



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 CALIFORNIA

February 17, 2022

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published notice in the *Federal Register* announcing reissuance of 40 existing nationwide permits (NWP) and one new NWP. These 41 NWP will go into effect on **February 25, 2022**, and will expire on March 14, 2026. The general conditions and definitions included in the January 13, 2021, final rule reissuing 12 NWP and four new NWP will apply to these 41 NWP.

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

Following publication of the January 13, 2021, final rule the Los Angeles District finalized regional conditions for the 16 new and reissued NWP. These regional conditions will also apply to the 41 NWP upon their February 25, 2022, effective date. Regional conditions 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 California. The final regional conditions for the 2021 NWP for the state of California were developed by the Sacramento, San Francisco and Los Angeles Districts (Districts) and are attached to this notice.

Following publication of the September 15, 2020, proposed rule the Districts requested the state of California, Indian Tribes, 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 rule. Any conditions of a valid certification issued by a certifying authority are adopted as regional conditions by the Los Angeles District. Where certification of an NWP has been waived, there is no requirement to obtain project-specific water quality certification within that certifying authority's area of responsibility. Where a certifying authority has issued a valid denial of WQC, or where the Districts have declined to accept the 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 quality certifications for the 2021 NWP are available at our website <https://www.spl.usace.army.mil/Missions/Regulatory/NWP-Reissuance>.

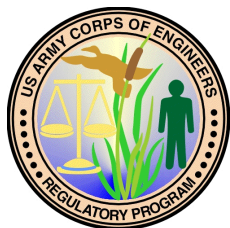
The state of California has also completed the Coastal Zone Management Act (CZMA) consistency determination process for the 2021 NWP and denied CZMA consistency certification for all 59 NWP. Therefore the use of an NWP to authorize an activity within, or outside, a state's coastal zone

that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

Updated application forms and instructions are available at:

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

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 California

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 involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;
 - b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands*;
 - c. Activities involving the permanent channelization, realignment, or relocation of streams; and,
 - d. Activities that have the potential to adversely affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council. The PCN shall include an EFH assessment and analysis of effects of the action on EFH, in accordance with 50 C.F.R. § 600.920 (e). For Federal permittees, if a PCN is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the Magnuson-Stevens Fishery Conservation and Management Act;
2. In the desert regions of Los Angeles District (*USGS Hydrologic Unit Code accounting units: Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002*), the use of any NWP resulting in greater than 0.10-acre loss** of wetlands, mudflats, vegetated shallows, or riffle and pool complexes, as defined at 40 CFR Part 230.40-45, is prohibited.
3. In the Los Angeles District, NWPs 29, 39, 42 and 43, and NWP 14 combined with any of those NWPs, cannot authorize a loss** of waters of the United States greater than 0.25 acre Within the Murrieta Creek and Temecula Creek watersheds in Riverside County.
4. In the Los Angeles District, all 2021 NWPs are revoked within the Special Area Management Plans areas of the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California. Additional information is available here: <https://www.spl.usace.army.mil/Missions/Regulatory/Established-LOP-Procedures/>
5. In the Los Angeles District, 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 the Murrieta and Temecula Creek watersheds in Riverside County, California; and,
- b. Activities that would result in a loss** of waters of the United States within Santa Clara River watershed in Los Angeles and Ventura County, California, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River; and,
- c. Activities that would result in a loss** of waters of the United States within all watersheds in the Santa Monica Mountains in Los Angeles and Ventura County, California, bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south; and,
- d. Activities that would result in a loss** of waters of the United States within all perennial waterbodies and special aquatic sites.

** "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.*

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

Summary of the 2021 Nationwide Permits¹

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.	none	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.	none	
(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.
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.

¹ This table is intended to provide **general** information on the 2021 nationwide permits published in the *Federal Register* on January 13, 2021 (86 FR 2744) and December 27, 2021 (86 FR 73522).

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
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	Removed 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.
oil or natural gas pipeline substations					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Changes	Other Information
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.	Added 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.	Added “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	Increased 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	25 cubic yards below plane of OHWM/ MHWM	PCN not required	no	navigable waters of the U.S.	none	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	Removed 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.	Note 1 revised to clarify EPA requirements for intentional ocean disposal of vessels under the Marine, Protection, Research and Sanctuaries Act.	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.	Added Florida to list of states that have been approved to administer the Section 404 permit program.	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.	Added “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	Removed 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	Added “repair” and “replacement” of boat ramps.	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	Removed 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	Removed 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	Added 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	Removed 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	Removed 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	Removed 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	yes	navigable waters of the U.S.	Changed “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.	Removed 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	Removed 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	Removed 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	Removed 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.	Modified definition of “low-head dam.”	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.	Added text stating that native plants appropriate for the elevation should be used for living shorelines.	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.
NWP 59 – Water Reclamation and Reuse Facilities	404	1/2-acre	all activities	Y	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	new NWP	



Nationwide Permit Reissuance

January 2022

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 district or division commander revokes the NWP in a state or other geographic region. The NWP's authorize approximately 40,000 reported activities per year, as well as approximately 30,000 activities that do not require reporting to USACE districts. In 2017 the USACE issued 52 NWP's, and they authorized 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. To continue the NWP Program, the NWP's must be reissued before the 2017 NWP's expire in March 2022.

The process for issuing NWP's is a rulemaking activity. The proposal to reissue the NWP's 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 NWP's. USACE also proposed to issue five new NWP's 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, USACE districts issued local public notices to solicit comment on proposed regional conditions to further restrict the use of the NWP's to protect local aquatic resources.

Approximately 23,700 comments were received in response to the *Federal Register* notice. The comments were evaluated, and two draft final NWP rules were prepared to issue those NWP's. The first draft final rule for 16 NWP's was submitted to OMB on December 11, 2020, and the second final rule for 41 NWP's was submitted to OMB on June 11, 2021. Five agencies provided comments on the first draft final rule, and three agencies provided comments on the second draft final rule. The agency comments were reviewed, and modifications were made to the draft final NWP's to address agency comments.

The first final rule was published in the *Federal Register* on January 13, 2021 (86 FR 2744) and it reissued 12 existing NWP's and issued four new NWP's. The second final rule was published in the *Federal Register* on December 27, 2021 (86 FR 73522) and it reissued 40 existing NWP's and issued one new NWP.

2021 Nationwide Permits: In the January 2021 final rule, USACE reissued and modified 12 existing NWP's and issued four new NWP's. In the January 2021 final rule, USACE also reissued the NWP general conditions and definitions, with some modifications to respond to public and agency comments. The January 2021 final rule went into effect on March 15, 2021. In the December 2021 final rule, USACE reissued 40 existing NWP's and issued one new NWP. The NWP general conditions and definitions published in the January 2021 final rule apply to the 41 NWP's issued in the December 2021 final rule. The December 2021 final rule goes into effect on February 25, 2022. The reissued NWP's have no major changes from 2017, the last time the NWP's were authorized in accordance with the law. The revised NWP's will streamline the requirements of the Clean Water Act and the Rivers and Harbors Act of 1899 and their revisions were informed by extensive feedback from the public and various stakeholders. These permits provide effective review of projects that have minimal impact on the aquatic environment.

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Two of the five new NWP's provide an effective process to authorize structures in navigable waters for finfish and seaweed mariculture activities. Another two of the five new NWP's 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. The fifth new NWP authorizes discharges of dredged or fill material into regulated waters for the construction, expansion, and maintenance of water reclamation and reuse facilities. Notification requirements have been revised for some NWP's to provide greater national consistency and foster making timely decisions for the regulated community for minimal impact activities. All improvements, additions, and revisions to the suite of NWP's are consistent with USACE's commitment to effectively evaluate minor activities, while ensuring appropriate environmental protection of the nation's aquatic resources. The 2021 NWP's support implementation of the Infrastructure Investment and Jobs Act by providing USACE authorization for regulated activities associated with infrastructure.

USACE division engineers may add, after public review and consultation, regional conditions to NWP's 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 ecologically critical waters. Division and district 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's 21, 29, 39, 40, 42, 43, 44, 50, 51, 52: All of these NWP's have been revised to remove the 300-linear-foot limit for losses of stream bed; the aggregate limit for loss of waters of the United States for these NWP's is 1/2-acre. All 10 NWP's have pre-construction notification requirements that will ensure that authorized activities will have no more than minimal adverse environmental effects. Removing the 300-linear-foot limit does not reduce environmental protection, but it does make these 10 NWP's 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 losses equivalent to the compensatory mitigation requirement for wetland losses in the NWP program.

NWP 27: This NWP authorizes aquatic habitat restoration, enhancement, and establishment activities. It was modified to authorize releases of sediment from reservoirs to maintain sediment transport continuity in rivers to restore downstream habitats. It was also modified to authorize coral restoration or relocation activities.

NWP 41: This NWP authorizes the reshaping of existing drainage ditches to improve water quality. It was modified to include the reshaping of existing irrigation ditches to improve water quality.

NWP 48: This NWP authorizes commercial shellfish mariculture activities. It was revised to provide greater flexibility in its use. NWP 48 is available to authorize new operations as well as existing operations that are seeking authorization to continue on-going activities. A preconstruction notification requirement has been added to this NWP for all impacts to submerged aquatic vegetation that are greater than 1/2-acre, to require case-by-case review by USACE districts to ensure that the impacts of those activities are no more than minimal.

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New NWP 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 conducted 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 conducted 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 1/2-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 United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

NWP 59: This new NWP authorizes discharges of dredged or fill material into waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities. This NWP has a 1/2-acre limit for losses of waters of the United States and pre-construction notification to USACE district engineers is required for all activities.

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 USACE district engineers in terms of enforcement and compliance efforts.

USACE modified the expiration date for the 12 existing NWPs (i.e., NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52) that were reissued in the January 2021 final rule. The expiration date for the 2017 versions of those NWPs was changed to March 14, 2021. USACE modified the expiration date for the 40 existing NWPs (i.e., NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54) that were reissued in the December 2021 final rule. The expiration date for the 2017 versions of those NWPs was changed to February 24, 2022. The expiration date for the 52 reissued NWPs and the five new NWPs issued in the January 2021 and December 2021 final rules is March 14, 2026.

For permittees holding verified authorizations for activities for any of the 52 existing NWPs replaced by the January 2021 and December 2021 final rules, if the previously verified activity continues to qualify for NWP authorization under any of the 52 NWPs reissued in those two final rules, that verification letter

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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 52 existing NWPs reissued in these two final rules, 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 verifications for activities that were authorized by the 2017 NWPs, but no longer qualify for authorization under the 52 existing NWPs that were reissued in the January 2021 and December 2021 final rules (i.e., a reissued NWP has been modified so that the activity that was previously authorized by that NWP is no longer covered by that NWP), those activities continue to be authorized by the 2017 NWP for 12 months after the expiration date of those NWPs (i.e., March 14, 2021, for the 12 NWPs reissued in January 2021; February 24, 2022, for the 40 NWPs reissued in December 2021) 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 NWP 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, 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. Information on the final nationwide permits is available on the following USACE's web site: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>.