



Pending Deadlines

OSTP – Federal Flood Standard Support Tool Beta

Comment period closes May 28, 2024.

- [Tool Platform](#)
- [Feedback Request](#)
- [Comment Docket](#)

Recent CSO Letters/Comments

- [Comment to USACE on Principles, Requirements, & Guidelines Procedures](#) (Apr. 15, 2024)

Issue Updates

USACE – Wetland Protection Initiatives Announced

Update

On March 22, 2024, USACE issued a [memo](#) outlining plans for enhancing the protection of the country's wetlands following the U.S. Supreme Court decision restricting the jurisdictional scope of the Clean Water Act over non-adjacent wetlands in [Sackett v. EPA](#). Key actions include:

- Allocating \$5M for Planning Assistance to States assistance to develop new or revised water-related programs or regulations in response to the *Sackett* decision
- Prioritizing wetland connectivity and physical & biological integrity improvements in CAP Section 206 Aquatic Ecosystem Restoration projects, using a remaining pot of IJA funding and proposing \$13M for the effort in the next budget cycle.
- Clarifying that non-jurisdictional waters remain eligible for use for compensatory mitigation.

Context

On May 25, 2023, the U.S. Supreme Court issued a decision in *Sackett v. EPA* narrowing the scope of adjacent wetlands included in the “Waters of the United States” subject to the Clean Water Act. On Sep. 8, 2023, EPA and USACE issued a supplemental [final rule](#) codifying the *Sackett* decision.

USFWS/NOAA – Endangered Species Act Rules Finalized

Update

On Apr. 5, 2024, USFWS and NOAA NMFS finalized [three Endangered Species Act rules](#) affecting species listing and critical habitat designation processes, interagency consultation, and default protections for newly listed threatened species. A summary of key changes, including loosening criteria for critical habitat designation and allowing agencies to consider offsite offsetting measures alongside avoidance and reduction in incidental take statements, is available [here](#). The new rules are effective May 6, 2024.

Additionally, on Apr. 12, 2024, USFWS issued a [final rule](#) revises the regulations concerning the issuance of enhancement of survival and incidental take permits. Changes include clarifying USFWS’s authority to issue permits for non-listed species, combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type, and codifying the scope of certain monitoring requirements. This final rule is effective May 13, 2024.

Context

Proposed rules were issued Jun. 22, 2023 in response to a mandate under E.O. 13990, [Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis](#) (Jan. 25, 2021). The rules roll back a number of changes made under the previous administration, including abolishment of the “blanket rule” default protections for newly listed threatened species.

EPA – PFAS Maximum Contaminant Levels Established

Update

On Apr. 10, 2024, EPA released a [final rule](#) establishing maximum contaminant levels (MCLs) for five per- and polyfluoroalkyl substances (PFAS). An estimated 6-10% of 66,000 drinking water systems nationwide will have three years to complete initial monitoring and five years to integrate technology to abate contamination. For a subset of three of the listed substances, the new rule requires the use of the Hazard Index to establish site-specific limitations for mixtures of the substances.

Context

EPA regulates public drinking water systems under the Safe Drinking Water Act. Although only regulating municipal water systems directly, the new MCL rule is also significant for existing PFAS

contamination remediation, as MCLs typically serve as *de facto* target levels for cleanup action. In 2021, the agency issued the [PFAS Strategic Roadmap](#) setting out regulatory and enforcement priorities under that act, the Clean Water Act, and other pollution control authorities. A rulemaking extending Resource Conservation and Recover Act controls to a proposed list of nine PFAS is open for public comment. EPA also recently released [updated interim guidance](#) for the destruction and disposal of PFAS and PFAS-containing materials.

OSTP – FFRMS Mapping Tool Beta Version Released

Update

On Apr. 11, 2024, the National Climate Task Force [released](#) a beta version for a new [Federal Flood Standard Support Tool](#) for [public review and feedback](#). The tool is intended to automate the determination of whether the [Federal Flood Risk Management Standard](#) applies to a project based on whether a user-defined project area falls within a zone of modelled future flood risk (called the FFRMS Floodplain in the tool) according to either the Freeboard Value Approach or, for coastal areas, the Climate Informed Science Approach.

CSO intends to coordinate through the Coastal Hazards Planning and Adaptation work group to develop feedback. Comments may be submitted via [Regulations.gov](#) through **May 28, 2024**.

Context

The [FFRMS](#) applies to projects where federal funds are used for new construction, substantial improvement, or repairs to address substantial damage, and requires that designs account for future conditions, including sea level rise, through one or a combination of approaches:

- **Freeboard Value Approach:** Adopt 1ft of freeboard above the 1% annual chance flood level (2ft for critical facilities).
- **500-Year Floodplain Approach:** Build above the 0.2% annual chance flood level.
- **Climate Informed Science Approach:** Use best-available, actionable hydrologic and hydraulic data and climate models.

The new tool is the third of three new resources announced by the [National Climate Task Force](#) as part of a pivot to focus on “climate services,” including a March 2023 [CISA State of the Science report](#) and an August 2023 [FFRMS Floodplain Determination Job Aid](#). Final rules are expected from [FEMA](#)

and [HUD](#) in 2024 to implement the FFRMS in their respective funding programs, and USACE has incorporated CISA requirements into its proposed [water resource planning procedures](#).

BOEM – O&G Decommissioning Bond Rule Released

Update

On Apr. 15, 2024, BOEM released a [final rule](#) increasing the financial assurances federal offshore oil and gas leaseholders must demonstrate in an effort to limit the number of abandoned wells in the Gulf of Mexico’s Outer Continental Shelf. BOEM will assess bond rates based on a lessee’s credit rating and reserve values and current value of oil and gas reserves on the lease.

Context

BOEM regulates offshore oil & gas development under the Outer Continental Shelf Lands Act. The new rule responds to [2015](#) and [2024 GAO reports](#) that found over 75% of end-of-lease and idle infrastructure in federal waters of the Gulf of Mexico—more than 2,700 oil and gas wells and 500 platforms—are overdue for decommissioning. A [proposed rule](#) was issued Jun. 29, 2023.

EPA, NASA – Categorical Exclusions Adopted, NEPA Processes Updated

Update

On Apr. 15, 2024, EPA [announced](#) that it had adopted a USFWS categorical exclusion (CatEx) for restoration activities of wetland, riparian, instream, and native habitats under the National Environmental Policy Act (NEPA) to use in certain EPA water grants and loan programs. The adoption, which is effective immediately, is not opened for public comment.

Additionally, on Apr. 11, 2024, NASA issued a [final rule](#) revising its NEPA implementation regulations, modifying some CatExs and issuing nine new CatExs. CatExs include habitat and species management activities on NASA properties and small-scale, short-term hazardous material cleanup activities. The final rule is effective immediately.

Context

The June 2023 [Fiscal Responsibility Act](#) amended NEPA to allow federal agencies to adopt other agencies’ CatExs that have already undergone regular review processes. A provision of CEQ’s [Phase 2 NEPA proposed rule](#) would additionally allow agencies to adopt CatExs through programmatic environmental impact statements, land use plans, and joint documents.