

# Federal Emergency Management Agency (FEMA) Region 9

## Work In or Near Water Quick Guide

### **PURPOSE:**

The National Environmental Protection Act (NEPA) establishes environmental policy for the United States. 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. Non-compliance 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 and state 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. It establishes the basic structure for regulating discharges of pollutants into the Waters of the United States (WOTUS) and regulating quality standards for surface waters, including 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 waters of the U.S (WOTUS).
  - 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). Contact information for USACE offices can be located at the following weblink: <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 numerous species that exist in or near water.
    - FEMA is required, under section 7(a)(2) of the ESA, to consult with the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) **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. Refer to USACE Biological Opinions or the FEMA Biological Opinions with the Fish and Wildlife Service and National Marine Fisheries to ensure no impacts to species while performing in water work.
    - NMFS species list here: <https://www.fisheries.noaa.gov/species-directory/threatened-endangered>
    - FWS species list here: <https://ecos.fws.gov/ecp/report/species-listings-by-state?stateAbbrev=CA&stateName=California&statusCategory=Listed>
    - FEMA FWS/NMFS Biological Opinion: <https://www.fema.gov/disaster/4683/news-media#block-views-block-media-library-public-block-1>
- Conservation and Avoidance and Minimization Measures listed

## Federal Emergency Management Agency (FEMA) Region 9 Work In or Near Water Quick Guide

- **Coastal Zone Management Act (CZMA):** This Act is the federal law that encourages coastal states to develop and implement coastal zone management plans. Under the direction of the CZMA policies, the State has been authorized for the supervision of significant land and water activities that could significantly affect the coastal zones.
  - Coordination with the state administering agency, the California Coastal Commission, should be made **PRIOR to the initiation of any action**. Information regarding the California Coastal Commission for the CA can be found at the following weblink: [Coastal Zone Boundary \(ca.gov\)](https://www.calcoastalcommission.org/Coastal-Zone-Boundary).
- **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 Executive Order (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).