



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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December 28, 2020

Michelle Walker
District Engineer
Seattle District, Corps of Engineers
Post Office Box 3755
Seattle, Washington 98124-3755

RE: State of Washington Coastal Zone Management Program's Federal Consistency Decision
in response to Department of the Army, Corps of Engineers' Consistency Determination
for the 2020 Nationwide Permits

Dear Michelle Walker:

The Washington State Department of Ecology (Ecology) has completed its Coastal Zone Management Program (CZMP) review of the Consistency Determination that the United States Department of the Army, Corps of Engineers' (the Corps), Seattle District sent to Ecology on October 15, 2020. The Consistency Determination is for the Corps's Nationwide Permit (NWP) Rule as published in the *Federal Register* (82 FR 1860) on September 15, 2020. The Corps is reissuing its existing NWPs, and associated general conditions and definitions, with some modifications. The Corps is also issuing five new NWPs, new general conditions, and new definitions.

As the State's designated Coastal Zone Management agency, Ecology is authorized to review the Corps's Federal Consistency Determination for the NWP Program and issue a Federal Consistency Decision for each NWP. The state may concur, concur with conditions, or object to each NWP demonstration of consistency with the CZMP. The State's decision will apply to activities authorized by NWPs in Washington's Coastal Zone which includes the following 15 coastal counties: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom.

For the 2020 NWP Program, Ecology developed NWP-specific CZMP Federal Consistency Conditions. Ecology's Conditions are in addition to, and not a replacement for, the National and Regional Conditions of the NWPs or the State's Section 401 Certification decisions.

Please be advised that the consistency decisions for the NWPs do not apply to federal activities or development projects that are subject to Title 15 CFR 930 Subpart C – *Consistency for Federal Agency Activities*. **For those federal activities or development projects, the federal agency is required to send Ecology a Federal Consistency Determination pursuant to the requirements of Subpart C.**

Projects and activities that are required to obtain a Federal Consistency Decision from Ecology must submit the following information:

A Coastal Zone Management Program "Certification of Consistency" is required for projects located within a coastal county. Ecology's Certification of Consistency form may be used to demonstrate consistency with Washington's CZM Program. The Certification of Consistency needs to include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington CZMP, along with supporting information.

Within 6 months from receipt of the necessary information, Ecology will provide a Federal Consistency Decision for the proposed project or activity. If Ecology fails to act within the 6-month period, and has not negotiated a stay with the applicant, concurrence with the CZMP is presumed.

Ecology's NWP CZMP Federal Consistency Conditions apply to each NWP as indicated below:

- Ecology concurs with the Corps's determination that the following are consistent with the CZMP:

NWP #s 1, 2, 4, 5, 7, 9, 10, 11, 18, 20, 22, 25, 30, and 31.

- Ecology concurs with conditions the Corps's determination that the following are consistent with the CZMP:

NWP #s 3, 6, 13, 14, 15, 16, 19, 23, 27, 28, 29, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 45, 46, 48, and NWPs C and D.

- These projects or activities are subject to the following condition:

A CZM Consistency Decision is required for projects or activities under this NWP if a State Section 401 Water Quality Certification is required.

- NWP#s14 and 15 and NWP C are subject to an additional condition:

A CZM Federal Consistency Decision is required for projects or activities under this NWP if they are pre-empting local or state permit requirements necessary to demonstrate compliance with the CZMP's enforceable policies.

- Ecology objects to the Corps's determination that the following are consistent with the CZMP:

NWP #s 8, 12, 17, 21, 37, 44, 49, 50, 51, 52, 53, 54, and NWPs A, B, and E

- These projects or activities are subject to the following condition:

A CZM Federal Consistency Decision is required from the State for projects or activities authorized by this NWP.

This letter and attachment constitute Ecology's Programmatic Coastal Zone Management Federal Consistency Decisions for the reissuance of the NWP's. These Federal Consistency Decisions apply to all NWP permits authorized in Washington by the Seattle District or Portland District Corps for projects or activities within the State's coastal zone.

Ecology's Federal Consistency Decisions neither replace nor supersede requirements set forth by other local, state, federal, and tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

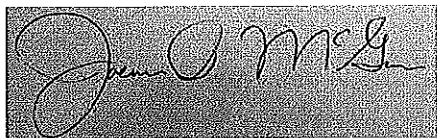
In closing, Ecology strongly recommends that:

- The Corps implement early coordination with state coastal programs in the next iteration of the NWP Re-authorization process.
- The Corps develop an open communications process, as called for by the CZMA federal regulations to ensure meaningful state-federal coordination on federal consistency issues.
- The Corps coordinate with the National Oceanic and Atmospheric Administration's Office for Coastal Management to address inconsistencies, misalignments, or misunderstandings of the CZM federal regulations applicable to the recurring NWP Re-Authorization and Modification Process.

This early coordination will go a long way in avoiding the confusion after the September, 2020 issuance of the Federal Register notice and the subsequent Corps's Districts' Consistency Determinations. We welcome the opportunity to support the Corps in its coordination and outreach efforts and appreciate your responsive communications to date.

Please contact Loree' Randall at (360) 485-2796 or lora461@ecy.wa.gov or Terry Swanson at (360) 584-3744 or tswa461@ecy.wa.gov if you have any questions or need additional information.

Sincerely,



Joenne McGerr
Program Manager
Shorelands and Environmental Assistance Program
Washington State Department of Ecology

Enclosure

ATTACHMENT

WASHINGTON STATE PROGRAMMATIC COASTAL ZONE MANAGEMENT PROGRAM **FEDERAL CONSISTENCY DECISIONS and** **CONDITIONS for 2020 NATIONWIDE PERMITS**

As the State's designated Coastal Zone Management agency, Ecology is issuing the following Coastal Zone Management Program (CZMP) federal consistency decisions and conditions which apply to all Nationwide Permits (NWP) in the 15 coastal counties of the State of Washington. These counties are: Clallam, Grays Harbor, Island, Jefferson, King, Kitsap, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom.

NOTE: Ecology's Federal Consistency decisions for the NWPs do not apply to federal activities or federal development projects that are subject to Title 15 CFR 930 Subpart C – *Consistency for Federal Agency Activities*. For those federal activities or federal development projects, the federal agency is required to send Ecology a Federal Consistency Determination per the requirements of Subpart C.

Projects and activities that are required to obtain a federal consistency decision from Ecology must submit the following information:

A Coastal Zone Management Program "Certification of Consistency" is required for projects located within a coastal county. Ecology has a form on its web site that can be used to demonstrate consistency with Washington's CZM Program. The Certification of Consistency needs to include a description of the proposed project or activity and evidence of compliance with the applicable enforceable policies of the Washington CZMP, along with supporting information.

Within 6 months from receipt of the necessary information, Ecology will provide a Federal Consistency Decision for the proposed project or activity. If Ecology fails to act within the 6-month period, and has not negotiated a stay with the applicant, concurrence with the CZMP is presumed.

For the 2020 NWP Program, Ecology has developed NWP-specific CZMP Federal Consistency Decisions and Conditions below. Ecology's Conditions are in addition to, and not a replacement for, the National and Regional Conditions of the NWPs or the State's Section 401 Certification decisions.

Nationwide CZMP Decisions and Applicable Conditions

1. **Aids to Navigation**
CZM Federal Consistency Response – Concur
2. **Structures in Artificial Canals**
CZM Federal Consistency Response – Concur
3. **Maintenance**
CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.
4. **Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities**
CZM Federal Consistency Response – Concur
5. **Scientific Measurement Devices**
CZM Federal Consistency Response – Concur
6. **Survey Activities**
CZM Federal Consistency Response – Concur with Conditions.
 1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.
7. **Outfall Structures and Associated Intake Structures**
CZM Federal Consistency Response – Concur
8. **Oil and Gas Structures on the Outer Continental Shelf**
CZM Federal Consistency Response – Object
 1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.
9. **Structures in Fleeting and Anchorage Areas**
CZM Federal Consistency Response – Concur
10. **Mooring Buoys**
CZM Federal Consistency Response – Concur
11. **Temporary Recreational Structures**
CZM Federal Consistency Response – Concur
12. **Oil or Natural Gas Pipeline Activities**
CZM Federal Consistency Response – Object
 1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.
13. **Bank Stabilization**
CZM Federal Consistency Response – Concur with Conditions.
 1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

14. Linear Transportation Projects

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.
2. A CZM Federal Consistency Decision is required for projects or activities under this NWP if they are pre-empting local or state permit requirements necessary to demonstrate compliance with the CZMP's enforceable policies.

15. U.S. Coast Guard Approved Bridges

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.
2. A CZM Federal Consistency Decision is required for projects or activities under this NWP if they are pre-empting local or state permit requirements necessary to demonstrate compliance with the CZMP's enforceable policies.

16. Return Water from Upland Contained Disposal Areas

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

17. Hydropower Projects

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

18. Minor Discharges

CZM Federal Consistency Response – Concur

19. Minor Dredging

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

20. Response Operations for Oil and Hazardous Substances

CZM Federal Consistency Response – Concur

21. Surface Coal Mining Operations

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

22. Removal of Vessels

CZM Federal Consistency Response – Concur

23. Approved Categorical Exclusions

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

24. Indian Tribe or State Administered Section 404 Programs

This NWP is not used in Washington State.

25. Structural Discharges

CZM Federal Consistency Response – Concur

26. [Reserved]

27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

28. Modifications of Existing Marinas

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

29. Residential Developments

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

30. Moist Soil Management for Wildlife

CZM Federal Consistency Response – Concur

31. Maintenance of Existing Flood Control Facilities

CZM Federal Consistency Response – Concur

32. Completed Enforcement Actions

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

33. Temporary Construction, Access, and Dewatering

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

34. Cranberry Production Activities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

35. Maintenance Dredging of Existing Basins

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

36. Boat Ramps

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

37. Emergency Watershed Protection and Rehabilitation

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

38. Cleanup of Hazardous and Toxic Waste

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

39. Commercial and Institutional Developments

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a

State 401 Water Quality Certification is required.

40. Agricultural Activities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

41. Reshaping Existing Drainage Ditches

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

42. Recreational Facilities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

43. Stormwater Management Facilities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

44. Mining Activities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

45. Repair of Uplands Damaged by Discrete Events

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

46. Discharges in Ditches

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

47. [Reserved]

48. Commercial Shellfish Mariculture Activities

CZM Federal Consistency Response – Concur with Conditions.

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

49. Coal Remining Activities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

50. Underground Coal Mining Activities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

51. Land-Based Renewable Energy Generation Facilities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

52. Water-Based Renewable Energy Generation Pilot Projects

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

53. Removal of Low-Head Dams

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

54. Living Shorelines

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

A. Seaweed Mariculture Activities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

B. Finfish Mariculture Activities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.

C. Electric Utility Line and Telecommunications Activities

CZM Federal Consistency Response – Concur with Conditions

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.
2. A CZM Federal Consistency Decision is required for projects or activities under this NWP if they are pre-empting local or state permit requirements necessary to demonstrate compliance with the CZMP's enforceable policies.

D. Utility Line Activities for Water and Other Substances

CZM Federal Consistency Response – Concur with Conditions

1. A CZM Federal Consistency Decision is required for projects or activities under this NWP if a State 401 Water Quality Certification is required.

E. Water Reclamation and Reuse Facilities

CZM Federal Consistency Response – Object

1. A CZM Federal Consistency Decision is required for projects or activities authorized by this NWP.