



SPECIAL PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

BUILDING STRONG®

NATIONWIDE PERMITS REISSUANCE AND FINAL REGIONAL CONDITIONS FOR THE STATE OF ARIZONA

March 8, 2021

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of 12 existing nationwide permits (NWP) and issuance of 4 new NWP, general conditions, and definitions with some modifications. These 16 NWP will go into effect on **March 15, 2021**, and will expire on March 14, 2026. The remaining 40 NWP and one additional new NWP that were included in the proposed rule published on September 15, 2020 are not being reissued at this time. The terms and conditions of these 40 NWP continue to be in effect under the January 6, 2017 final rule. It is anticipated these remaining NWP will be reissued prior to their March 18, 2022 expiration date.

The 2021 NWP are available at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/> under *2021 Nationwide Permit Information*. A summary table of all NWP and fact sheet are also attached to this public notice.

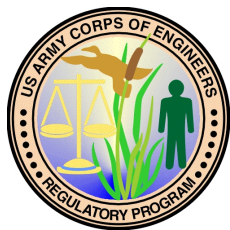
After publication of this *Federal Register* notice, Corps districts were required to finalize their regional conditions for the new and reissued NWP. Regional conditions will provide additional protection for the aquatic environment and will help ensure that the NWP authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the state of Arizona. The final regional conditions for the 2021 NWP for the state of Arizona are also attached to this notice. The existing regional conditions developed for the 2017 NWP program remain applicable to the 40 NWP that are not being reissued at this time.

Following publication of the September 15, 2020 proposed rule the Los Angeles District requested the state of Arizona, Indian Tribes, and the Environmental Protection Agency (EPA) complete their Clean Water Act Section 401 water quality certification (WQC) processes for the 57 NWP included in the proposed NWP reissuance rule. Any conditions of a valid WQC issued by a certifying authority are adopted as regional conditions by the Los Angeles District. Where WQC of a NWP has been waived, there is no requirement to obtain project-specific WQC within that certifying authority's area of responsibility. Where a certifying authority has issued a valid denial of WQC, or where the Los Angeles District has declined to accept the certifying authority's certification, the use of a NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual WQC or a case-specific WQC waiver from that certifying authority. Detailed information on the status of water WQCs for the 2021 NWP are available at our website

<https://www.spl.usace.army.mil/Missions/Regulatory/NWP-Reissuance/>.

Updated application forms and instructions are also available at the link provided above.

For additional information please call Antal Szijj of my staff at (805) 585-2147 or via e-mail at antal.j.szijj@usace.army.mil. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS
WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY

**Final 2021 Nationwide Permit (NWP) Regional Conditions
for the State of Arizona**

*(NWPs 12, 21, 29, 39, 40, 42-44, 48, 50-52, and 55-58,
Effective March 15, 2021 through March 14, 2026)*

1. The permittee shall submit a pre-construction notification (PCN) for all 2021 NWPs, in accordance with General Condition 32, in the following circumstances:

- a. Activities that would result in a loss* of waters of the United States within all perennial and intermittent waterbodies and special aquatic sites.
- b. Activities resulting in a discharge of dredged or fill material in waters of the United States on Tribal lands**;
- c. All waterbodies designated by the Arizona Department of Environmental Quality (ADEQ) as Outstanding Arizona Waters (OAWs), within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated OAW, and on tributaries to OAWs within 1600 meters of the OAW (see <http://www.azdeq.gov/index.html>).
- d. All waterbodies designated by the ADEQ as 303(d)-impaired surface waters, within 1600 meters (or 1 mile) upstream and/or 800 meters (1/2 mile) downstream of a designated impaired surface water, and on tributaries to impaired waters within 1600 meters of the impaired water (see <http://www.azdeq.gov/index.html>).

2. In the state of Arizona the use of any 2021 NWPs resulting in greater than 0.1-acre loss* of wetlands, mudflats, vegetated shallows, or riffle and pool complexes, as defined at 40 CFR Part 230.40-45, is prohibited.

** "Loss" means waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity.*

***"Tribal Lands" refers to any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.*

Summary of the 2021 Nationwide Permits (grey rows) and 2017 Nationwide Permits (white rows)¹

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 1 – Aids to Navigation	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 2 – Structures in Artificial Canals	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 3 – Maintenance	10/404						
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		authorizes only minor deviations for maintenance	PCN not required	no	all waters of the U.S.	Authorize the repair, rehabilitation, or replacement of any currently serviceable structure or fill that did not require a permit at the time it was constructed. Authorize new or additional riprap to protect the structure or fill.	Does not authorize: maintenance dredging for the primary purpose of navigation; beach restoration; or new stream channelization or stream relocation projects. Limits stream channel modification to the minimum necessary for the maintenance activity.
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	yes	all waters of the U.S.		
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	no	all waters of the U.S.	none.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	10/404	none	PCN not required	no	all waters of the U.S.	none	Does not authorize impoundments or artificial reefs. Does not authorize covered oyster trays or clam racks.
NWP 5 – Scientific Measurement Devices	10/404	25 cubic yards for weirs and flumes	PCN not required	no	all waters of the U.S.	none	Devices and any associated structures or fills be removed upon completion of the use and restored to pre-construction elevations to maximum extent practicable.

¹ This table is intended to provide **general** information on the 2021 and 2017 nationwide permits. The 2021 nationwide permits, in which 12 existing nationwide permits have been reissued and 4 new nationwide permits have been issued along with changes to the general conditions and definitions, have been submitted to the *Federal Register* for publication. The final rule for the 2021 nationwide permits includes revised general conditions and definitions. The 12 existing 2021 NWPs replace 12 of the existing 2017 NWPs, and those NWPs are indicated in rows with grey background. Forty of the 2017 nationwide permits continue to be in effect until they are replaced by reissued NWPs. The text of the 2017 nationwide permits and their general conditions were published in the January 6, 2017, issue of the *Federal Register* (82 FR 1860). For the 2017 NWPs that remain effective, the “Changes” column indicates the changes that were published in the September 15, 2020, issue of the *Federal Register* (85 FR 57298) but will not be finalized at this time. For the 12 existing permits that are reissued, the “Changes” column indicates the changes that were finalized in the rule submitted to the *Federal Register* on January 4, 2021.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 6 – Survey Activities	10/404	1/10-acre	PCN not required	no	all waters of the U.S.	none	Does not authorize fills for roads. Does not authorize permanent structures. Does not authorize fill associated with recovery of historic properties. Backfilling of exploratory trenches must not drain a water of the U.S.
NWP 7 – Outfall Structures and Associated Intake Structures	10/404	none	all activities	yes	all waters of the U.S.	none	Activity must comply with National Pollutant Discharge Elimination System Program.
NWP 8 – Oil and Gas Structures on the Outer Continental Shelf	10	none	all activities	no	navigable waters of the U.S.	none	Limited to facilities in areas leased by the Bureau of Ocean Energy Management of the Department of the Interior.
NWP 9 – Structures in Fleeting and Anchorage Areas	10	none	PCN not required	no	navigable waters of the U.S.	none	Applies to structures, buoys, and other devices placed in anchorage or fleeting areas established for those purposes
NWP 10 – Mooring Buoys	10	none	PCN not required	no	navigable waters of the U.S.	none	Non-commercial, single boat mooring buoys
NWP 11 – Temporary Recreational Structures	10	none	PCN not required	no	navigable waters of the U.S.	none	Structures must be removed within 30 days after use discontinued.
NWP 12 – Oil or Natural Gas Pipeline Activities	10/404	1/2 acre	<ul style="list-style-type: none"> a section 10 permit is required discharges that result in the loss of >1/10 acre new oil or natural gas pipeline greater than 250 miles in length 	yes, if PCN required	see text of NWP	Limit to oil or natural gas pipeline activities. Remove PCN requirements for: (a) activities that involve mechanized land clearing in a forested wetland for the utility line right-of-way; (b) utility lines in waters of the United States, excluding overhead lines, that exceed 500 feet; (c) utility lines placed within a jurisdictional area (i.e., water of the United States), that run parallel to or along a stream bed that is within that jurisdictional area; (d) permanent access roads constructed above grade in waters of the United States for a distance of more than 500 feet; or (e) permanent access roads are constructed in waters of the United States with impervious materials. Add PCN requirement for new oil or natural gas pipelines more than 250 miles in length.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.
oil or natural gas pipelines					all waters of the U.S., including navigable waters	Remove Note requiring district engineer to send copy of PCN and NWP verification letter to Department of Defense Siting Clearinghouse.	Must restore area to pre-construction contours.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
oil or natural gas pipeline substations					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		
foundations for above-ground oil or natural gas pipelines					all waters of the U.S.		
access roads					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		Access roads must be constructed to minimize adverse effects to waters of the U.S.
NWP 13 – Bank Stabilization	10/404	<ul style="list-style-type: none"> 500 feet along the bank (unless waived by DE – waivers for bulkheads limited to 1,000 linear feet along the shore) 1 cubic yard per running foot (unless waived by DE) 	<ul style="list-style-type: none"> >500 linear feet in length >1 cubic yard per running foot, as measured along the treated bank, below OHWM or HTL discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	Add Note stating that in coastal waters and the Great Lakes, living shorelines authorized by NWP 54 may be an appropriate form of bank stabilization.	Activity cannot impair surface water flow into or out of waters of the U.S. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. Native plant species appropriate for site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization.
NWP 14 – Linear Transportation Projects	10/404	<ul style="list-style-type: none"> 1/2 acre in non-tidal waters 1/3 acre in tidal waters 	<ul style="list-style-type: none"> >1/10 acre discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	Add “driveways” to list of examples of linear transportation projects.	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. Does not authorize storage buildings, parking lots, train stations, aircraft hangars, or other non-linear transportation features.
NWP 15 – U.S. Coast Guard Approved Bridges	404	none	PCN not required	no	navigable waters of the U.S.	none	Causeways and approach fills for bridges are not authorized by this NWP; those activities require separate section 404 authorization. Bridge structures can be authorized by Section 9 of the Rivers and Harbors Act or other applicable laws.
NWP 16 – Return Water From Upland Contained Disposal Areas	404	none	PCN not required	no	all waters of the U.S.	none	Water quality issues addressed through Clean Water Act section 401 certification process
NWP 17 – Hydropower Projects	404	none	all activities	yes	all waters of the U.S., except navigable (i.e., section 10) waters	Increase total generating capacity from 5,000 kW to 10,000 kW.	Applies to activities licensed by the Federal Energy Regulatory Commission or activities exempt from licensing requirements.
NWP 18 – Minor Discharges	10/404	<ul style="list-style-type: none"> 25 cubic yards discharged below plane of OHWM/HTL 1/10 acre of waters of the U.S. 	<ul style="list-style-type: none"> >10 cubic yards discharged below plane of OHWM/HTL discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	none	Does not authorize discharges for stream diversions.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 19 – Minor Dredging	10/404	50 cubic yards below plane of OHWM/ MHW	PCN not required	no	navigable waters of the U.S.	Increase limit to 50 cubic yards.	Does not authorize dredging or degradation through siltation of coral reefs, submerged aquatic vegetation beds, anadromous fish spawning areas, or wetlands. Does not authorize the connection of canals to navigable waters.
NWP 20 – Response Operations for Oil or Hazardous Substances	10/404	none	PCN not required	no	all waters of the U.S.	none	Authorizes activities subject to the National Oil and Hazardous Substances Pollution Contingency Plan. Authorizes activities required for cleanup of oil releases in waters of the U.S. Authorizes use of temporary structures and fills for spill response training exercises.
NWP 21 – Surface Coal Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre No valley fills 	All activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision. Remove reference to integrated permit processing procedures. Remove requirement for written verification.	Activities must be authorized, or currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.
NWP 22 – Removal of Vessels	10/404	none	<ul style="list-style-type: none"> if vessel listed or eligible for National Register of Historic Places activities in special aquatic sites 	yes, if PCN required	all waters of the U.S.	none	Does not authorize maintenance dredging, shoal removal, or river bank snagging. Disposal of removed vessel in waters of the U.S. may require separate authorizations from EPA and Corps.
NWP 23 – Approved Categorical Exclusions	10/404	none	PCN not required, except for certain activities identified in RGL 05-07	yes, if PCN required	all waters of the U.S.	none	Categorical exclusions must be approved by the Office of the Chief of Engineers. See RGL 05-07 for list of agencies and their activities that are currently eligible for NWP 23.
NWP 24 – Indian Tribe or State Administered Section 404 Program	10	none	PCN not required	no	navigable waters of the U.S.	none	Does not authorize activities in navigable waters that require only a section 10 permit.
NWP 25 – Structural Discharges	404	none	PCN not required	no	waters of the U.S.	none	Structure may require a section 10 permit if located in navigable waters of the U.S. Does not authorize structures that support buildings or similar structures.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities	10/404	none	all activities, except for those that require reporting (e.g., activities under a binding agreement between the landowner and an agency)	yes, if PCN required	all waters of the U.S.	Add “releasing sediment from reservoirs to restore or sustain downstream habitat” and “coral restoration or relocation” to the list of examples of activities authorized by this NWP. No PCN required for activities conducted in accordance with the terms and conditions of a binding coral restoration or relocation agreement between the project proponent and the NMFS or any of its designated state cooperating agencies.	Does not authorize stream channelization. Does not authorize relocation or conversion of tidal waters. Does not authorize conversion of natural wetlands or streams, except for relocation activities. Compensatory mitigation is not required for NWP 27 activities.
NWP 28 – Modifications of Existing Marinas	10	activities limited to authorized marina area	PCN not required	no	navigable waters of the U.S.	none	Does not authorize dredging, additional slips, dock spaces, or expansion in waters of the U.S.
NWP 29 – Residential Developments	10/404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	For residential subdivisions, the aggregate total loss of waters of the U.S. cannot exceed 1/2-acre.
NWP 30 – Moist Soil Management for Wildlife	404	none	PCN not required	no	non-tidal waters of the U.S.	none	Authorizes only on-going activities. Does not authorize construction of new dikes, roads, water control structures, etc. Does not authorize conversion of wetlands to uplands. Does not authorize impoundments. Does not authorize activities that result in net loss of aquatic functions and services.
NWP 31 – Maintenance of Existing Flood Control Facilities	10/404	maintenance baseline approved by district engineer	all activities	yes	all waters of the U.S.	none	PCN must indicate location of sites for disposal of dredged or excavated material and baseline information. Authorizes the removal of vegetation from levees associated with a flood control project, if Corps permits are required for those activities.
NWP 32 – Completed Enforcement Actions	10/404	<ul style="list-style-type: none"> 5 acres of non-tidal waters 1 acre of tidal waters also see text of NWP 	PCN not required	no	all waters of the U.S.	none	
NWP 33 – Temporary Construction, Access, and Dewatering	10/404	none	all activities in navigable (i.e., section 10) waters	yes	all waters of the U.S.	none	Associated primary activity must be authorized by Corps or U.S. Coast Guard, or be exempt from permit requirements. PCN must include restoration plan.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 34 – Cranberry Production Activities	404	10 acres, but activity cannot result in net loss of wetland acreage	all activities	yes	section 404 waters only	none	Does not authorize discharges in waters of the U.S. for attendant features, such as warehouses, processing facilities, or parking areas.
NWP 35 – Maintenance Dredging of Existing Basins	10	dredging to previously authorized depths or controlling depths, whichever are less	PCN not required	no	navigable waters of the U.S.	none	
NWP 36 – Boat Ramps	10/404	<ul style="list-style-type: none"> 50 cubic yards, unless waived by DE 20 foot width, unless waived by DE 	<ul style="list-style-type: none"> >50 cubic yards >20 feet wide 	yes, if PCN required	all waters of the U.S., except special aquatic sites	none	Section 10 permit required if dredging navigable water is necessary for access to boat ramp. No placement of material in special aquatic sites.
NWP 37 – Emergency Watershed Protection and Rehabilitation	10/404	none	all activities	yes	all waters of the U.S.	none	Prospective permittee should wait 45 calendar days before proceeding with the activity if the DE has not yet issued a verification letter, but may proceed immediately if there is an unacceptable hazard to life or significant loss of property or economic hardship will occur.
NWP 38 – Cleanup of Hazardous and Toxic Waste	10/404	none	all activities	yes	all waters of the U.S.	none	Does not authorize the establishment of new disposal sites or the expansion of existing disposal sites.
NWP 39 – Commercial and Institutional Developments	10/404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	Does not authorize construction of new golf courses or new ski areas. Authorizes the construction of oil or gas wells. For wind energy generating structures, solar towers, or overhead transmission lines, district engineer coordinates PCN and NWP verification with Department of Defense Siting Clearinghouse.
NWP 40 – Agricultural Activities	404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	NWP can be used for agricultural activities, regardless of whether applicant is USDA participant. Does not authorize aquaculture ponds.
NWP 41 – Reshaping Existing Drainage and Irrigation Ditches	404	none	PCN not required	no	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Add irrigation ditches.	Reshaping drainage ditch cannot increase capacity of ditch or drain additional waters of the U.S. Does not authorize relocation of drainage ditches constructed in waters of the U.S.
NWP 42 – Recreational Facilities	404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	Authorizes variety of recreational facilities, except for hotels, restaurants, racetracks, stadiums, arenas, or similar facilities (these may be authorized by NWP 39).

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 43 – Stormwater Management Facilities	404	<ul style="list-style-type: none"> 1/2 acre 	all activities involving expansion or construction of SWM facilities	yes, if PCN required	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	Does not authorize construction of new stormwater management facilities in perennial streams. Maintenance does not require PCN if limited to restoring original design capacities. Also authorizes low impact development integrated management features and pollutant reduction green infrastructure features.
NWP 44 – Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision. Limit mining in non-tidal navigable waters of the United States (i.e., section 10 waters) to 1/2-acre.	PCN must include final reclamation plan if reclamation is required by other statutes.
NWP 45 – Repair of Uplands Damaged by Discrete Events	10/404	Restore uplands to pre-event ordinary high water mark	all activities	yes	all waters of the U.S.	none	PCN must be submitted to district engineer within one year of date of damage; work must start or be under contract within two years of date of damage.
NWP 46 – Discharges in Ditches	404	<ul style="list-style-type: none"> 1 acre 	all activities	yes	certain types of non-tidal ditches constructed in uplands and determined to be waters of the U.S.	none	NWP does not authorize discharges into ditches constructed in streams or other waters of the U.S., or in streams that have been relocated in uplands.
NWP 48 –Commercial Shellfish Mariculture Activities	10/404	none	New and existing activities that directly affect greater than 1/2-acre of submerged aquatic vegetation	no	navigable waters of the U.S.	Change “aquaculture” to “mariculture.” Remove the prohibition against new commercial shellfish mariculture activities directly affecting more than 1/2-acre of submerged aquatic vegetation. Remove definition of “new commercial shellfish aquaculture operation” as operating in an area where such activities have not occurred during the past 100 years. Add PCN requirement for activities directly affecting greater than 1/2-acre of submerged aquatic vegetation. Prohibit cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody.	Does not authorize nonindigenous species not previously cultivated in the waterbody, aquatic nuisance species, or attendant features such as docks or staging areas. Does not authorize the deposition of shell material back into waters of the U.S. as waste. Project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 49 – Coal Remining Activities	10/404	Limited to sites that were previously mined for coal, but new mining may be conducted in adjacent areas if the newly mined area is less than 40 percent of the area being remined plus any unmined area needed for reclamation.	all activities	yes	non-tidal waters of the U.S.	Remove requirement for written verification. Remove reference to integrated permit processing procedures.	Permittee must demonstrate net increase in aquatic resource functions through reclamation. Activities must be authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title IV and V of the Surface Mining Control and Reclamation Act of 1977. Corps will review the SMCRA determination regarding the amount of previously unmined area necessary for the reclamation and make an independent determination of the amount needed.
NWP 50 – Underground Coal Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision. Remove requirement for written verification. Remove reference to integrated permit processing procedures. Remove Note stating that coal preparation and processing outside the mine site may be authorized by NWP 21.	Activities must be authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977. If reclamation required, a copy of the plan must be submitted with PCN. Does not authorize coal preparation and processing activities outside of the mine site.
NWP 51 – Land-Based Renewable Energy Generation Facilities	10/404	<ul style="list-style-type: none"> 1/2 acre 	<ul style="list-style-type: none"> discharges that result in the loss of >1/10 acre 	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	Authorizes construction, expansion or modification of land-based renewable energy production facilities, including attendant features. If only activity requiring DA authorization is utility line, then NWP C shall be used. Utility lines transferring energy to a distribution system, regional grid, or other facility are generally considered to be separate single and complete linear projects. For wind energy generating structures, solar towers, or overhead transmission lines, district engineer coordinates PCN and NWP verification with Department of Defense Siting Clearinghouse.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects	10/404	<ul style="list-style-type: none"> 1/2 acre No more than 10 generation units Floating solar panels in section 10 waters limited to 1/2-acre in size 	all activities	yes	all waters of the U.S. except in coral reefs	Remove the 300 linear foot limit for losses of stream bed. Remove waiver provision.	Authorizes construction, expansion, modification, or removal of water-based renewable energy generation pilot projects and their attendant features. Limited to “pilot projects.” Placement of a transmission line on bed of a navigable water of U.S. from generation unit to land-based collection facility is considered a structure under section 10 and is not considered a loss of waters of the U.S. Prohibits activities in coral reefs. Structures in anchorage areas must comply with U.S. Coast Guard requirements. Does not authorize structures in established danger zones, restricted areas, etc. Upon completion of pilot project, associated structures and/or fills must be removed unless authorized by separate DA permit. Utility lines transferring energy to a distribution system, regional grid, or other facility are generally considered to be separate and complete linear projects. An activity located on an existing, maintained Corps project requires separate approval under 33 USC 408. For wind energy generating structures, solar towers, or overhead transmission lines, district engineer coordinates PCN and NWP verification with Department of Defense Siting Clearinghouse.
NWP 53 – Removal of Low-Head Dams	10/404	none	all activities	yes	all waters of the U.S.	none.	Authorizes the removal of low-head dams for stream restoration and public safety. “Low-head dam” defined as a dam built to pass upstream flows over the entire width of the dam crest on a continual and uncontrolled basis. As a general rule, compensatory mitigation is not required for these activities because they result in net increases in stream ecological functions and services. NWP does not authorize regulated activities for restoration of stream in vicinity of former impoundment (these activities may be authorized by NWP 27), or bank stabilization activities (these activities may be authorized by NWP 13).

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 54 – Living Shorelines	10/404	<ul style="list-style-type: none"> 30 feet channelward of mean low water in tidal waters or mean high water line in Great Lakes (unless waived by DE) 500 feet along the bank (unless waived by DE) 	all new activities; PCN not required for repair and maintenance of existing living shorelines	yes	all waters of the U.S.	none.	Authorizes construction and maintenance of living shorelines for shore erosion control. Living shorelines consist of natural and man-made materials. May include stone or reef structures to protect the shoreline from low to moderate energy waves. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. Does not authorize beach nourishment or land reclamation activities. Discharges of dredged or fill material into waters of the United States, including the construction of fill structures such as sills or breakwaters, must be the minimum necessary for the establishment and maintenance of the living shoreline.
NWP 55 – Seaweed Mariculture Activities	10	none	all activities	yes	navigable waters of the U.S., including federal waters on the outer continental shelf	new NWP	Prohibits the cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
NWP 56 – Finfish Mariculture Activities	10	none	all activities	yes	navigable waters of the U.S., including federal waters on the outer continental shelf	new NWP	Prohibits the cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 or the cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.
NWP 57 – Electric Utility Line and Telecommunications Activities	10/404	<ul style="list-style-type: none"> 1/2-acre 	<ul style="list-style-type: none"> a section 10 permit is required discharges that result in the loss of >1/10 acre 	yes, if PCN required	all waters of the U.S.	new NWP	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.
electric utility lines and telecommunications lines					all waters of the U.S., including navigable waters		Must restore area to pre-construction contours.
electric utility line and telecommunications substations					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		
foundations for overhead electric utility line or telecommunication line towers, poles, and anchors					all waters of the U.S.		
access roads					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		Access roads must be constructed to minimize adverse effects to waters of the U.S.
NWP 58 – Utility Line Activities for Water and Other Substances	10/404	<ul style="list-style-type: none"> 1/2-acre 	<ul style="list-style-type: none"> a section 10 permit is required discharges that result in the loss of >1/10 acre 	yes, if PCN required	all waters of the U.S.	new NWP	Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations.
utility lines					all waters of the U.S., including navigable waters		Must restore area to pre-construction contours.
utility line substations					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		
foundations for above-ground utility lines					all waters of the U.S.		

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
access roads					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		Access roads must be constructed to minimize adverse effects to waters of the U.S.



Nationwide Permit Reissuance

January 2021

U.S. ARMY CORPS OF ENGINEERS

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Background: Under Section 404(e) of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) can issue general permits to authorize activities that have only minimal individual and cumulative adverse environmental effects. General permits can be issued for a period of no more than five years. A nationwide permit (NWP) is a general permit that authorizes activities across the country, unless a division commander or district engineer revokes the nationwide permit in a state or other geographic region or for a specific activity. The NWPs authorize approximately 35,000 reported activities per year, as well as approximately 30,000 activities that do not require reporting to USACE districts. Under the 2017 NWPs, there are 52 NWPs, and they authorize a wide variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities.

The process for issuing NWPs is a rulemaking activity. The proposal to reissue the NWPs was published in the *Federal Register* on September 15, 2020, for a 60-day public comment period ending on November 16, 2020. USACE proposed to reissue all 52 of its existing 2017 NWPs. USACE also proposed to issue five new NWPs that pertain to authorizing seaweed mariculture activities, finfish mariculture activities, electric utility line and telecommunications activities, utility line activities for water and other substances, and water reclamation and reuse facilities. Concurrent with the *Federal Register* notice, districts issued local public notices to solicit comment on proposed regional conditions to further restrict the use of the NWPs to protect local aquatic resources.

Approximately 22,700 comments were received in response to the *Federal Register* notice. The comments were evaluated, and the draft final NWP rule was prepared. The draft final rule was submitted to OMB December 11, 2020, for interagency review. Five agencies provided comments on the draft final rule. The agency comments were reviewed, and modifications were made to the draft final NWPs to address the agency comments.

2021 Nationwide Permits: In this final rule, USACE is reissuing and modifying 12 existing NWPs and issuing four new NWPs. For these 16 NWPs, USACE is also reissuing and modifying the NWP general conditions and definitions. At this time, USACE is not reissuing or modifying the remaining 40 existing NWPs or finalizing proposed new NWP E for discharges of dredged or fill material for water reclamation and reuse facilities. The 40 remaining NWPs continue to be in effect under the January 6, 2017, final rule and the existing general conditions and definitions in the 2017 final rule continue to apply to those permits. The reissued NWPs have no major changes from 2017, the last time the NWPs were authorized in accordance with the law. The revised permits will further streamline the authorization process under the Clean Water Act and Rivers and Harbors Act of 1899 and were informed by extensive feedback from the public and key stakeholders. These permits provide expedited review of projects that have minimal impact on the aquatic environment. The 16 revised and new NWPs will go into effect on March 15, 2021.

Two of the four new NWPs provide appropriate mechanisms for an efficient process to authorize structures in navigable waters for finfish and seaweed mariculture activities. The other two new NWPs provide appropriate processes to enable project proponents to obtain authorization to discharge dredged or fill material or to construct structures or do work in regulated waters associated with the construction and maintenance of electric utility lines and telecommunication activities or with the construction and maintenance of utility lines for water or other substances. Notification requirements have been revised for some permits to provide greater national consistency and foster making timely decisions for the regulated community.

All improvements, additions, and revisions to the package are consistent with USACE's commitment to authorizing minor activities efficiently, while ensuring appropriate environmental protection of the nation's aquatic resources.

USACE division engineers may add, after public review and consultation, regional conditions to NWPs in order to protect local aquatic ecosystems such as fens or bottomland hardwoods, or to minimize adverse effects on fish or shellfish spawning, wildlife nesting, or other ecologically critical processes or areas. Division and district

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commanders are also charged with ensuring appropriate coordination and consultation occurs with federally recognized American Indian and Alaska Native governments.

Revisions to the 2017 Nationwide Permits: NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, 52: All of these NWPs have been revised to remove the 300-linear-foot limit for losses of stream bed; the limit for losses of waters of the United States for each of these NWPs remains at ½ acre. All 10 NWPs have pre-construction notification requirements that will ensure that authorized losses of waters and wetlands are not more than minimal. Removing this limit does not reduce environmental protection, and it makes these 10 NWPs available for use to authorize minimally impacting activities with little paperwork and delay.

Mitigation General Condition: General Condition 23, Mitigation, was modified to include a requirement for compensatory mitigation for stream bed losses exceeding 3/100-acre. This modification makes the compensatory mitigation requirement for stream bed loss equivalent to the compensatory mitigation requirement for wetlands in the NWP program.

NWP 48: The NWP for Commercial Shellfish Mariculture Activities was revised to provide greater flexibility in its use. NWP 48 authorizes new operations as well as existing operations where operators are seeking permission to continue on-going shellfish cultivation activities. A preconstruction notification requirement has been added to the final NWP for all direct impacts to submerged aquatic vegetation greater than ½ acre, to insure appropriate individual review by USACE districts.

New NWPs for 2021: NWP 55: This new NWP authorizes structures in marine and estuarine waters, including structures anchored to the seabed on the Outer Continental Shelf, for the purpose of seaweed mariculture activities. Also, this NWP allows project proponents to integrate shellfish production activities if those actions are integrated with the seaweed production on the same structure or a structure that is part of the same project.

NWP 56: This new NWP authorizes structures in marine and estuarine waters, including structures anchored to the seabed on the Outer Continental Shelf, for the purpose of finfish mariculture activities. Also, this NWP allows project proponents to integrate shellfish and seaweed production activities if those actions are integrated with the finfish production on the same structure or a structure that is part of the same project.

NWP 57: This new NWP provides authorization for activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States. There are reporting requirements for certain activities authorized by this NWP and it has a ½-acre limit for losses of waters of the United States for each single and complete project.

NWP 58: This new NWP authorizes activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. This NWP also authorizes associated utility line facilities, such as substations, access roads, and foundations for above-ground utility lines, in waters of the U.S., provided the activity does not result in the loss of greater than ½-acre of waters of the U.S. for each single and complete project.

Grandfathering: When USACE modifies existing NWPs, the modified NWPs replace the prior versions of those NWPs so that there are not two sets of NWPs in effect at the same time. Having two sets of NWPs in effect at the same time creates regulatory uncertainty if each set of those NWPs has different limits, requirements, and conditions because permittees may be unclear as to which limits, requirements, and conditions apply to their authorized activities. In addition, differences in NWP limits, requirements, and conditions between two sets of NWPs can create challenges for district engineers in terms of enforcement and compliance efforts.

USACE is modifying the expiration date for the 12 existing NWPs (i.e., NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52) that are issued in this final rule. The expiration date for the 2017 versions of these NWPs is March 14, 2021. The expiration date for the 12 existing NWPs and the four new NWPs issued by this final rule is five years after the date those NWPs go into effect: March 14, 2026.

Activities authorized by the 2017 NWPs remain authorized by those NWPs until March 18, 2022. For permittees holding authorizations for activities for any of the 12 NWPs replaced by this final rule, if the previously verified

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activity continues to qualify for NWP authorization under any of the 12 NWPs reissued in this final rule, that verification letter continues to be in effect until March 18, 2022, unless the district engineer specified a different expiration date in the NWP verification letter. As long as the verified NWP activities continue to comply with the terms and conditions of the 12 existing NWPs issued in this final rule, those activities continue to be authorized by the applicable NWP(s) until March 18, 2022, unless a district engineer modifies, suspends, or revokes a specific NWP authorization.

For permittees with authorizations for activities that were authorized by the 2017 NWPs, but no longer qualify for authorization under the 12 existing NWPs that are reissued in this final rule (i.e., the reissued NWP has been modified so that the activity that was authorized is no longer covered), those activities continue to be authorized by the 2017 NWP(s) for 12 months of the date as long as those activities have commenced (i.e., are under construction) or are under contract to commence in reliance upon an NWP prior to the date on which the NWP expires. That authorization is contingent on the activity being completed within twelve months of the date of an NWP's expiration, modification, or revocation, unless discretionary authority has been exercised by a division or district engineer on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c) or (d). This provision applies to activities that were previously verified by the district engineer as qualifying for NWP authorization, but no longer qualify for NWP authorization under the modified or reissued NWP.

Public Interest: The reissuance of NWPs is of interest to various entities involved in the development of our nation's economy and the employment and well-being of our citizens, such as agricultural producers, other food producers, housing developers, industrial and commercial development companies, utility companies, mining industries, transportation departments, and commercial and recreational users of navigable waterways. The NWP reissuance is also of interest to government agencies and non-governmental organizations that seek protection of natural resources and other environmental qualities. The NWP provide incentives to avoid and minimize impacts to jurisdictional wetlands, streams, and other aquatic resources because of the limits and other conditions imposed on these authorizations. The NWP final rule was published in the *Federal Register* on January 13, 2021.

The final nationwide permits have been posted on USACE's Website
<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>.