ADMINISTRATIVE INFORMATION:

- Effective Date: This engineering bulletin (EB) is effective upon signature.
- Superseded Issuances: NA
- Disposition of Issued Materials: The material issued in this EB will reside in the New York State Department of Transportation’s (NYSDOT) The Environmental Manual (TEM) § 4.4.9.3 Endangered and Threatened Species, Appendix H.

PURPOSE: To announce the availability of an appendix to TEM § 4.4.9.3 Endangered and Threatened Species, “Appendix H. Coordination Regarding Waterbodies Supporting S1 or S2 Mollusks Including Survey & Relocation.”

TECHNICAL INFORMATION:

- This issuance provides guidance in response to the New York State Department of Environmental Conservation (NYSDEC) blanket Section 401 Water Quality Certification (WQC) for the 2017 Nationwide Permits (NWPs). The blanket WQC identifies under which circumstances projects authorized under the United States Army Corps of Engineers (USACE) 2017 NWP program can proceed without applying for an individual WQC from the NYSDEC. The 2017 NWP program was published in the Federal Register on January 6, 2017 and became effective on March 19, 2017. The blanket WQC was issued on March 7, 2017 and became effective on March 19, 2017.

- Specifically, the 2017 issuance of the blanket WQC includes a new general condition (condition #8), which states: “This [blanket] Certification may not be issued for and does not authorize disturbances or discharges to waters of the state listed as supporting mollusks S1 or S2 on the New York State Natural Heritage database.”

  o The NYSDEC has clarified that blanket WQC general condition #8 applies only to waterbodies supporting freshwater mussels or clams (other mollusks are not included).

  o The New York State Natural Heritage Program (NYNHP) database does not currently contain “waters of the state listed as supporting mollusks S1 or S2.” The NYSDEC has provided the NYSDOT with Geographic Information Systems (GIS) data of the waterbodies supporting S1 or S2 mollusks.

- The blanket WQC does not specify what, if any, additional information must be provided in the individual WQC application regarding waterbodies supporting S1 or S2 mollusks. As such, guidance is provided within TEM § 4.4.9.3 Endangered and Threatened Species, Appendix H, which
consolidates information on, and formalizes procedures regarding coordination of in-water work and compliance with the 2017 blanket WQC. Specifically, Appendix H provides details on:

- When blanket WQC general condition #8 is applicable/relevant (work within Waters of the United States).
- How to screen for waterbodies supporting S1 or S2 mollusks (specifically freshwater mussels and clams), including interim mapping to be used until the “waters of the state listed as supporting mollusks S1 or S2” is incorporated into the NYNHP database.
- Steps to determine whether a survey is needed to obtain an individual WQC (habitat assessment, work scope, early coordination with the NYSDEC).
- Information on survey requirements for mollusks.
- Permitting/licensing requirements related to S1 or S2 mollusks and for listed mollusks.
- Salvage and relocation details.

**IMPLEMENTATION:** The NYSDEC blanket WQC became effective March 19, 2017 and will expire on March 18, 2022. The guidance issued in this EB is effective upon issuance and should be utilized to ensure compliance with WQC general condition #8 for all pertinent NYSDOT projects that have not yet received a WQC from the NYSDEC.

**TRANSMITTED MATERIALS:** The TEM § 4.4.9.3 Endangered and Threatened Species, “Appendix H. Coordination Regarding Waterbodies Supporting S1 or S2 Mollusks Including Survey & Relocation” can be accessed at: https://www.dot.ny.gov/divisions/engineering/environmental-analysis/manuals-and-guidance/epm.

**BACKGROUND:**
- Information on the NWP program can be found at: http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits.
- TEM § 4.4.1 Surface Waters, Including Wetlands, Appendix D, Technical References provides links to current regulations and guidance.
- S1 and S2 are designations used by the NYSDEC to classify species in terms of population abundance and sensitivity. S1 species are “critically imperiled” in New York State and are considered “especially vulnerable” while S2 species are “imperiled” and “very vulnerable.” All mollusks found in New York State that are listed as either endangered or threatened, and protected either federally under the Endangered Species Act (ESA), or by the State under Article 11 of the New York State Environmental Conservation Law (ECL) are also identified as either S1 or S2. Additionally, the NYSDEC has identified other mollusk species as S1 or S2 though they are not listed by the ESA or ECL as endangered or threatened. In cases where the S1 or S2 species in question are also Federally or New York State listed, coordination regarding the information needed concerning S1 and S2 mollusks for the WQC should occur concurrent with endangered and threatened species coordination.
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