

July 18, 2025

Submitted via Regulations.gov and via email at 2026nationwidepermits@usace.army.mil

U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street NW
Washington, DC 20134-1000

RE: Comments in Response to Department of the Army Corps of Engineers' Proposal to Reissue and Modify Nationwide Permits, Docket No. COE-2025-0002

Dear Ms. McCafferty:

The undersigned 49 organizations appreciate the opportunity to comment on the proposal to reissue and modify Nationwide Permits (NWP). While our organizations value the heightened focus and proposed definition for nature-based solutions (NBS) in the current proposal, we urge the Corps to modify the NWPs to ensure that the activities they authorize will cause no more than minimal harm to the environment, as required by law.

Our organizations urge the Corps to modify the NWPs to:

- **Ensure robust consideration and use of NBS.** Our organizations appreciate the heightened focus and proposed definition of NBS in the NWPs. However, we ask the Corps to add language in each NWP prioritizing consideration, and where appropriate the use, of NBS to minimize adverse impacts. NBS provide cost-effective solutions that also provide important environmental, social and economic benefits, as clearly recognized by the Corps. NBS should be used wherever possible in lieu of other structural methods to provide maximum benefit.
- **Strengthen limits to the extent of impacts of activities authorized under NWPs.** The Corps should reinstate the 300-linear-foot limit for streambed losses for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 that were eliminated in previous, 2021 permit package. We urge the Corps to reinstate, and for high impact NWPs reduce, the existing acreage and linear feet limitations in the NWPs, and impose acreage and linear feet limits for the numerous NWPs that currently have no limits. NWPs that lack such limitations on their face allow unlimited impacts to waters of the United States in violation of Clean Water Act §404(e).
- **Strengthen the pre-construction notification (PCN) requirements to improve understanding and analysis of individual and cumulative impacts.** The Corps should require PCNs, or similar pre-construction reporting requirements, for all activities authorized under NWPs. Without the detailed information in a PCN, decision-makers have no ability to assess whether the impacts of a proposed

project are in fact minimal. Furthermore, the Corps should abandon the provision to automatically allow projects to proceed if the District Engineer does not respond to a PCN within 45 days.

- **Eliminate the ability to use multiple NWPs to authorize individual segments of high impact linear projects, including pipelines and bank stabilization projects.** Such use of multiple NWPs violates the Clean Water Act §404(e) minimal impact limitation; and the Clean Water Act, National Environmental Policy Act, Endangered Species Act and other legal requirements for rigorous and transparent environmental reviews and safeguards to protect the nation's waters.
- **Rigorously assess the direct, indirect, and cumulative impacts of each NWP and the NWP program before issuing a final NWP package.** Without this information, the Corps cannot ensure that the NWPs will cause only minimal individual and cumulative impacts as required by law.

COMMENTS ON PROPOSED NATIONWIDE PERMITS

NWP 3 (Maintenance): Our organizations urge the Corps to withdraw NWP 3 as formulated as it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e), including by allowing maintenance activities on structures that did not have a permit at the time of construction. At a minimum, the Corps should impose stricter impact limitations (both areal and linear) and restrict covered activities to those that are in fact similar in nature, as required by law.

NWP 12 (Oil or Natural Gas Pipeline Activities): Our organizations urge the Corps to withdraw NWP 12 because it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e). The Corps should instead require individual permits for these activities. At minimum, this NWP should be further limited to ensure only minimal adverse impacts, and PCN requirements should be strengthened. Our organizations also oppose explicitly allowing multiple segments of the same pipeline to qualify for NWP authorization, which allows extensive impacts in violation of the Clean Water Act §404(e).

NWP 13 (Bank Stabilization): Our organizations appreciate the addition of language clarifying that NBS can be used in association with NWP 3. However, even with this language, NWP 13 authorizes activities that cause significant adverse impacts, in violation of Clean Water Act §404(e). Accordingly, our organizations urge the Corps to withdraw NWP 13 or at minimum modify the permit to: (1) significantly reduce the linear feet impact limit; (2) require PCNs; and (3) require that any applicant for a structural bank stabilization method must first demonstrate that a nature-based approach such as a living shoreline would be insufficient to stabilize the shoreline, and that the applicant's proposed method would be the least environmentally damaging practicable alternative.

NWP 17 (Hydropower Projects): Our organizations urge the Corps to withdraw NWP 17 as it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e). At a minimum, the Corps should rescind the previous increase from 5,000 kw to 10,000 kw as the total allowable generating capacity for hydropower project eligible for authorization under NWP 17.

NWP 23 (Approved Categorical Exclusions): Our organizations urge the Corps to publish the categorical exclusions approved under this NWP in the Federal Register. As the Corps has recognized, “[p]roviding notice of the approved changes in the Federal Register ensures the broadest dissemination of the decision” and there is no justification for limiting dissemination.

NWP 27 (Aquatic Ecosystem Restoration, Enhancement and Establishment Activities). Our organizations support the proposed changes to NWP 27. These proposed changes will facilitate effective ecosystem restoration, including by clarifying that the purpose of NWP 27 is to move project areas from a degraded state to a more restored state, by ensuring that cultural ecosystems and indigenous and local ecological knowledge are accounted for in the ecological reference requirement, and by ensuring that the Corps is provided with a pre-construction report that will provide important ecological context and information.

NWP 31 (Maintenance of Existing Flood Control Facilities): Our organizations urge the Corps to withdraw NWP 31 because it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e). At a minimum, the Corps should: (1) impose strict impact limitations (both areal and linear) rather than continuing to allow unlimited impacts to waters of the United States; (2) restrict covered activities to those that are in fact similar in nature as required by law; and (3) not limit mitigation to one time only as maintenance efforts could be carried out on multiple occasions causing adverse impacts each time. The impacts of NWP 31 are exacerbated by the fact that it also authorizes removal of vegetation from levees, which is better addressed through a scientifically based regional approach.

NWP 55 (Seaweed Mariculture Activities): Our organizations urge the Corps to withdraw NWP 55 as there still is not sufficient information to inform whether the activities covered would cause no more than minimal impacts as required by Clean Water Act §404(e).

NWP A (Activities to Improve the Passage of Fish and Other Aquatic Organisms): Our organizations urge the Corps to add additional safeguards to this proposed NWP to ensure that authorized activities will cause no more than minimal harm, both individually and collectively, as required by Clean Water Act §404(e). As currently proposed, NWP A covers a wide array of activities that could result in extensive damage to aquatic ecosystems. Key safeguards would limit the use of this NWP to nature-like fishways, culvert and low-head dam removal and related restoration, and fish screens. The other activities currently included in this NWP A (e.g., construction or expansion of fish bypass channels around existing in-stream structures; the replacement of existing culverts; and the modification of

existing instream structures) are more appropriately handled through individual permits as such activities have a significant potential for causing more than minimal harm.

Comments on General Conditions

General Condition 23 (Mitigation): GC 23, and each NWP as appropriate, should be revised to: (1) eliminate all language allowing the use of mitigation buy-downs to justify a finding that an activity has less than minimal impacts; (2) require that permit applicants take all steps practicable to avoid and minimize adverse impacts, as required by law; (3) eliminate the ability of the District Engineer to allow riparian area compensatory mitigation in lieu of compensatory wetland mitigation for wetland losses; (4) eliminate all language that gives the District Engineer the right to waive compensatory mitigation requirements; (5) require more than a 1:1 mitigation ratio which is unlikely to successfully replace lost functions and values; and (4) make mitigation requirements consistent for all NWPs with both areal and linear impact thresholds.

CONCLUSION

Our organizations urge the Corps to adopt the recommendations made in these comments to help ensure that each NWP will cause no more than minimal harm, both individually and cumulatively, as required by law. Please do not hesitate to contact Sophia Ressler at resslers@nwf.org with regard to these comments.

Sincerely,

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