

Region IV Federal Emergency Management Agency (FEMA) Work In or Near Water Quick Guide

PURPOSE: The National Environmental Policy Act (NEPA) establishes environmental policy for the Nation. The Act requires that federal agencies consider the effects of their proposed actions and alternatives on the human environment before deciding to fund and implement 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 is required to take into account environmental considerations when authorizing or approving actions that could significantly affect the environment in the United States. Work in or near water has an elevated potential to affect the environment; there are several federal laws that pertain to work in water (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.

- Under Section 404 of the CWA, the United States Army Corps of Engineers (USACE) is responsible for issuing permits for the discharge of dredged or fill material into the navigable waters of the U.S.
- Under Section 401 of the CWA, the State is delegated authority by the Environmental Protection Agency (EPA) to issue permits for nonpoint source pollution sources.
- Subgrantees must coordinate with USACE and the State for actions listed under Section 404 and 401 of the CWA, respectively, for permitting **PRIOR to the initiation of any action** (including the use of Nationwide Permits).
- To find contact information for USACE offices, go to: <http://www.usace.army.mil/Locations.aspx>

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 multitudinous amount of species that exist in or near water.

- FEMA is required, under section 7(a)(2) of the ESA, to consult with USFWS **PRIOR to the initiation of any action** to determine if the action may effect Threatened and Endangered Species and their critical habitat.
- Timelines for the completion of consultation depend explicitly on the complexities of the action.

Coastal Barrier Resource 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 Resource Zones are determined and mapped by the U.S. Fish and Wildlife Service (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 find contact information for USFWS offices, go to: <https://www.fws.gov/offices/>

Coastal Zone Management Act (CZMA): This Act is the federal law that is designed to set up a basis for protecting, restoring, and establishing a responsibility in preserving and developing the nation's coastal communities and resources that under the most problem.

- Under the direction of the CZMA policies, the states have been authorized 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 CZM, contact your states environmental agency.

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) and the National Oceanic and Atmospheric Administration (NOAA) for work in water out to 200 nautical miles from shore **PRIOR to initiation of actions** in these areas..
- 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).