



National Association of Wetland Managers

"Dedicated to the Protection and Restoration of the Nation's Wetlands"

July 18, 2025

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Submitted via www.regulations.gov

Docket ID No: COE-2025-0002

Re: Proposal to Reissue and Modify Nationwide Permits

To Whom It May Concern:

These comments were prepared by the National Association of Wetland Managers (NAWM) in response to the "Proposal to Reissue and Modify Nationwide Permits," published in the Federal Register by the Army Corps of Engineers on June 18, 2025 (Docket # COE-2025-0002, RIN 0710-AB56).

NAWM is a national 501(c)(3) professional organization that supports the use of sound science, law, and policy in the development and implementation of state and Tribal wetland and aquatic resource protection programs. Since 1983, our organization and our member states and Tribes have had longstanding positive and effective working relationships with federal agencies. As an association representing state and Tribal co-regulators tasked with implementation of regulations under the Clean Water Act (CWA), NAWM understands the complexity of the CWA section 404 and the implementation challenges it poses as it addresses the discharge of dredged or fill material into waters of the United States. We also have worked closely with our state and Tribal members to implement CWA section 401 water quality certification of federal licenses and permits, including section 404 Nationwide General Permits (NWP).

The draft 2026 NWPs authorize certain activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. The draft rule includes certain modifications

to existing NWP, changes to the associated general conditions and definitions, and one proposed new permit.

The NWPs play a critical role in state and Tribal regulation of wetlands and other aquatic resources. When oversight is performed appropriately by the Corps, the NWPs help both state and Tribal certifying agencies to streamline the permitting process, which is beneficial to not only project proponents but states and Tribes as well. While the role of the NWPs is valued, the process of reviewing and certifying (some with conditions) is equally important. The proposed rule poses a number of concerns for state and Tribal certifying authorities. NAWM has been gathering information from states and Tribes on their responses to the proposed rule, identifying legal, regulatory, implementation, and impact concerns. NAWM's comment letter is reflective of this information, sharing key issues and suggestions.

NAWM Comments on the Rule Review Process

Requiring 401 Certification of Nationwide Permits in a Proposed Rule, Rather than on Final Rule

States and Tribes express deep concerns about the requirement documented in the *2025 Proposal to Reissue and Modify Nationwide Permits* to concurrently comment on the proposed rule and certify the proposed permits as proposed during the same period. These joint tasks require 401 certifying authorities to review and condition permits that are not yet final. This practice is inconsistent with standard NWP reissuance procedures that the Corps has followed between 1977 and 2020. The standard NWP certification process makes use of an initial rulemaking and comment period with proposed NWP changes, followed by certification of the permits in the final rule months later once comments are addressed. This ensures that the water quality certification under CWA section 401 pertains to the final NWPs, not the penultimate NWPs. States and Tribes have expressed serious concern that any changes that take place to the permits after certification may result in missing or inappropriate conditions, leaving states and Tribes with no opportunity to remedy a deficient certification.

Being asked to review and condition draft general NWPs puts states and Tribal certifying authorities in the position of having to consider subsequently conditioning each individual authorization and their own certifications to ensure they meet their water quality requirements. If the content of the NWPs changes between the draft and final rule, state and Tribal certifying authorities may feel obligated to deny certification of NWPs because of insufficient information to evaluate each future authorization as complying with their water quality standards and requirements. While this is a clear problem with the proposed review process, the proposed rule also does not outline a

process for states and Tribes to address changes made to the draft permit language in the final rule. This is neither good governance nor good business as it causes additional burden for permittees.

NAWM recommends the Corps separate the public comment and certification processes on this proposed Rule, and provide an extension of the deadline for certification of the Nationwide Permits until the rule is finalized and the permits are no longer in draft form. With the mandatory Congressional Review Act-derived period between when the NWP are finalized and when they take effect, allowing states and Tribes to certify the final NWPs before they go into effect need not delay the process.

Potential for Inconsistency Between Nationwide Permit Reissuance and Larger Permitting Changes

States and Tribes express concerns about the potential inconsistency of the current proposed NWP reissuance with Congressional efforts to reform environmental permitting processes. Specifically, there appears to be some overlap in the functionality between the proposed 2026 NWPs and H.R. 3898.¹ H.R. 3989 would require two years' notice to the Federal Register for the discontinuation of a general permit. Further, under H.R. 3898, for general permits the Secretary "shall consider any effects of a discharge of dredged or fill material into less than 3 acres of navigable waters to be a minimal adverse environmental effect."² Should H.R. 3898 be enacted, this would result in a substantial change from the thresholds and limits in the current and proposed NWPs. State and Tribal certifying agencies spend significant efforts reviewing and certifying the NWPs, and they have expressed concerns about the potential for further changes to the permitting process soon after the 2026 NWPs are finalized.

NAWM Comments on Specific Nationwide Permits

As a general matter, NAWM strongly supports the increased emphasis on nature-based solutions in the proposed rule and addition of a definition for "nature-based solutions" (NBS) to the NWPs. NAWM has long been a proponent of utilizing NBS to address societal concerns (such as flooding, storm surge, and water quality issues) while providing ecosystem services and benefits that contribute to our quality of life. Successful implementation of NBS relies on a predictable and consistent permitting process that recognizes the unique types of projects and potential benefits of such activities.

¹ H.R. 3898, entitled the "Promoting Efficient Review of Modern Infrastructure Today Act" or the "PERMIT Act," was introduced in the House of Representatives on July 11, 2025; see <https://www.congress.gov/bill/119th-congress/house-bill/3898/text>.

² H.R. 3989, Section 13

NAWM strongly recommends that the definition of “nature-based solutions” incorporated in the NWP be consistent with definitions reflected in other Corps and federal agency programs, to avoid confusion regarding which solutions should be considered “nature-based.” For example, The Department of Interior released a Nature-Based Solutions Roadmap that defines nature-based solutions as “actions that incorporate natural features and processes to protect, conserve, restore, sustainably use, and manage natural or modified ecosystems to address socioenvironmental challenges while providing measurable co-benefits to both people and nature.”³ EPA considers NBS as encompassing a wide range of actions that may include planning, design, and maintenance of engineering practices that restore, use, or enhance natural processes (such as green infrastructure, agricultural conservation practices, and coastal restoration) and/or protect natural features to preserve ecosystem function.⁴ The Corps’ Engineering with Nature seeks to align processes of nature with engineering to provide more sustainable delivery of economic, social, and environmental benefits associated with infrastructure.⁵

The addition of a definition for nature-based solutions in the proposed NWPs, as well as clear identification of those NWPs that can be used to authorize nature-based solutions, bodes well for the success of future efforts to provide these cost-effective solutions with multiple benefits to society.

NWP 24 – Indian State or Tribe Administered Section 404 Programs

The proposed modification to NWP 24 would remove Florida from the list of states with assumed Section 404 permitting authority under the Clean Water Act, following a court decision that vacated the U.S. Environmental Protection Agency’s (EPA) approval of Florida’s program. Activities in Florida that previously fell under state administration now require Corps authorization.

NAWM agrees that NWP 24 needs to be updated to reflect judicial decisions, removing Florida from the list of assumed states and clarifying what permitting processes should be followed as a result.

NWP 27 – Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities

The proposed revisions to NWP 27 broaden the definition of acceptable ecological references to include cultural ecosystems and indigenous or local ecological knowledge.

³ Available at [DOI Nature-based Solutions Roadmap](#).

⁴ Available at [Green Infrastructure Federal Collaborative | US EPA](#).

⁵ [Home Page - Engineering With Nature](#).

It also removes the previous prohibition on converting streams or wetlands to other aquatic types, allowing for more dynamic, process-based restoration approaches. However, the permit still excludes stream channelization, which NAWM supports. A report will now be required for all activities under NWP 27 and the thresholds for pre-construction notification (PCN) will be removed.

NAWM appreciates the proposed revisions that will clarify the use of NWP 27 and provide for a more efficient process for authorizing activities that will have a net benefit on the aquatic environment. In particular, NAWM supports broadening the definition of acceptable ecological references to include indigenous or local ecological knowledge. Tribal communities have extensive knowledge of their wetlands and aquatic resources and have long been dedicated stewards of these precious resources. The addition of “cultural ecosystems” within NWP 27 will allow for the reflection of this valuable knowledge within proposed restoration, enhancement, and establishment activities.

NAWM is concerned, however, that removing the prohibition on converting wetlands to other aquatic types under NWP 27 could result in a loss of vital wetland acreage, as well as streams, and a reduction in the function of the broader aquatic system. While activities authorized under NWP 27 are intended to provide net increases in aquatic ecosystem functions and services, wetlands provide unique and crucial services that may be lost should those areas be converted to stream or open water habitat. While flexibility for restoration approaches is desirable, it should not be provided at the cost of overall aquatic ecosystem functional loss due to loss of wetlands. NAWM recommends that the Corps provides additional clarification about the use of NWP 27 for process-based restoration, and if removing the prohibition on wetland conversion, the revised NWP 27 should require that the project proponent seeking authorization under NWP 27 conduct an analysis of the effect on functions and values of the broader aquatic ecosystem should wetlands be converted. In order to ensure that there is a net gain and minimal adverse environmental impacts, descriptions of predicted losses, other changes in aquatic type, and conversions vs. existing condition and other water and habitat goals should be evaluated before an activity qualifies under this NWP as having minimal adverse impacts and net gain. Further, NAWM recommends that the Corps retain discretionary authority to require compensatory mitigation.

NAWM disagrees that precise boundaries for waters, wetlands, and other special aquatic sites are unnecessary. This information, and areal extents, are essential in determining net ecological gain and whether or not the adverse impacts are more than minimal. Areal extents of activities (acreage for wetlands, linear feet and area for streams) are needed by certifying agencies for setting thresholds and requiring relevant conditions deemed appropriate for water quality. While NAWM agrees that in some areas setting a wetland-upland boundary can be challenging, it has been accomplished using established methods for decades and is used to determine federal (and

States/Tribal, where independent regulatory programs for wetlands and waters exist) jurisdiction.

NAWM is also concerned that by removing the PCN requirement and replacing it with a report for NWP 27, this also appears to remove any Endangered Species Act Section 7 consultation for NWP 27 actions. The consultation requirements in the notice are only for activities requiring a PCN. NAWM thus strongly recommends retaining the full PCN requirement for NWP 27.

NWP 43 – Stormwater Management Facilities

The Corps proposes to expand NWP 43 to explicitly include a wider range of NBS for stormwater management and pollution abatement, such as rain gardens, bioretention systems, and regenerative stormwater conveyances. A similar change is proposed to NWP 13 allowing for permissive use of habitat integrated bank stabilization.

NAWM supports allowing a wider range of nature-based stormwater approaches to stormwater management. Such facilities may provide important habitat and ecological functions, in addition to stormwater management. However, as discussed above, NAWM strongly recommends that the definition of “nature-based solutions” incorporated in the NWPs be consistent with definitions reflected in other Corps and federal agency programs to avoid confusion regarding which solutions should be considered “nature-based.” Changes to other aquatic resource types, or dominant wetland vegetation, should be considered as part of the loss and be part of the determination of minimal adverse impacts and any requirements for compensatory mitigation as a result of converting waters of the U.S. to stormwater treatment.

NWP A – Activities to Improve Passage of Fish and Other Aquatic Organisms

The new NWP A would authorize activities that restore or enhance the passage of fish and other aquatic organisms through river and stream networks as well as other types of waters. A range of activities could be authorized under this NWP that would improve the ability of fish and other aquatic organisms to move through aquatic ecosystems and provide overall benefits to the aquatic environment.

NAWM supports the addition of this NWP to authorize activities that restore or enhance the passage of fish and other aquatic organisms through aquatic networks. However, NAWM is concerned about allowing one acre of loss of waters of the United States and potential for losses in wetland acreage associated with authorized activities under the proposed NWP. The benefits of enhanced aquatic organism passage should not necessarily be achieved at the cost of wetland loss. To ensure that wetland loss is minimized, NAWM recommends the requirement of a PCN for proposed discharge of

dredged or fill material into special aquatic sites, including wetlands. This PCN requirement would be consistent with existing notification requirements for NWP 13 (Bank Stabilization), NWP 14 (Linear Transportation Projects), and NWP 18 (Minor Discharges). Use of regional conditions would be the best approach for managing species-specific passage and preventing further spread of aquatic invasive species.

NAWM Comments on Nationwide Permit General Conditions (GCs)

GC 11 – Equipment

The proposed revisions to GC 11 would require areas affected by the use of mats to be restored, including the restoration of pre-construction elevations and addressing soil decompaction and revegetation. This change is particularly relevant for access roads, laydown yards, and trenching corridors in remote or soft-soil areas.

NAWM supports the revision to GC 11 that areas affected by mats be restored to pre-construction conditions. Such requirements will allow for recovery of the pre-construction vegetation, hydrological processes, and other crucial functions and services of the wetland ecosystem.

GC 25 – Water Quality

The Corps is proposing a clarification to specify that Section 401 water quality certification is required only for a “proposed activity which may result in any discharge from a point source into waters of the United States.” The Corps states that this revision is intended to align the NWP program more closely with the EPA’s current interpretation of Section 401 under the Clean Water Act, and to reduce uncertainty around activities that trigger the certification requirement. Letters from Corps Districts that notified state and Tribal certifying authorities indicated that a NWP requires 401 certification only where it may “reasonably be expected to discharge into waters of the United States.” (quoting a letter sent by the Louisville Corps District to the Kentucky Energy and Environment Cabinet’s Water Quality Certification Section).

NAWM agrees that CWA section 401 certification applies only to federally issued permits and licenses that “may result “in a discharge to waters of the United States. However, the Corps interpretation of the word “may result” as meaning “reasonably expected to result” is not consistent with EPA’s longstanding interpretation that “may” implies possibility, not likelihood or reasonable expectation.

The Corps letter acknowledges that certifying authorities have the final decision of whether a particular NWP requires certification. That allows certifying authorities to fulfill their CWA certification responsibilities. However, NAWM remains concerned that

confusion and inconsistent application of 401 could result if the Corps deviates from EPA's interpretation of the words "may result."

GC 28 – Use of Multiple Nationwide Permits

The proposed modifications to GC 28 would explicitly prohibit combining acreage limits across multiple NWPs to authorize a greater total impact and provides examples to clarify this GC.

NAWM supports the modifications to this general condition that prohibits "stacking" to authorize more miles and acres of aquatic resource impacts. The modified language should provide clarity to applicants and ensure activities authorized under NWPs will result in no more than minimal individual and cumulative adverse environmental effects.

In Conclusion

NAWM appreciates the opportunity to comment on the Corps' Proposal to Reissue and Modify Nationwide Permits. While these comments have been prepared by NAWM with input from the NAWM Board of Directors, they do not necessarily represent the individual views of all states and Tribes. We therefore encourage your full consideration of the comments of individual states and Tribes and other state/Tribal associations. Please do not hesitate to contact me should you wish to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Marla J. Stelk", with a stylized, flowing script.

Marla J. Stelk
Executive Director

Cc. NAWM Board of Directors