Introduction and Purpose: This document outlines the Department of Environmental Conservation's (DEC) policy for determining the appropriate permitting authority to issue wastewater discharge permits in Alaska. These include both federal permits under the Alaska Pollutant Discharge Elimination System (APDES)[1] and state-issued permits under Alaska law.[2]

To help identify which waterbodies may fall under federal permitting requirements (i.e., waters of the U.S. [WOTUS]), [3] DEC will rely on existing georeferencing tools – specifically the U.S. Fish and Wildlife Service's (USFWS's) National Wetlands Inventory (NWI) mapping and U.S. Geological Survey (USGS) National Hydrography Dataset (NHD) for the State of Alaska. However, final decisions regarding permit decisions may require more detailed, site-specific information and will follow relevant existing state and federal regulations and applicable federal court rulings.

Table 1. Summary of NWI and NHD Mapping for Alaska

Description	State of Alaska (acres)
NWI Mapped Wetlands and Waterbodies	144,256,247
NWI Mapped Uplands	123,163,085
Total Mapped Area (~75%)	**267,419,332**
Total Area of Alaska	**365,481,600**

Methodology: DEC intends to utilize readily available federal agency ArcGIS data to make general determinations of permitting authority. This two-step process entails determining the extent of waters subject to Section §402 of the Clean Water Act around the discharge using the following resources, followed by a review of site-specific information and reviewing federal court rulings for applicability to the details of the proposed discharge, as necessary.

[1] Clean Water Act (CWA) Section 402 establishes the framework of the NPDES program. Section 402(b) provides the process for states to assume the legal and programmatic requirements established in the CWA. DEC assumed full authority to administer the wastewater and discharge permitting and compliance program for Alaska on October 31, 2012.

[2] State regulatory programs operating under state law are independent of Clean Water Act jurisdictional issues. The agencies recognize that the federal and Tribal and state laws and programs can overlap, and some Tribes and states have more stringent requirements than the federal regulations. The way in which these programs are administered and affect sources of water pollution will depend on the regulatory requirements or permits issued. U.S. EPA Region 10 Letter to Idaho Department of Environmental Quality. November 29, 2023.

[3] In Alaska, the current operable definition of "waters of the United States" is the agencies' pre-2015 regulatory regime due to ongoing litigation on the January 2023 rule "Revise Definition of 'Waters of the United States'" (80 FR 3004, January 18, 2023).

1. USFWS NWI mapping[4] for the State of Alaska: The NWI dataset contains wetland and waterbody polygon mapping and is routinely used by agencies for regulatory purposes. Wetlands are attributed according to the *Classification of Wetlands and Deepwater Habitats of the United States,*[5] which characterize the system, subsystem, class, and hydrologic regime of each wetland and waterbody mapped.
2. USGS NHD: The NHD[6] dataset includes polygons and line features that represent oceans, streams, lakes, and ponds. The NHD Data Model (version 2.3.1)[7] describes the feature classes, tables, domains, and feature types.
3. US Army Corps of Engineers (USACE) Alaska District: Non-Tidal Section 10 Navigable Waters List. [8]
4. Alaska Department of Fish and Game (ADF&G) Anadromous Waters Catalog [9] (reference only).
5. Alaska Department of Natural Resources (ADNR) Navigable Waters Map[10] (reference only).

Preliminary Step. Desktop Analysis

Step 1 – Determining the extent of Clean Water Act Section 402 Permitting

Lakes, Rivers, Streams

DEC will determine a waterbody to be subject to the federal Clean Water Act Section 402 permitting process (i.e., APDES) if it:

- Is subject to the ebb and flow of the tide shoreward to the mean high-water mark; **or**
- Is listed as a Non-Tidal Section 10 Navigable Water on the US Army Corps of Engineers listing; **or**
- Is a perennial stream with continuous surface water connection to any of the above waters.

[4] USFWS. 2025. National Wetlands Inventory: Download Seamless Wetlands Data by State. Accessed on March 28, 2025, at https://www.fws.gov/program/national-wetlands-inventory/download-state-wetlands-data.
[5] FGDC. 2013. *Classification of Wetlands and Deepwater Habitats of the United States*. Adapted from Cowardin et al. (1979). Wetlands Subcommittee. FGDC-STD-004-2013.
[6] USGS. 2024. National Hydrography Dataset. Downloaded from http://viewer.nationalmap.gov on April 26, 2024.
[7] USGS. 2025. National Hydrography Dataset (NHD) Data Model (version 2.3.1). Accessed on April 8, 2025 at https://www.usgs.gov/media/files/national-hydrography-dataset-nhd-data-model-v231.
[8] USACE, Alaska District. *Non-Tidal Section 10 Navigable Waters List*. Accessed on May 14, 2026 at https://www.poa.usace.army.mil/Missions/Regulatory/Navigable-Waters-of-Alaska/.
[9] Alaska Department of Fish and Game. *Anadromous Waters Catalog*. Accessed on May 14, 2026 at https://www.adfg.alaska.gov/sf/SARR/AWC/.
[10] Alaska Department of Natural Resources. *Navigable Waters Map*. Accessed on May 14, 2026 at https://dnr.alaska.gov/mlw/paad/nav/.

Wetlands

Any area identified as a wetland is considered "water" under AS 46.03.900 (37) and subject to state regulations. For preliminary reviews, DEC will use wetland boundaries shown in the NWI to help make initial authorization decisions, when this information is available.

DEC will determine a wetland to the subject to the federal Clean Water Act Section 402 permitting process (i.e., APDES) if it:

- Is directly adjacent (abutting) to any surface water which satisfies the criteria for lakes, rivers, and streams above; **and**
- Forms a continuous surface water connection with the lake, river, or stream as defined by USFWS NWI mapping for the State of Alaska; **and**
- Is indistinguishable from the surface waterbody (See Appendix A).

For a wetland to be considered continuously connected to surface water, there must be water present or flowing through the nearby waterbody. To meet this definition, the wetland next to the waterbody must be classified as either permanently flooded or mostly flooded (see Appendix A, Table 3).

The term "indistinguishable" means there are no clear boundaries (e.g., streambank, wetland-dependent plants) separating the wetland from the lake, river, or stream, such that an ordinary person would not have difficulty "determine[ing] where the 'water' ends and the 'wetland' begins."[11]

Wetland mosaics, which are distinguishable from adjacent water bodies, are generally excluded under application of the above criteria. This includes wetland mosaics atop permafrost.

Step 2. Additional Sources of Information

In accordance with state regulations (18 AAC 70, 72, and 83), before making a preliminary decision, DEC may ask project applicants for more information to determine who has the authority to issue permits. This could include wetland maps, field reports, and details about the project and its location. Additionally, DEC will review the application materials to determine if federal court rulings may be applicable in the permit strategy decision.

Sometimes, this additional information will include a detailed look at wetlands located on permafrost (frozen ground). These wetlands may appear wet because of the frozen layer underneath, which prevents water from draining. However, if the permafrost melts, these areas could drain and turn into dry land. Wet soil above permafrost that are likely to become dry land in the future are usually not included in Clean Water Act Section 402 permitting.

[11] *Sackett v. EPA*, 598 U.S. 651, 678–79 (2023).

Appendix A

Table 2 shows the waterbody mapping codes within the NWI and NHD mapping as well as compliance with the *Sackett* decision standard.

Wetlands

Wetlands next to waterbodies that meet the first criteria must have a surface connection with those waters that is "indistinguishable." Here, wetlands refer to vegetated areas not previously assessed under the first criteria but identified using the FGDC National Wetlands Inventory (NWI) mapping system. These indistinguishable wetlands are defined as areas flooded with the same water that is in or flowing through the adjacent waterbody.

All wetlands that are permanently or semi-permanently flooded and directly touch jurisdictional waterbodies are considered jurisdictional under the proposed Sackett decision standard (see **Table 3**).

- Permanently flooded wetlands are areas covered by water year-round, every year.
- Semi-permanently flooded wetlands have surface water present through most of the growing season in most years.

Table 2. Proposed Permit Strategy of Mapped Waterbodies

FGDC NWI Code	Description	Permit Strategy	Rationale
Traditional Navigable Waters (TNW)			
M1 and M2	Subtidal and intertidal marine areas.	**APDES**	These areas are subject to the ebb and flow of the tide, and are inherently jurisdictional.
E1 and E2	Subtidal and intertidal estuarine areas.	**APDES**	These areas are subject to the ebb and flow of the tide, and are inherently jurisdictional.
R1	Riverine tidal areas.	**APDES**	These areas are subject to the ebb and flow of the tide, and are inherently jurisdictional.
L1, L2, R2, and R3	Lakes and perennial rivers identified on the Alaska District: Non-Tidal Section 10 Navigable Waters List.	**APDES**	These areas are determined by USACE to be TNWs.
Relatively Permanent Waterbodies (RPW)			
R2, R3, and R5	Lower perennial (R2), upper perennial (R3), and unknown perennial (R5) streams.	**APDES, if continuously connected to a TNW[a]**	These streams are characterized by water flowing year-round, except during years of extreme drought. These streams are jurisdictional if they are continuously connected by surface water to a TNW.
PUB, PUS, PAB, and PRB	Ponds with an unconsolidated bottom, unconsolidated shore, aquatic bed, or rock bottom.	**APDES, if continuously connected to a TNW[a]**	These ponds are characterized by prolonged inundation that either support submerged aquatic vegetation growth or prevent vegetation growth. These ponds are jurisdictional if they are continuously connected by surface water to a TNW.

FGDC NWI Code	Description	Permit Strategy	Rationale
L1 and L2	The limnetic (L1) and littoral (L2) portions of lakes (i.e., waterbodies greater than 20 acres in size).	**APDES, if continuously connected to a TNW[a]**	These lakes are characterized by prolonged inundation that either support submerged aquatic vegetation growth or prevent vegetation growth. These ponds are jurisdictional if they are continuously connected by surface water to a TNW.
Non-Jurisdictional Streams			
R4	Intermittent streams.	State	These are typically high gradient and defined as channels that "contain flowing water for part of the year. When water is not flowing, it may remain in isolated pools or surface water may be absent."[12] Since these channels are not continuously flowing and typically flow only seasonally (i.e., are dry at intervals during a typical year), they do not meet the "relatively permanent, standing, or continuously flowing" *Sackett* decision requirement for jurisdiction.

Table 3. Proposed Permit Strategy for Palustrine Wetlands (includes subclasses ML, EM, SS, and FO) Based on Water Regime

FGDC NWI Code	Description[13]	Permit Strategy	Rationale
Non-Tidal Water Regimes			
A	Temporarily Flooded. Temporarily flooded wetlands are defined as wetlands where surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for most of the season.	State	These wetlands have surface water for only brief periods. Since these areas are not inundated for prolonged periods during the growing season, they are easily distinguishable from adjacent RPWs and TNWs.

[12] FGDC. 2013. *Classification of Wetlands and Deepwater Habitats of the United States*. Adapted from Cowardin et al. (1979). Wetlands Subcommittee. FGDC-STD-004-2013.
[13] Federal Geographic Data Committee. 2013. *Classification of Wetlands and Deepwater Habitats of the United States*. Adapted from Cowardin, Carter Golet, and LaRoe (1979). Wetlands Subcommittee. FGDC-STD-004-2013.

FGDC NWI Code	Description[13]	Permit Strategy	Rationale
B	Seasonally Saturated. Seasonally saturated wetlands are defined as wetlands where the substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent but may occur for a few days after heavy rain and upland runoff.	State	These wetlands typically do not have surface water; they are easily distinguishable from adjacent RPWs and TNWs.
C	Seasonally Flooded. Seasonally flooded wetlands are wetlands where surface water is present for extended periods (generally for more than one (1) month) during the growing season but is absent by the end of the season in most years. When surface water is absent, the depth to substrate saturation may vary considerably among sites and among years.	State	These wetlands, or portions of them, typically fluctuate between periods of flooding and surface water being absent. These areas may have up to four (4) months during the growing season with surface water being absent; therefore, they are considered distinguishable from adjacent RPWs and TNWs.
D	Continuously Saturated. Continuously saturated wetlands are defined as wetlands where the substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent but may occur for a few days after heavy rain and upland runoff.	State	These wetlands typically do not have surface water; they are easily distinguishable from adjacent RPWs and TNWs.
E	Seasonally Flooded-Saturated. Seasonally flooded, saturated wetlands are defined as wetlands where surface water is present for extended periods (generally for more than one (1) month) during the growing season but is absent by the end of the season in most years. When surface water is absent, the substrate typically remains saturated at or near the surface.	State	These wetlands, or portions of them, typically fluctuate between periods of flooding and surface water being absent. These areas may have up to four (4) months during the growing season with surface water being absent; therefore, they are considered distinguishable from adjacent RPWs and TNWs.
F	Semi-permanently Flooded. Semi-permanently flooded wetlands are defined as wetlands where surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.	**APDES, if continuously connected to a TNW[2]**	These wetlands are typically flooded throughout the growing season and would be indistinguishable from adjacent waterbodies due to a continuous surface water connection.

FGDC NWI Code	Description[13]	Permit Strategy	Rationale
H	Permanently Flooded. Permanently flooded wetlands are defined as areas where water covers the substrate throughout the year in all years.	**APDES, if continuously connected to a TNW[a]**	These wetlands are flooded throughout the growing season and would be indistinguishable from adjacent waterbodies due to a continuous surface water connection.
Freshwater Tidal Water Regimes			
R	Seasonally Flooded-Tidal Fresh. Tidal fresh surface water is present for extended periods (generally for more than one (1) month) during the growing season but is absent by the end of the season in most years. When surface water is absent, the depth to substrate saturation may vary considerably among sites and among years.	State	These wetlands, or portions of them, typically fluctuate between periods of flooding and surface water being absent. These areas may have up to four (4) months during the growing season with surface water being absent; therefore, they are considered distinguishable from adjacent RPWs and TNWs.
S	Temporarily Flooded-Tidal Fresh. Tidal fresh surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for most of the season.	State	These wetlands have surface water for only brief periods. Since these areas are not inundated for prolonged periods during the growing season, they are easily distinguishable from adjacent RPWs and TNWs.
T	Semi permanently Flooded-Tidal Fresh. Tidal fresh surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.	**APDES, if continuously connected to a TNW[a]**	These wetlands are typically flooded throughout the growing season and would be indistinguishable from adjacent waterbodies due to a continuous surface water connection.
V	Permanently Flooded-Tidal Fresh. Tidal fresh water covers the substrate throughout the year in all years.	**APDES, if continuously connected to a TNW[a]**	These wetlands are flooded throughout the growing season and would be indistinguishable from adjacent waterbodies due to a continuous surface water connection.

[a] Continuously connected refers to the surface water of the wetland having a relatively permanent, standing, or continuously flowing connection to a downstream interstate navigable water. This connection makes it difficult to determine where the water ends and the wetland begins.