



Memorandum

TO: Water Quality Subcommittee
CC: Coal Policy Task Force
Minerals Policy Task Force
FROM: Tawny Bridgeford, General Counsel & Senior Vice
President, Regulatory Affairs
DATE: June 26, 2025
SUBJECT: Army Corps Proposes Reissuance of NWP with
Targeted Modifications

The U.S. Army Corps of Engineers (Corps) recently [proposed](#) to reissue its existing nationwide permits (NWPs) and associated general conditions (GCs) and definitions, with some modifications. The Corps is also proposing a new NWP to authorize activities to improve the passage of fish and other aquatic organisms through aquatic ecosystems. A summary of the proposed 2026 NWPs is available [here](#). **Comments are due on July 18, 2025.**

The National Mining Association (NMA) is reviewing this rulemaking package and considering whether to submit comments. Notably, the Corps is not proposing specific changes to the NWPs traditionally used by the mining industry, including NWP 21 (Surface Coal Mining Activities), NWP 44 (Mining Activities), NWP 49 (Coal Remining Activities), and NWP 50 (Underground Coal Mining Activities). The NMA is reviewing the proposed modifications to the GCs and other NWPs, particularly NWP 23 (Approved Categorical Exclusions) and NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities).

The NMA is interested in hearing from member companies on whether any mining specific concerns should be raised with the Corps. We are also coordinating with a broader industry coalition that is considering joint comments, particularly on recommendations that would facilitate greater use of NWPs that were not proposed in this

current rulemaking package. **Please send all feedback to me at tbridgeford@nma.org by July 7, 2025.**

Background

NWPs authorize categories of activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects. The goal of the NWP program is to authorize such activities with little delay or paperwork. Over the years, these permits have become more complex as the Corps has placed increasingly stringent limitations on mining-related NWPs, which has decreased the utility of the program.

There are [currently 57 NWPs](#), which the Corps reissued in 2021. **These NWPs are scheduled to expire on March 14, 2026.** At the time of their reissuance, the Corps finalized several changes that improved the NWP program for the mining industry. For example, the Corps removed the 300 linear foot limit for losses of stream bed from, among others, NWPs 21 (Surface Coal Mining Activities), NWP 43 (Stormwater Management Facilities), NWP 44 (Mining Activities), and NWP 50 (Underground Coal Mining Activities). Additional background on the NMA's advocacy related to the 2021 reissuance package and the Corps' decisions in the final rule is available [here](#).

During the Office of Management and Budget's interagency review process earlier this year, the NMA joined a coalition of industry associations in advocating for, among other things, increased allowable acreage thresholds and additional flexibility for compensatory mitigation. The Corps did not include our recommendations in this proposed rulemaking package.

Summary of Proposed Changes

In the proposed rule, the Corps proposes to reissue 56 of the existing NWPs with some modifications and to issue one new NWP. The proposed new NWP A, if issued, would authorize activities that improve the passage of fish and other aquatic organisms and other important ecological processes. Proposed new NWP A does not replace NWP 56, which the Corps is proposing to not reissue and which authorized finfish mariculture activities in ocean and estuarine waters and is the subject of ongoing litigation.

- **Proposed NWP Modifications**

The Corps is proposing to revise the text of NWP 12 (Oil or Natural Gas Pipeline Activities), NWP 13 (Bank Stabilization), NWP 15 (U.S. Coast Guard Approved Bridges), NWP 23 (Approved Categorical Exclusions), NWP 24 (Indian Tribe or State Assumed Section 404 Program), NWP 27 (Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities), NWP 48 (Commercial Shellfish Mariculture Activities), NWP 52 (Water-Based Renewable Energy Generation Projects), NWP 54 (Living Shorelines), NWP 55 (Seaweed Mariculture Activities), NWP 57 (Electric Utility Line and Telecommunications Activities), and NWP 58 (Utility Line Activities for Water and Other Substances) to provide NWP authorization for additional activities or clarify what is authorized by these NWPs.

If your company has used any of these NWPs, please review the modifications and provide feedback on any concerns. As noted above, the Corps has not proposed modifications to the NWPs that have been the primary focus of our historical advocacy efforts.

- **Proposed GC Modifications**

The Corps is also proposing to modify some GCs and definitions so that they are clearer and can be more easily understood by the regulated public, government personnel, and interested parties, while retaining terms and conditions that help protect the aquatic environment and recognize when activities requiring Department of Army authorization would benefit the aquatic environment.

The proposed GC modifications include:

1. GC 9 (Management of Water Flows): Adds “tidal flows” to clarify extent of GC.
2. GC 11 (Equipment): Adds text to clarify required restoration for areas under mats.
3. GC 18 (Endangered Species): Removes reference to Section 402.17 related to Section 7 interagency consultation requirements under the Endangered Species Act promulgated in the first Trump administration and subsequently removed.
4. GC 25 (Water Quality): Modifies text for consistency with definition of “license or permit” with water quality certifications at 40 C.F.R. part 121.
5. GC 28 (Use of Multiple NWPs): Clarifies compliance standards including: (1) loss of waters cannot exceed acreage limit of NWP

- with highest specified limit; and (2) loss of waters authorized under each NWP cannot exceed acreage limit for that NWP.
6. GC 30 (Compliance Certification): Modifies text to refer to “successful completion” of permittee responsible mitigation, rather than “success”.
 7. GC 32 (Pre-Construction Notification): Modifies for consistency with GC 18, simplifies by using term “other waters” to cover specific features required in a delineation, and avoids duplicative submittals for users of NWP 27 (*proposed* aquatic ecosystems).

The proposed definition modifications apply to: (1) ecological reference; (2) nature-based solutions; and (3) stream bed.

If these GCs or definitions are important to your company, please provide feedback on any concerns.

- **Request for Comments**

The Corps is soliciting public comment on all changes to the NWPs, GCs, and definitions discussed in the proposed rule, as well as the NWPs, GCs, and definitions for which the Corps has not proposed any changes. The Corps also welcomes comments on situations that might warrant nationwide permit coverage but are not covered by a current nationwide permit.

Next Steps

The NMA is collaborating with an ad hoc industry coalition in reviewing this proposed rulemaking package and assessing opportunities to develop a coalition letter representing shared concerns with the modifications or recommendations for further modifications to the program. The NMA is also considering whether a mining specific letter is warranted. Your feedback is essential for understanding the level of engagement on this matter. **Please send all feedback to me at tbridgeford@nma.org by July 7, 2025.** The NMA will organize a Teams meeting to discuss further if there is interest among members in developing comments.