

Work In or Near Water Quick Guide

PURPOSE: The National Environmental Policy Act (NEPA) requires federal agencies to consider the impacts of their proposed actions and alternatives on the human environment before funding and implementing an action. The information below is a quick review of Laws and Executive Orders that FEMA must consider for work in or near water. Noncompliance with these requirements may jeopardize receipt of federal funding.

LAW REQUIREMENTS FOR WORK IN OR NEAR WATER

FEMA Directive 108-1, requires FEMA to take into account environmental considerations when authorizing or approving actions that could significantly affect the human environment. Work in or near water has an elevated potential to affect the environment. There are several federal laws that pertain to work in water, including, but not limited to the following:

Clean Water Act (CWA): This Act is the primary federal law governing water pollution. Its objective is to restore and maintain the chemical, physical, and biological integrity of the nation's waters by preventing pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands.

- Section 404 of the CWA outlines the process for issuing permits for the discharge of dredged or fill material into waters of the U.S.
- Subgrantees must coordinate with United States Army Corps of Engineers (USACE) for permitting actions in or near water PRIOR to the initiation of any action, including the use of Nationwide Permits and associated conditions or regional conditions.
- To find contact information for USACE offices, go to: <http://www.saw.usace.army.mil/Contact.aspx>.
- For the most recent Nationwide Permits and conditions please go to: <http://www.sam.usace.army.mil/Missions/Regulatory/NWP.aspx>.
- The Subgrantee should include a copy of FEMA's project-specific Record of Environmental Consideration (REC) as part of their USACE permit application package.

Endangered Species Act (ESA): This Act is the federal law that is designed to protect critically imperiled species from extinction as a consequence of economic growth and development. There are a large number of listed threatened and endangered species or candidate species and critical habitat that exist in or near water in Alabama.

- FEMA is required, under section 7(a)(2) of the ESA to consult with United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) PRIOR to the initiation of any action to determine if the action may affect listed threatened and endangered species, candidate species, or their critical habitat.
- Timelines for the completion of consultation depend explicitly on the complexities of the action.
- There may also be state listed species in or near the project area.
<https://www.fws.gov/endangered/species/index.html>

Fish and Wildlife Coordination Act (FWCA): This Act is the federal law intended to protect fish and wildlife when federal actions result in the control or modification of a natural stream or body of water. It also requires federal agencies to take into consideration the effect that water-related projects would have on fish and wildlife resources; take action to prevent loss or damage of these resources; and provide for the development and improvement of these resources.

- FEMA determines whether a proposed action will result in the control or modification of a body of water. Typical actions may include:
 - Discharges of pollutants, municipal wastes or dredged and fill material into a body of water or wetlands.
 - Projects involving construction of dams, levees, impoundments, stream relocation, and water-diversion structures.
- FEMA is required to consult with USFWS for actions involving the control or modification of a body of water PRIOR to the initiation of any action.
- Timelines for the completion of consultation depend explicitly on the complexities of the action.

Coastal Barrier Resources Act (CBRA): This Act is the federal law that protects coastal areas that serve as barriers against wind and tidal forces caused by coastal storms, and serve as habitat for aquatic species. Coastal Barrier Resources System Units (CBRUs) are determined and mapped by the USFWS.

- FEMA is required to consult with USFWS for actions in coastal areas PRIOR to initiation of actions in these areas.
- Timelines for the completion of consultation depend explicitly on the complexities of the action.
- To view CBRS maps for North Carolina, please go to: <https://www.fws.gov/ecological-services/habitat-conservation/cbra/maps/a/NC.pdf> or <https://www.fws.gov/CBRA/Maps/Mapper.html>

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Coastal Zone Management Act (CZMA): This Act is the federal law that is designed to protect, restore, and establish shared responsibility for preserving and developing the nation's coastal communities and resources.

- NOAA, via CZMA policies, has authorized the states for the supervision of significant land and water activities that could significantly affect their respective coastal zones.
- Subgrantees must coordinate with their state administering agency PRIOR to the initiation of any action, unless the state administering agency does not require a consistency review in coastal zones.
- To find contact information for CZMA go to: <https://coast.noaa.gov/czm/consistency>, or for state information regarding permits under the NC Coastal Area Management Act (CAMA), contact the North Carolina Department of Environmental Quality, Division of Coastal Management at: <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-permits>

Magnuson-Stevens Fishery Conservation and Management Act (MSA): This Act is the primary law governing marine fisheries management in U.S. federal waters. First passed in 1976, the Magnuson-Stevens Act fosters long-term biological and economic sustainability of our nation's marine fisheries out to 200 nautical miles from shore.

- FEMA is required to consult with the National Marine Fisheries Service (NMFS) for work in water out to 200 nautical miles from shore.
- Timelines for the completion of consultation depend explicitly on the complexities of the action.

FEDERAL EXECUTIVE ORDERS (E.O.) FOR WORK IN OR NEAR WATER

Federal regulations sets forth the policy and procedure and responsibilities to implement and enforce **E.O. 11998, Floodplain Management**, and **E.O. 11990, Protection of Wetlands**. Based on these Executive Orders, FEMA is required to integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act (NEPA), (44 CFR, Part 9.1, October, 2002 edition).