, that would encourage the use of new bank stabilization technologies, including composite vegetated riprap-while still allowing the activity to proceed under NWP. They also stated we should continue to provide a PCN for all proposals involving bank stabilization in anadromous and resident fish streams.

ADOT&PF has not expressed concern over providing an alternatives analysis for bank stabilization projects and the process is still working efficiently. The Corps noted we do not currently require PCN for all proposals involving bank stabilization in anadromous and resident fish streams and if we were to, it is highly unlikely impacts to the aquatic resource would change as a result of this additional notification process.

EPA recommended: adding NWP 3, Maintenance: Projects involving stream channel modification (including through expansion of previous footprint). The PCN shall contain information detailing how stream channel modification is the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill. EPA also recommends deleting A2 as it pertains to bank stabilization (adding a bank stabilization RC later) and inserting into 3. “the use of impact hammers or blasting” instead of “pile driving.”

USFWS recommended: Deleting A2 as it pertains to bank stabilization (adding a bank stabilization RC later), modifying A3 to read, “Any activity proposing the use of impact hammers to drive steel piles in marine waters, anadromous lakes or anadromous streams,” and adding a PCN requirement for projects that involve stream channel modification.

The concerns raised by EPA and USFWS regarding stream channel modification is addressed within the language of NWP 3, as it only allows for maintenance of previously permitted activities and any changes should be minor, as well as GC 9, which addresses stream modifications, and GC 22, which specifically addresses minimization. The concern regarding the use of impact hammers was addressed by requiring all pile driving or blasting activities be coordinated.

The City and Borough of Juneau comment: The types of projects that require the applicant to contact the Corps is not clear.

The Corps believes Footnote 1 of regional condition A clarifies this.

Regional Condition B – ADF&G recommended revisions to the names listed in the agency coordination list due to changes in agency names. *The changes were made due to the coastal management program expiring in July 2011, and projects no longer being coordinated through*

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their office. Though not specific to this RC, both EPA and USFWS expressed concern over not having the ability to comment on projects that may be verified as a result of a waiver from the District Engineer. Specifically, bank stabilization projects that exceed the limits outlined in the NWP or loss of stream bed that may exceed 300 feet. Both agencies also felt there should be a mechanism in place to review projects that proposed relocation of stream beds. Currently, a project could be verified with a waiver from the District Engineer, authorizing the loss of greater than 300 feet of stream bed and in some circumstances, would not be coordinated with resource agencies. By adding an agency coordination requirement, all activities requiring waivers (e.g., bank stabilization projects exceeding 500 feet, stream bed losses exceeding 300 feet) or stream relocations, are coordinated with the resource agencies so they have an opportunity to provide site specific recommendations, if appropriate.

The condition will be modified to include a requirement for agency coordination for projects requiring written waivers and/or stream relocations.

City and Borough of Juneau (CBJ) recommended: Adding culvert installation in fish-bearing streams to your list of projects subject to General Permit Agency Coordination (GPAC). CBJ has a serious problem with applicants installing culverts that are not adequate for fish passage. Agencies need an opportunity to provide culvert design information that is appropriate on a stream by stream basis. In addition, they requested local agencies be identified as requiring coordination and they noted the expiration of the Alaska Coastal Management Program.

The Corps concern with incorporating this as an agency coordination requirement is that unless streams are mapped in ADF&Gs catalog, we have no way of identifying if they are fish bearing. Proposed RC J was developed because an ADF&G permit is required for ALL culverts and crossings in fish bearing waters and the criteria for a culvert installation is based on site specifics that ADF&G works with the applicant on, we believe that by adding a condition stating they are required to install culverts in accordance with ADF&G criteria, it will ensure that they are working closely with ADF&G and give us an enforcement mechanism if they did not install it in accordance with the site specific criteria. GC 31 outlines who we are required to coordinate with by law which is why those specific agencies are listed in the RC. We do have internal mailing lists that we try and coordinate with geographic regions, as it would be cumbersome to try and incorporate every individual community into the GPAC mailing lists. Reference to the coastal zone and Alaska Coastal Management Plan was removed.

Regional Condition C – NMFS recommended: changing C1c) to read: “In marine waters, wood structures treated with pentachlorophenol preservative shall not be used. For marine installations with more than 20 pilings, or where current velocities are less than 10 cm/sec, an individual permit will be required.”

EPA recommended: adding d) For marine installations with more than 50 pilings, or where current velocities are less than 10 cm/sec, a site-specific risk assessment shall be conducted to determine the potential adverse effects of using creosote or copper-treated wood products.

Further consultation took place with EPA and NMFS and both agencies stated that site specific risk assessments were recommended for marine installations with more than 50 pilings. This is

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consistent with NMFS guidance of recommending risk assessments for installations with large numbers of creosote and copper-treated pilings (50 to 100 pilings), or where current velocities are less than 10cm/sec. Creosote and copper-treated wood products leach contaminants into the aquatic environment. This recommendation was adopted as proposed.

Regional Condition D – EPA recommended: adding “Excavated material temporarily sidecast into wetlands shall be underlain with geotextile to allow for its complete recovery. Sidecast material shall be completely removed at the earliest practicable date, and may not remain longer than 30 days. Trenching within emergent wetlands or flowing waters requires authorization via individual permit.”

USFWS recommended: changes to place more enforceable limits on the amount of “minor trench over-fill” allowed on wetlands, and to help assure that wetlands are protected from impacts from the placement of “temporary” sidecast material. They also proposed to add, “All excavated material temporarily sidecast into wetlands shall be underlain with geotextile to allow for its complete recovery. Sidecast material shall be completely removed at the earliest practicable date, and may not remain longer than 30 days. Trenching within emergent wetlands or flowing waters requires authorization via individual permit.”

The comments from EPA and USFWS were very similar. Currently, the NWP requirements for temporarily sidecast material to be removed within 90 days seems appropriate given the growing season, resource impacts, and limited window in which to work. The Corps disagrees with the recommendation to require an individual permit for trenching within emergent wetlands or flowing waters, since those activities are typically done during freeze up and/or requires stream diversions. Trenching in forested wetlands is much more likely to result in the largest permanent impacts. It was agreed that in cases where it is practicable, to assist in the removal of temporarily sidecast material, it should be underlain with geotextile, ice pads or similar material. The Corps is modifying the condition to include: “Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.” The regional condition is adopted with the modifications discussed above.

Regional Condition E – There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

Regional Condition F – There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

Regional Condition K (formerly Regional Condition G) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This regional condition is adopted as proposed.

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Regional Condition L (formerly Regional Condition H) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

This condition is adopted as proposed.

Regional Condition M (formerly Regional Condition I) - EPA and USFWS recommend adding: The PCN shall include a reclamation plan that includes a description of baseline site conditions, a schedule for removing stockpiles and restoring pre-project contours, and identifies the usual seasonal high water events for the waterbody.

Due to the abundant amount of waters of the U.S. in Alaska, and the size hard rock mines tend to be, the Alaska District does not expect many hard rock mines would qualify for the NWP. Reclamation plans are required by other statutes (State Alaska Division of Mining and Bureau of Land Management), therefore a reclamation plan is required with PCN per the terms of the NWP. This NWP was only verified 3 times in the past five years, with a cumulative impact of 0.08-acre. The condition was adopted as proposed.

This condition is required to prevent degradation of existing waters of the U.S. and riparian areas, to facilitate reclamation of tailing piles and to prevent sedimentation outside the permitted area (33 CFR 320.4(b), 40 CFR PART 230.21, 40 CFR PART 230.23, 40 CFR PART 230.24, 40 CFR 230.72 and 40 CFR 230.73). The regional condition is adopted as proposed

Regional Condition N (formerly Regional Condition J) - There were no comments suggesting changes to this regional condition as a result of SPN 2011-6.

The Alaska District has a Regional General Permit (RGP) that allows for these types of activities. Both the RGP and NWP 48 are similar in that they both prohibit the farming of fin-fish. Working with local State and Federal agencies, the RGP has allowed the Alaska District to better manage Aquatic Farm Structures located in state managed waters in a manner that minimizes impacts to navigation and has no more than minimal adverse impacts, both individually and cumulatively, on the aquatic environment. We believe that revoking the NWP in the Alaska District is appropriate to ensure these impacts are properly evaluated. The regional condition is adopted as proposed.

2.2 New Regional Conditions Proposed by Resource Agency(ies), Adopted in Full or Part:

New Regional Condition G – EPA and USFWS proposed the following: Project boundaries shall be staked, flagged, or otherwise clearly delineated prior to the commencement of the authorized activity.

This was a regional condition to the 2002 NWPs, and was eliminated when the NWPs were reauthorized in 2007 due to the fact that where the permittee causes a loss of waters greater than the amount authorized, the potential non-compliance enforcement action would hinge primarily on the excess acreage of lost waters of the U.S., not for the failure to identify the project limits. While this is still the case, after careful reconsideration, we believe it is a proven successful tool

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for compliance purposes and provides protection to the aquatic resource by ensuring that fill does not exceed the project footprint.

The new regional condition was adopted as proposed.

New Regional Condition H – EPA and USFWS proposed the following: Site preparation, excavation, and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures to prevent ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance with this condition. “Excessive” is defined as a measurable and long-term change in site hydrology or drainage from the pre-project condition.

The Corps agrees that additional language to support maintaining hydrology patterns that would compliment general conditions 8. (Adverse Effects from Impoundments), and 9. (Management of Water Flows), is warranted. The proposed condition provides a performance based measure to ensure compliance. The new regional condition is adopted as proposed.

New Regional Condition I – EPA and USFWS proposed the following: Authorized activities shall not result in the net loss of perennial stream bed length. Relocated stream channels shall approximate the length, meander pattern, gradient, channel cross-section, substrate and flow velocity of the original stream channel. Relocated stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the stream channel. The relocation of stream channels shall include establishment of an associated floodplain. The floodplain shall be of similar dimension and form as the original, or sized to convey the 100-year flood while retaining the channel, substrate, and floodplain characteristics without significant down- or head-cutting.

The Corps disagrees that authorized activities should never result in the net loss of perennial stream bed length and there may be instances where such activities occur, and the project impacts are still considered minimal. However, the Corps agrees language to compliment general condition 9. (Management of Water Flows) is necessary for protection of streams, and is critical in maintaining the integrity of existing stream systems, particularly when a relocation activity is occurring. The new regional condition will be adopted but will omit the first sentence.

New Regional Condition J – Stream Crossing Structures

EPA proposed the following, which was supported by NMFS: Stream crossing structures within/over entrenched channels with narrow floodplains (i.e. ratio of floodprone width/ OHWM width < 2.2) are restricted to: 1) full-span bridges without structures or fill below the stream’s ordinary high water (OHW) mark or; 2) a single metal culvert or bottomless arch of at least 130% of the channel width at the OHW mark. Stream crossing structures other than above; or within/over channels with extensive flood plains or associated wetlands (i.e. ratio of floodprone width/ OHWM width > 2.2) require authorization via individual permit. Floodprone width is the width of the floodplain at an elevation twice the bankfull depth.

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On January 27, 2012, EPA proposed the following after various coordination efforts:

Adding to RC A - Additional pre-construction notification requirements for: Any activity proposing a stream crossing structure (i.e., culverts and bridges) in fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing.

Adding to RC B - Additional agency coordination requirements for: Any activity proposing a stream crossing structure (i.e., culverts and bridges) in fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing.

EPA proposed the specific stream crossing structure condition to read: Stream crossing structures (i.e., culverts and bridges) within/over entrenched channels with narrow floodplains (i.e. ratio of floodprone width/ ordinary high water mark (OHWM) width < 2.2) are restricted to:

1) full-span bridges without structures or fill below the stream's OHW mark

or

2) a single embedded metal culvert or a bottomless arch with a minimum effective culvert width of at least 120% of the channel width at the OHW mark.

The bottom (invert) of circular culverts shall be countersunk at least 30% of the culvert diameter below the surface of the streambed. The invert of squash pipe arches shall be countersunk at least 20% of the culvert rise below the surface of the streambed. Stream crossing structures other than above (e.g., culverts with an effective width less than 120% of the channel width); or within/over channels with extensive flood plains or associated wetlands (i.e. ratio of floodprone width/ OHWM width > 2.2) require authorization via individual permit. The District Engineer may verify the use of a NWP in specific cases where a proposed activity does not meet the above criteria, if they determine in writing that the proposed activity will result in only minimal adverse impacts and comply with the NWP General Conditions, including for Aquatic Life Movements.

USFWS stated the following: Stream crossing structures such as bridges and culverts are authorized by several NWPs (2, 3, 12, 14, etc.). Alaska's streams provide important fish and wildlife habitats. The hydrologic and habitat functions of streams are dependent on the maintenance of not only channel processes, but riparian and floodplain integrity and processes as well. These riparian and floodplain processes include the transport of sediment and bed material, the conveyance of debris and flood flows, and the assimilation of nutrient inputs from the watershed. Full functioning of these riparian and floodplain processes requires connectivity from a stream's headwaters to its mouth. Full functioning also requires continuity and connectivity of the stream-floodplain-riparian corridor.

Stream crossing design criteria should protect stream health by maintaining a dynamic stable channel, including riparian and floodplain processes. In particular, road crossings should maintain the normative physical processes within the stream-floodplain-riparian corridor by:

- allowing for natural sediment transport patterns,

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- providing unaltered fluvial debris movement, and
- maintaining or restoring functional continuity and connectivity of the stream-floodplain-riparian corridor.

Ideally, all crossings should consist of a bridge or culvert that spans the floodplain, provides for long-term dynamic channel stability, retains existing spawning habitats, maintains food (benthic invertebrate) production, and minimizes risk of failure. In general, fill should not be placed or replaced within the channel or floodplain. All crossing designs should be based on site-specific information such as: estimates of peak discharge, flow velocities and patterns; channel stability; sediment and bed load transport; flooding regime (50-year to 100-year flood frequency and magnitude); cross-section profiles of channel morphology and water surface elevations. The Service supports use of the *National Marine Fisheries Service (NMFS) Anadromous Salmonid Passage Facility Design* guidelines for road crossings over streams (chapter 7, 2008).

Currently, the NWP language, the General Conditions and Alaska's Regional Conditions do not provide adequate sidebars to ensure that only activities with minimal impacts to stream habitats and systems are permitted. For example, NWP 3, Maintenance, allows for identical replacement of an existing crossing structure, even if it is currently restricting flow or debris movement. General Condition 2, the Aquatic Life Movements GC, only provides basic transport of organisms, but no protections of other important aquatic functions such as unaltered debris movement or maintenance of habitats (e.g., rearing habitat, prevention of impoundments, etc.).

We recommend that a new Regional Condition or Conditions be developed that incorporate(s) the generally-accepted current crossing standards for maintenance of full hydrologic functioning of flowing waters. Projects permitted under NWPs should be limited to those which maintain or restore the naturally dynamic stable channel, including riparian and floodplain processes, at low flow conditions. Projects which do not meet these criteria should be reviewed under the Individual Permit process. We recognize that crossing technology is a still-developing field and there are many variables in stream type and conditions and project type. Therefore, we have not yet developed draft language for this Regional Condition(s) but look forward to working with the Corps and others to do so.

NMFS proposed the following condition on January 20, 2012, following an EFH consultation meeting: Crossing design by culvert should have sufficient channel complexity to provide passage condition. If a channel is not fully entrenched (entrenchment ratio restriction of 2.2 or less) the minimum culvert bed width should be at least 130% of the OHW channel width. The minimum culvert bed width for entrenched culverts must be OHW width or greater. The slope of the reconstructed streambed within the culvert should not exceed 125% of the approximate average slope of the adjacent stream. If embedment of the culvert is not possible, the maximum slope should not exceed 0.5%. Crossings that meet these standards would be authorized by NWP.

USFWS proposed the following in a February 16, 2012, letter, following a discussion on our consideration of comments to date:

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They recommended the Alaska District establish criteria for stream crossing structures in all fish-bearing streams. A Regional Condition that would provide adequate fish passage should incorporate the following standards, at a minimum:

- Application to all fish bearing waters;
- Requirement for pre-construction notification and resource agency coordination;
- Crossing structures must maintain the channel width, grade, substrate composition, and sediment transport conditions of the natural streambed.

After the initial comments from EPA and USFWS responding to SPN-2011-6, the Corps coordinated with EPA, USFWS, NMFS, and ADF&G, to identify if there was appropriate language to include that would meet the primary concern, which is to maintain fish passage. There was general concern that the language in general condition 2 was not prescriptive enough to ensure adequate culvert installation and that by prescribing a method, the Corps would have a mechanism to ensure fish passage and the integrity of the stream was maintained. We have not adopted NMFS, FWS, or EPA's recommendations. Although we seriously considered a regional condition that required implementation of design standards suggested, we believe the existing performance based general conditions (e.g. 2 Aquatic Life Movements, 3 Spawning Areas, and 9 Management of Water Flows) provide performance based standards that are protective of all fish species under all crossing scenarios regardless of the specific design criteria or guidelines that are used.

Installation of culverts in fish bearing waters also requires an ADF&G fish habitat permit. After extensive discussions with the state and NMFS the District was unable to reconcile differences between NMFS recommendations and ADF&G fish habitat permit review procedures to create a single set of stream crossing criteria or guidelines that would be applicable statewide. It is our understanding that ADF&G evaluates each individual applicant's proposed crossing and may require site specific crossing design features. These site specific crossing designs required by ADF&G may not always follow the NMFS recommended guidance. Adopting the NMFS design guidance would be problematic in terms of NWP compliance whenever compliance with the required state fish habitat permit deviates from the NMFS recommended guidelines. As such we elect to continue with the performance based NWP general conditions which we believe limit impacts to EFH to no more than minimal individual or cumulative impacts. General condition 2 minimizes the potential for adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the necessary life cycle movements of indigenous aquatic species. General condition 3 requires that activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable and also prohibits activities that result in the physical destruction of spawning areas. General condition 9 requires the preconstruction course, condition, capacity, and location of open waters to be maintained unless the purpose of the project is to manage high flows or impound water. The Corps decided to retain the language that was drafted after the resource agency meeting on the regional conditions on November 30, 2011 (Culverts in fish bearing waters must be installed in accordance with a valid Alaska Department Fish and Game, Fish Habitat Permit). After further consideration and discussion about what our measure of compliance would be (fish passage and maintaining water flows), we determined the general conditions and proposed RC J were comprehensive enough to maintain fish passage and water flows and having a prescriptive culvert installation requirement could pose problems with compliance. Additionally, after

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reviewing sample fish habitat permits, it was clear that there would be instances where the requirements of the proposed regional conditions from the resource agencies would not make sense for the integrity of the stream (e.g., when there is heavy stream bank erosion, and stream restoration work is required). The regional condition is adopted as Regional Condition J, as described in Section 3.0.

2.3 Resource Agency Proposed Regional Conditions Not Adopted and General Comments:

EPA and USFWS proposed the following regional conditions that were not adopted (*Corps response is italicized*):

2.3.1 Activity Based Proposals:

Fills within 100-Year Floodplains - Discharges within 100-year floodplains, within the braidplains of braided streams and rivers, or within 100 feet horizontally, of the ordinary high water (OHW) mark or high tide line of any open water body, (including streams, sloughs, rivers, ponds, lakes, estuaries, marine waters, and permanently flooded emergent wetlands) may only be authorized by the following NWP: 3, 5, 6, 7, 12, 13, 14, 15, 17, 19, 20, 22, 23, 25, 27, 31, 32, 33, 36, 37, 38, 45. Other categories of activities require authorization via individual permit.

The Corps coordinated with the resource agencies in an attempt to identify areas where this was an issue and creating a regional condition critical to protecting the resource. No specific geographic areas were identified. The Corps' primary concern with adopting a similar requirement would be that it would eliminate the use of certain NWPs in large areas of Alaska where the communities are entirely surrounded by wetlands and open waters (e.g., Western Alaska). The Corps is not adopting this as a regional condition, and does not believe it is necessary to ensure impacts to the aquatic resources are minimal, both individually and cumulatively.

Losses of Intermittent and Ephemeral Stream Beds - District Engineer waivers issued to extend the 300 linear foot thresholds found in NWPs: 21, 29, 39, 40, 42, 43, 44, 50, A and B are limited to an additional 30 linear feet. Stream bed losses that exceed 330 linear feet require authorization via individual permit.

The Corps is confident that waivers issued to extend these thresholds have not resulted in more than minimal impacts, individually or cumulatively. To ensure those instances where the loss may be to a resource that requires other mitigation measures to ensure impacts are minimal, coordination of all projects that require a District Engineer waiver was added to regional condition B (general permit agency coordination). We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. Special conditions may include compensatory mitigation requirements to reduce the project impacts to the minimal level. Compensatory mitigation may include the restoration, establishment, enhancement, and/or preservation of aquatic habitats, as well as the establishment and maintenance of riparian areas next to streams and other open waters.

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Compensatory mitigation can be provided through permittee responsible mitigation, mitigation banks, or in-lieu fee programs.

Impoundment of Flowing Waters - The impoundment of flowing waters may only be authorized via NWP 17, Hydropower Projects. The PCN shall detail: 1) how the impoundment will alter the hydrology of the site and the conveyance of bedload, fluvial debris, and flood flows from the pre-project condition; and 2) how adverse effects have been minimized. Impoundments that substantially disrupt the life cycle movements of species of aquatic life indigenous to the waterbody (e.g., that do not provide specific measures and/or structures to allow aquatic organisms to move around or over dams) require authorization via individual permit.

The Corps believes the requirements of general conditions 2. (Aquatic Life Movement), and 9. (Management of Water Flows), adequately addresses these concerns. The Corps coordinated with the resources agencies to identify those areas where this may be an issue, and concluded the language of the NWPs themselves, as well as the language in the general conditions provided the protection to the aquatic resources to ensure impacts to the aquatic resources were no more than minimal. The Corps is not adopting this as a regional condition.

Pile Driving - Pile installation/driving shall be via vibratory hammer. Impact hammers may only be used to “finish” piles and test refusal when design specifications require piles to be driven to refusal.

The Corps believes this language is too prescriptive as in some areas of the state, this is not logistically practicable. To ensure those instances where there may be a concern regarding noise from impact hammers, regional condition A was modified to include a requirement for PCN for all activities that involve pile driving or blasting. In addition, RC B requires agency coordination to occur on all projects that require PCN and fall in a sensitive habitat area (i.e., marine or anadromous waters, etc.), or geographic area designated as needing additional review (i.e. Municipality of Anchorage, etc.). This will allow resource agencies to recommend mitigation measures to ensure impacts to these resources are in fact no more than minimal.

Activities in Spawning Areas-The discharge of dredged or fill material to the spawning aggregation areas of resident or anadromous fish requires authorization via individual permit. *Note:* In many cases, the location of spawning areas has been previously documented, is commonly known, or is obvious (e.g., presence of adult fish or fish carcasses). Where uncertainty exists whether an area is used for fish spawning, the Alaska Department of Fish and Game should be consulted.

General condition 3 (Spawning Areas) requires activities in spawning areas during spawning seasons be avoided to the maximum extent practicable. In addition, activities that result in the destruction of an important spawning area are not authorized. All activities in fish bearing waters require an Alaska Department of Fish and Game fish habitat permit. These measures all offer the necessary protection for spawning areas to ensure any impacts to this critical resource are minimal.

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Compensatory Mitigation-Compensatory mitigation shall be required for all wetland losses that exceed 1/10 acre and for all losses of intermittent and ephemeral stream channel length.

General Condition 23 requires compensatory mitigation for all wetland losses that exceed 1/10-acre unless the district engineer determines that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. The Corps will retain this flexibility as there have been numerous instances where the Corps has found other forms of mitigation to be appropriate (an example would be requiring avoidance and minimization for a wastewater treatment facility in a remote village in western Alaska). Retaining this ability is critical for being able to make balanced decisions in various parts of Alaska where compensatory mitigation may not be practicable and/or where avoidance and minimization is appropriate mitigation.

Bank Stabilization-Bank stabilization activities authorized under this NWP are restricted to those utilizing bioengineering. Bioengineering is defined as the use of vegetation and biodegradable materials (e.g., coir logs and fabrics) as structural components to provide stabilization that is deformable by river processes in the long term. Rock may only be used as scour protection below the ordinary high water (OHW) mark at the base (toe) of the bioengineering. Vegetated rip rap is not considered bioengineering. The use of methods and techniques included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) or its future revisions is encouraged. The Guide is available at <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>. Bank stabilization activities that: 1) involve armoring the bank with material such as sheet pile, riprap, gabion baskets, concrete, etc.; 2) substantially change bank contours (e.g., bulkheads); or 3) involve flow modification with dikes, rock barbs, weirs, vanes, etc., require authorization via individual permit.

Regional condition A requires a PCN for all activities not proposing a bioengineered method along with an alternatives analysis consisting of the bioengineered methods considered and rationale as to why those alternatives are not part of the applicant's proposal. Additionally, all activities under NWP 13 that require a PCN, will require agency coordination under regional condition B if the activity is in an anadromous and/or marine water, or if the activity requires a DE waiver. We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest.

Footprint Minimization - Side slopes of fills shall be no greater than 2:1 horizontal to vertical. Fill areas shall be minimized by consolidating activities and uses of fill to the maximum extent practicable. For example, utility lines (water, electrical, telephone, sewer, etc.) should be located within pad, road or driveway fills.

General condition 22 (Mitigation) requires that the activity be designed and constructed to avoid and minimize adverse effects, to waters of the U.S. to the maximum extent practicable at the project site.

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Activities in Permafrost Areas-If permafrost is present, sufficient depth of fill or other means of insulation shall be used to provide thermal stability. Signs of thermokarsting (depressions formed by localized soil thawing) or standing water indicate non-compliance with this condition.

No rationale was provided to support this as a necessary regional condition to ensure impacts to the aquatic resources are minimal. Additionally, no specific examples were provided that demonstrated that this was an impact that was occurring as a result of NWP verifications. This could be incorporated as a special condition as necessary, in those areas where thermokarsting may be an issue.

Open Waters to Upland Conversions-Non-structural discharges that convert open waters, including lakes, ponds, streams and marine waters, to uplands for the purpose of reclaiming or creating new uplands require authorization via individual permit. Examples include discharges for dock construction, for yards, or to meet local setback requirements.

This type of activity is not authorized by nationwide permits, therefore, would not be necessary as a regional condition.

2.3.2 NWP Specific Proposals:

NWP 15 – EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively.

NWP 17 – NMFS recommended an RC revoking use of NWP 17 Hydropower Projects to protect EFH.

The District declines to issue a regional condition revoking NWP 17 for several reasons. First, not all hydropower projects that are proposed may occur in waters designated as EFH. Second all activities proposed under NWP 17 required PCN to the district engineer and regional condition B further requires that any potential hydropower project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP authorization to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require the hydropower project be evaluated under a different form of permit authorization if the

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proposed activity would result in more than minimal adverse effects on the aquatic environment, including EFH such as vegetated shallows and fish spawning and feeding areas.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 17. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

NWP 23 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively. The Corps is not adopting this recommendation.

NWP 25 - EPA proposed imposing acreage limits of no more than ½ acre loss of waters of the U.S., including the loss of no more than 300 linear feet of intermittent or ephemeral stream bed. In addition, they proposed requiring all forms or cells shall be tightly sealed and isolated from waters of the U.S. prior to fill placement.

This proposal was not supported by rationale that demonstrated these limitations were essential to ensuring activities authorized by this NWP are in fact minimal. The current limitations, along with the general and regional conditions ensure the impacts resulting from activities verified by this NWP would be no more than minimal, individually and cumulatively. The Corps is not adopting this recommendation.

NWP 29 – EPA and FWS recommended wetland losses associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc.) shall not exceed ¼ acre.

This limitation would result in requiring individual permits for many subdivisions and would not generate more meaningful evaluation of these developments. If the impacts occur in more sensitive resource areas (e.g., areas with high cumulative impacts, within 500 feet of anadromous waters, etc.), then they are coordinated with resource agencies per regional condition B. We anticipate the agency coordination will generate meaningful comments and additional measures the district engineer will consider when determining if the project qualifies for the NWP. Finally, district engineers may impose special conditions on NWP verifications to ensure that the NWP authorizes only activities that result in minimal individual and cumulative effects on the aquatic environment and are in the public interest. The Corps is not adopting the agencies recommendation.

NWP 51 - NMFS recommended the District revoke part or all of NWP 51 (initially proposed as NWP A) Land-Based Renewable Energy Generation Facilities and require evaluation of these

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projects under an individual permit process. NMFS cited concern over the potential for elements such as mercury, boron, lithium, and arsenic at elevated levels to be released into waterways for geothermal energy projects that do not recycle water in a closed system under NWP 51.

The District elects not to revoke these new NWPs on the basis of a potential for adverse or unknown impacts to aquatic resources for several reasons. Regarding NWP 51, not all proposed projects may involve impacts to aquatic resources designated as EFH or involve geothermal energy projects that result in discharges of elevated contaminants to waters designated as EFH. Additionally, discharges of dredged or fill material are limited to non-tidal waters and discharges into non-tidal wetlands adjacent to tidal waters are not authorized. Finally, all activities proposed under NWP 51 require PCN to the district engineer and regional condition B further requires that any potential land based renewable energy generation project affecting EFH (anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 51 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. District engineers may also exercise discretionary authority and require land based renewable energy generation projects be evaluated under a different form of permit authorization if the proposed activity would result in more than minimal adverse effects on the aquatic environment.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 51. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

NWP 52 - NMFS recommended the District revoke part or all of NWP 52 (initially proposed as NWP B) Water-Based Renewable Energy Generation Pilot Projects and require evaluation of these projects under an individual permit process. NMFS cited concerns over potential for unknown effects without site-specific baseline or monitoring data for projects potentially authorized under NWP 52.

Emphasis is added that this NWP authorization is only for "pilot projects". USACE has added a provision to this NWP that defines the term "pilot project." The definition is similar to how the Federal Energy Regulatory Commission describes hydrokinetic pilot projects in their April 2008 white paper on licensing hydrokinetic pilot projects. The definition in the NWP focuses on the experimental nature of pilot projects, and their use in collecting data on the performance of the device in generating energy for other uses and the effects of the devices on the environment, including the aquatic environment. USACE believes that due to the recent development of this technology it is necessary to limit these water-based renewable energy generation facilities to pilot projects, to provide more information on potential adverse effects to the aquatic environment. We believe this will address NMFS concerns regarding unknown effects by requiring data collection on the effects of the devices on the environment, including the aquatic resources.

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An individual permit, with a public notice and comment process, will be required for larger-scale water-based renewable energy generation facilities that are not pilot projects and involve activities that require DA authorization. A PCN is required for all activities authorized by this NWP, so that district engineers can evaluate the proposed work and make a project specific determination that the adverse effects on navigation, the aquatic environment, and other public interest review factors would be minimal, individually and cumulatively. Regional condition B further requires that any water based renewable energy generation project affecting EFH (marine waters, anadromous streams or lakes or within 500 feet of anadromous streams or lakes) requires agency coordination with NMFS as well as other state and federal agencies. Consideration of the site specific impacts to EFH and Fishery Management Plan managed species can be assessed during the agency coordination process and EFH consultation with NMFS. Special conditions may be added to NWP 52 authorizations to avoid, minimize, and compensate for impacts to aquatic resources including EFH. Finally, USACE added a paragraph to NWP 52 that requires the permittee to remove the generation units, transmission lines, and other structures or fills associated with the pilot project once the pilot project is completed, unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit.

During discussions, NMFS also recommended agency coordination be sent to Sue Walker, NOAA Fisheries Hydropower and Energy Coordinator, for all NWP 52. The District is reluctant to add to our official agency coordination mailing lists individual agency staff for coordination involving only specific NWPs. We view it as the agency's responsibility to coordinate with their staff internally. The Corps is not adopting this recommendation.

3.0 Final Alaska District Regional Conditions and Rationale: These RCs are being required to ensure that the NWPs 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 NWPs that require a PCN will be coordinated with the agencies beyond the requirements of general condition 31(d), to further ensure that NWPs do not authorize activities that may exceed the minimal adverse effects threshold.

REGIONAL CONDITION A - Additional Pre-Construction Notification (PCN) Requirements¹

1. NWP 6, Survey Activities: 3-D seismic surveys employing ocean bottom cables.
2. NWP 13, Bank Stabilization: Projects require a PCN when specified by NWP 13 and/or the proposed methods and techniques are not included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions.

The Guide is available at <http://www.adfg.alaska.gov/index.cfm?adfg=streambankprotection.main>

Furthermore, applicants proposing projects not contained in the Guide may still qualify for NWP

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13 but they shall provide an alternative analysis to the district engineer with the PCN consisting of the bioengineered methods that were considered and rationale as to why these alternatives are not in the applicant's preferred alternative. Applicants subject to the PCN due to a design that is not included in the Guide are encouraged to include measures that minimize impacts to the aquatic environment including methods that improve fish habitat such as vegetated riprap.

3. Any activity proposing pile driving and/or blasting in marine waters, anadromous lakes or anadromous streams.

4. Proposed projects that qualify for NWPs 3, 12, 13, 14, and 18 within the Municipality of Anchorage.

¹ Where required by the terms of the NWP or Regional Condition A, a prospective permittee must notify the district engineer by submitting a preconstruction notification (PCN) as early as possible. See General Condition 31 of the NWPs for the contents of the PCN or visit www.poa.usace.army.mil/reg/NWPs.

Rationale: *This regional condition is necessary to verify impacts are minimal both individually and cumulatively, and where appropriate, consider special conditions to mitigate impacts to aquatic resources (33 CFR 330.4(e) and 33 CFR 330.5(d)).*

REGIONAL CONDITION B – General Permit Agency Coordination

*This Regional Condition establishes geographic and habitat areas that will require agency coordination for projects that are less than 1/2 acre.*¹

For projects requiring a Pre-Construction Notification (PCN) **and** occurring within any of the following geographic/habitat areas, the Corps will conduct agency coordination with the appropriate agencies according to General Condition 31, regardless of the amount of loss of waters of the U.S.

- 1) The Municipality of Anchorage.
- 2) Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan.
- 3) Areas designated as "High" or "Moderate" value wetlands in the Homer Wetland Functional Assessment.
- 4) Anadromous lakes or anadromous streams including, but not limited to catalogued streams identified in the *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* (available at <http://www.adfg.alaska.gov/sf/SARR/AWC/>)
- 5) Jurisdictional areas within 500 feet (measured from OHW or HTL) of anadromous lakes or anadromous streams as identified above.
- 6) Marine waters

Agency coordination will also occur if the proposed activity:

- 1) is authorized by NWP 51

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- 2) requires a written waiver by the District Engineer; and/or
- 3) involves stream relocation

Local, State or Federal applicants may choose to conduct agency coordination in accordance with this regional condition for projects in the above geographic areas having less than 1/2 acre loss of waters of the U.S. The documentation of agency coordination shall be supplied with the PCN and if the Corps determines the applicant's proposal adequately addresses agency concerns, the project will not be coordinated again.

The Corps (or local, State or Federal applicant, as described above) will coordinate such projects with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and State Historical Preservation Officer or Tribal Historical Preservation Officer. Additionally, project coordination will occur with the State of Alaska's Department of Environmental Conservation and the Department of Fish and Game.

¹ For activities requiring a PCN that result in the loss of greater than 1/2-acre of waters of the U.S., agency coordination will occur according to general condition 31(d) but also include the agencies as specified above.

Rationale: *This regional condition is necessary after consultation with the resource agencies to verify impacts are minimal both individually and cumulatively, and where appropriate, consider special conditions to mitigate impacts to aquatic resources (33 CFR 330.4(e) and 33 CFR 330.5(d)).*

REGIONAL CONDITION C - Wood Preservatives

This Regional Condition applies to all NWP's when the regulated activity involves the use of wood preservative products in waters of the U.S. ¹

1. For new materials²:

- a) Preservatives for wooden structures shall be applied by pressure treatment.
- b) In fresh waters, wood structures treated with creosote or pentachlorophenol preservative shall not be used.
- c) In marine waters wood structures treated with pentachlorophenol preservative shall not be used.
- d) For marine installations with more than 50 pilings, or where current velocities are less than 10 cm/sec, a site-specific risk assessment shall be conducted to determine the potential adverse effects of using creosote or copper-related wood products.

2. For the reuse of previously treated wood products in marine waters the wood preservative product's use shall be consistent with its original use and may not be treated with any additional wood preservative. (e.g. the reuse for dock piling of creosote treated wood for dock piling is

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allowable, the reuse for a retaining wall of creosote treated railroad ties is not allowed, etc.).

¹ Wood preservative products allowed for use in the aquatic/marine environments is determined by the Environmental Protection Agency.

² Treated wood products are produced and installed in accordance with the “Best Management Practices for the Use of Treated Wood in Aquatic and Other Sensitive Environments” (August 2006), including amendments published by the Western Wood Preservers Institute (WWPI) (www.wwpinstitute.org) including the standards set forth by the American Wood-Preservers Association (AWPA) (www.awpa.com), the Timber Piling Council (TPC) (www.timberpilingcouncil.org) and/or the American Lumber Standards Committee as appropriate.

Rationale: *This regional condition is necessary to minimize potential impacts to water quality, and aquatic species and habitats, by reducing the potential for toxic leachate entering the water column (33 CFR 320.4(c and d)) and 33 CFR 320.4(r)).*

REGIONAL CONDITION D - Activities Involving Trenching

Trenches cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a French drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to an upland location. The backfilled trench shall achieve the original surface condition, within a year of disturbance unless climatic conditions warrant additional time and is approved by the Corps.

Excavated material temporarily sidecast into wetlands shall be underlain with geotextile, ice pads, or similar material, to allow for removal of the temporary material to the maximum extent practicable.

Revegetation of the trench should follow the process outlined in RC E.

Rationale: *This condition is required to maintain normal drainage patterns and water fluctuation, as well as to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4(r), 40 CFR 230.23, 40 CFR 230.24 (b), 40 CFR 230.41, 40 CFR 230.70, 40 CFR 230.74, 40 CFR 230.75, and 40 CFR 230.77).*

REGIONAL CONDITION E - Site Restoration for Projects with Ground Disturbing Activities

Disturbed areas shall be stabilized immediately after construction to prevent erosion. Revegetation of the site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and soils removed for project construction shall be stockpiled

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separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used only if identified in the PCN and approved in the NWP verification. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Revegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area. (33 CFR 320.4(b), 33 CFR 320.4(r), 40 CFR 230.73 and 40 CFR 230.75).*

REGIONAL CONDITION F - Equipment Standards

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g. ice roads, compacted snow, low psi ground bearing weight, etc) must be taken to prevent soil disturbance.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b), 40 CFR 230.72 and 40 CFR 230.73(c)).*

REGIONAL CONDITION G – Delineation of Project Boundary

Project boundaries shall be staked, flagged, or otherwise clearly delineated prior to the commencement of the authorized activity for projects that involve the placement of fill.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b) and 40 CFR 230.73(c) and 40 CFR 230.74).*

REGIONAL CONDITION H – Maintenance of Hydrology Patterns

Site preparation, excavation, and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems and other measures to prevent ponding or drying. Excessive ponding and/or dewatering of areas adjacent to fill areas shall indicate non-compliance with this condition. “Excessive” is defined as a measurable change in site hydrology or drainage from the pre-project condition.

Rationale: *This condition is required to (a) prevent degradation of existing waters of the U.S. and riparian areas, which could change the functions of wetlands adjacent to the permitted area (33 CFR 320.4(b), 40 CFR 230.21, 40 CFR 230.23), and (b) maintain the integrity and functions of the riparian buffer adjacent to anadromous lakes or streams (40 CFR 230.21 and 40 CFR 230.31).*

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REGIONAL CONDITION I – Relocation of Stream Beds

Relocated stream channels shall approximate the length, meander pattern, gradient, channel cross-section, substrate and flow velocity of the original stream channel. Relocated stream channels shall be designed and constructed to avoid excessive loss of flow through the bed and dewatering of the stream channel. The relocation of stream channels shall include establishment of an associated floodplain. The floodplain shall be of similar dimension and form as the original, or sized to convey the 100-year flood while retaining the channel, substrate, and floodplain characteristics without significant down- or head-cutting.

***Rationale:** This condition is required to (a) prevent degradation of existing waters of the U.S. and riparian areas, which could change the functions of wetlands adjacent to the permitted area (33 CFR 320.4(a and b), 33 CFR 320.4(l), 40 CFR 230.21, 40 CFR 230.22, and 40 CFR 230.23), and (b) maintain the integrity and functions of riparian areas (40 CFR 230.21 and 40 CFR 230.31).*

REGIONAL CONDITION J – Culvert Installation

Culverts in fish bearing waters must be installed in accordance with a valid Alaska Department of Fish and Game, Fish Habitat Permit.

***Rationale:** This condition is required to prevent degradation of existing waters of the U.S. and riparian areas (33 CFR 320.4(b), 33 CFR 320.4(c), 40 CFR 230 Subpart C, 40 CFR 230.31, and 40 CFR 230.45)*

REGIONAL CONDITIONS K-N APPLY TO SPECIFIC NWPs

REGIONAL CONDITION K - Seasonal Docks Authorized by NWP 11, Temporary Recreational Structures

Small, seasonal docks shall not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less.

***Rationale:** This condition is required to maintain navigation(33 CFR 320.4(a, g and o).*

REGIONAL CONDITION L – NWP 40 Agricultural Activities

The following activities are not authorized by NWP 40: a. Drain tiles, ditches, or levees or; b. Mechanized land clearing and land leveling in wetlands within 500' of anadromous lakes or anadromous streams.

***Rationale:** This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(b), 33 CFR 320.4 (r), 40 CFR 230.21(b), 40 CFR 230.31, and 40 CFR 230.73(c)).*

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REGIONAL CONDITION M – NWP 44 Mining Activities

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit 2006-1944. In Alaska, NWP 44 will only authorize the following activities:

1. Hard rock mining, not including trenching, drilling, or access road construction. Applicable to Section 404 only.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, and/or prior to equipment being removed from site, whichever comes first.

Rationale: *This condition is required to minimize adverse impacts to wetlands and other waters outside of the project area (33 CFR 320.4(a and b), 33 CFR 320.4 (r), and 40 CFR 230.21(b)).*

REGIONAL CONDITION N – NWP 48 Existing Commercial Shellfish Aquaculture Activities

NWP 48 is revoked in Alaska. Applicants seeking authorization for this work are encouraged to apply for Regional General Permit POA-2006-1035, Aquatic Farm Structures within the State of Alaska.

Rationale: *The Alaska District has a Regional General Permit (RGP) that allows for these types of activities. Both the RGP and NWP 48 are similar in that they both prohibit the farming of fin-fish. Working with local State and Federal agencies, the RGP has allowed the Alaska District to better manage Aquatic Farm Structures located in state managed waters in a manner that minimizes impacts to navigation and has no more than minimal adverse impacts, both individually and cumulatively, on the aquatic environment. We believe that revoking the NWP in the Alaska District is appropriate to ensure these impacts are properly evaluated. (33 CFR 330.5)*