



May 15, 2026

Via <https://www.Regulations.gov>

U.S. Army of Engineers  
Attn: CECW-CO-R  
441 G Street NW  
Washington, DC 20314-1000

RE: Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits; Establishment of a Public Docket; Request for Input; Docket No. 2026-0001

Dear Ms. McCafferty:

This letter provides comments from the American Petroleum Institute (“API”), Independent Petroleum Association of America (“IPAA”); Western Energy Alliance; Alaska Oil & Gas Association (“AOGA”); Colorado Oil & Gas Association (“COGA”); Montana Petroleum Association (“MPA”); New Mexico Oil & Gas Association (“NMOGA”); North Dakota Petroleum Council (“NDPC”); The Petroleum Alliance of Oklahoma; Utah Petroleum Association (“UPA”);

Center for Liquid Natural Gas (“CLNG”); and Natural Gas Supply Association (“NGSA”) (collectively “the Associations”) in response to the Army Corps of Engineers’ (“Corps”) Notice of Solicitation of Input on Potential Future Changes to Nationwide Permits (“NWP”) (“Notice”).<sup>1</sup> We support the Corps’ diligence in continuously improving the NWP program and in engaging the stakeholders early in the process. We also appreciate the prompt and timely reissuance of the 2026 NWPs. Recognizing time constraints with both the 2020 and the 2026 Reissuance process, we have focused our reply on the relevant provisions of this Notice, while also including suggestions for future rulemakings and incorporating by reference our past comments.<sup>2</sup>

For over 40 years, the NWP program has been an important and highly effective program that is specifically designed for activities with *minimal* individual and cumulative adverse environmental effects under the Clean Water Act (“CWA”) Section 404 as well as for works authorized under Section 10 of the Rivers and Harbors Act of 1899 (“RHA Section 10”). This streamlined process is intended to allow the Corps to focus its limited resources on projects with greater environmental impacts under individual permits, while providing timely and cost-effective permitting for the regulatory community through the general permit program.

The NWP program impacts industries across the board, and facilitates industrial and commercial development, including critical infrastructure projects that ensure resilient and reliable supplies vital to the nation’s growing energy needs. By providing greater regulatory certainty while also protecting the environment, NWPs permits encourage investment and prevent many unnecessary costs and project delays.

Within this framework, we believe that the existing NWPs and their terms and processes, are robust, legally durable, and fully in compliance with the applicable authorities including the CWA Section 404 and the RHA Section 10. In fact, many NWP terms are considerably more protective than the minimum statutory requirements for a program that is intended for activities with minimal adverse impacts. Some NWPs include onerous and overly burdensome terms and require processes that add more paperwork and unnecessary hoops akin to the requirements for an individual permit. As such, we fully support the Administration’s goals to realign critical elements of the permitting system and look for ways to facilitate greater efficiencies in the NWP program.

We appreciate the Corps’ foresight, early planning, and strategic solicitation of early comments which will help inform staff on streamlined pathways for timely authorizations of activities that have minimal impacts. Using the extensive experience of our members, we provide the attached comments for your consideration, including our responses to the six questions the Corps poses.

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<sup>1</sup> 91 Fed. Reg. 12,591 (Mar. 16, 2026).

<sup>2</sup> American Petroleum Institute, Center for Liquefied Natural Gas, Energy Infrastructure Council, Natural Gas Supply Association, the Petroleum Alliance of Oklahoma, and the Utah Petroleum Association, Comments submitted to the Corps on the Proposal to Reissue and Modify Nationwide Permits; RIN 0710-AB56, July 18, 2025. Available at: <https://www.regulations.gov/comment/COE-2025-0002-0278> (“2025 NWPs Comments”)

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## I. EXECUTIVE SUMMARY

The Associations are committed to meeting the challenge of providing affordable and reliable energy and we support policies that strengthen our nation's energy security and economy while protecting the environment. For regulatory certainty, it is crucial to our members that the NWP do not lapse, and that American infrastructure can continue to develop resiliently in response to dynamic market conditions. Robust regulations and complementary permitting programs are essential to realizing the vision, and the NWP program is a key component in ensuring a reliable energy infrastructure.

For over 40 years, the NWPs have streamlined approvals of activities with minimal adverse impacts to Waters of the United States (“waters of the U.S.”) under the CWA Section 404 and RHA Section 10. This allows the Corps to focus its limited resources on reviewing projects with greater environmental impacts, while providing timely and cost-effective permitting for the regulatory community on projects with minimal environmental effects. Yet, as NWPs have expanded to 57 NWPs and 32 GCs, there have been increasing burdens put on the permittees with onerous permit terms and inefficient permitting processes that hinder timely approval of NWP-authorized activities.

As such, we fully support and endorse the Corps’ “continuing goal” to reduce “unnecessary paperwork and delays” and we appreciate the Corps reiterating that the NWP program is designed to provide “timely authorizations for the regulated public while protecting jurisdictional aquatic resources.”<sup>3</sup> The Associations considered the Notice carefully, and each of the six questions. Below is a brief overview of our comments following by detailed discussion.

**General Comment.** We appreciate the Administration’s timely reissuance of the 2026 NWPs with the expiration date of March 15, 2031.<sup>4</sup> We understand the tight time constraints the Corps was working under, and we are grateful for the staff’s diligence and hard work in issuing a set of robust and legally durable general permits. We appreciate the Corps’ steady focus on the NWPs and for swiftly seeking input from stakeholders on potential changes. For future rulemaking, if possible, we recommend beginning the NWP reissuance process at least one year in advance and planning for at least a 90-day comment period. We would also recommend reissuance of all NWPs at the same time to provide consistency and regulatory certainty in the process.

### **Specific Comments on 6 Questions Posed.**

- 1. What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny? For instance, are there any Pre-Construction Notifications (“PCNs”) requirements, NWP impact**

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<sup>3</sup> 91 Fed. Reg. at 12,591.

<sup>4</sup> 91 Fed. Reg. 768 (Jan. 8, 2026).

**limits, or general conditions (“GCs”) that should be modified or should remain unchanged?**<sup>5</sup>

- Retain certain PCNs, refine overly broad PCNs, and remove unnecessary PCNs.
- Retain existing 1/2-acreage impact limits, clarify that the limit applies to a complete loss of waters of the U.S. rather than temporary or long-term impacts, and recommend refinements.
- Support GCs and recommend certain revisions including removing GC 23’s (Mitigation) 3/100-acre mitigation threshold and associated GC 32(b)(6) (PCN).
- Preserve streamlined review for routine maintenance and integrity-driven activities conducted within existing rights-of-way, recognizing the importance of timely authorization for activities with minimal impacts.
- Improve efficiency and predictability in PCN review processes, including through clearer timelines and consistent application of requirements across the Corps Districts.

**2. What measures should the Corps consider, that would improve or maintain efficiency in the review of pre-construction notifications or issuance of NWP verifications? For instance, are there any requirements for agency coordination of a PCN, contents of a complete PCN, or verification compliance with applicable federal procedural laws and implementing regulations that should be modified or remain unchanged?**

- Recommend streamlined timelines for situations where PCNs are triggered under GC 18 (Endangered species) and GC 20 (Historic properties).
- Remove unnecessary and overly broad submittal requirements in GC 32 (PCN).
- Support the Corps’ voluntary verification compliance approach as an appropriate balance of regulatory oversight to ensure compliance.
- Clarify and consistently apply provisions under GC 18 (Endangered species) and GC 20 (Historic properties).
- Consider optional process efficiencies for recurring, low-impact activities, including approaches that reduce duplicative PCN review for substantially similar activities.

**3. What categories of activities that are similar in nature should the Corps consider for establishing new NWPs?**

- Recommend consistency and strict adherence to the plain meaning of the CWA Section 404(e)(1)’s term “similar in nature” as well as to the jurisdictional boundaries of the Corps’ authorities, and longstanding practice, when considering new categories of activities for establishing new NWPs.

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<sup>5</sup> Questions edited with non-substantive changes.

**4. What measures should the Corps consider to ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental effects both individually and cumulatively? For instance, are there NWP terms, GCs, or processes that should be modified or remain unchanged?**

- Recommend changes for greater streamlining and efficiencies; however, the NWP terms such as the acreage limits, GCs, and processes including the discretionary authority provided to district engineers to modify, suspend, or revoke NWPs, are robust and legally sufficient in ensuring that the NWP-activities cause no more than minimal adverse environmental effects both individually and cumulatively.

**5. What measures should the Corps consider to develop NWPs, terms, GCs, or processes for the transportation and disposal of dredged material into ocean waters?**

- Currently neutral on the development of new NWPs but recommend review and consistency with existing NWPs relating to ocean waters under CWA Section 404 and RHA Section 10 and if NWPs are developed, suggest separate Marine Protection, Research, and Sanctuaries Act (“MPRSA”)-based NWPs, and not in combination with existing NWPs.

**6. What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the nationwide permit program? For instance, what changes should the Corps consider that would increase the efficiency of the Chief of Engineer’s decision-making process to reissue the NWP?**

- Support existing CFR regulations pertaining to the NWP program, and the DE’s discretionary authority, provide comments on ways to increase efficiencies, and support initiatives for greater collaborations and consistency amongst the Corps Districts.

## **II. The Associations’ Interests**

API and a coalition of national and state oil and natural gas trade organizations have been actively involved in participating in the notice and comment process in the 2026 NWPs Reissuance

Process,<sup>6</sup> 2022 Request for Input relating to NWP 12,<sup>7</sup> 2021 and 2016 NWPs reissuance process,<sup>8</sup> and 2017 Corps' regulatory reforms efforts.<sup>9</sup> We have also submitted comments to rules related to the waters of the U.S. including the 2025 Proposed Updated Definition of "Waters of the United States,"<sup>10</sup> the Navigable Waters Protection Rule ("NWPR"), December 7, 2021 Revised Definition of Waters of the U.S. rulemaking,<sup>11</sup> as well as other related rulemakings, such as the 2019 U.S. Fish and Wildlife Service ("FWS") and National Marine Fisheries Service ("NMFS") rules.

Our members actively use a variety of critical NWPs for many of their essential energy production, transportation, and development activities that have little or no adverse impact on the nation's aquatic resources. We fully support the Administration and the Corps' position that the NWPs' faster processing times with reduced paperwork incentivize developers to design projects that reduce environmental impacts, facilitate more efficient processing of environmental permits that would otherwise require an individual permit. Based on our members' extensive experience and expertise in the CWA and related rulemakings, as well as environmental permitting and regulatory compliance, we offer our support for a timely reissuance of the 56 NWPs. Also, understanding time constraints, we provide comments for your consideration for this rulemaking as well as in anticipation for future reissuances.

The Associations and their interests are summarized as follows:

**API** is a nationwide, non-profit trade association that represents all facets of the natural gas and oil industry, which supports 10.3 million U.S. jobs and nearly eight percent of the U.S. economy. API's more than 600 member companies include large integrated companies, as well as exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms. API was formed in 1919 as a standards-setting organization, and API has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability. API and its members are dedicated to meeting environmental requirements, while

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<sup>6</sup> 2025 NWPs Comments.

<sup>7</sup> API and 11 national and state energy industry trade organizations, Comment Letter, Notice of Virtual Public and Tribal Meetings Regarding the Review of Nationwide Permit 12, Establishment of a Public Docket, Request for Input. Docket No. COE-2022-0003, May 27, 2022. Available at: <https://www.api.org/~media/Files/News/2022/05/27/NWP-12-Filed-Comments-2022>

<sup>8</sup> API and 20 national and state energy industry trade organizations, Comment Letter, Proposed 2020 NWPs, Docket No. COE-2020-0002, November 16, 2020; API, Comment Letter, Proposed 2016 NWPs, Docket No. COE-2015-0017, Aug. 1, 2016. 2020 comments available at: <https://www.ipaa.org/wp-content/uploads/2020/11/2020-NWPs-Complete-Package-Final-Filed.pdf>

<sup>9</sup> API and AOPL, Comment Letter to the Corps Subgroup to the DOD Regulatory Reform Task Force, Oct. 18, 2017. Available at: <https://aopl.org/documents/en-us/8107597b-f3f8-4b4c-9b1c-21563b35d722/1>

<sup>10</sup> API and 4 national and state energy industry trade organizations, Comment Letter to the Proposed Updated Definition of "Waters of the United States," Docket No. EPA-HQ-OW-2025-0322, January 5, 2026. Available: <https://www.ipaa.org/wp-content/uploads/2026/01/WOTUS-Comments-1.05.2026.pdf>

<sup>11</sup> API, IPAA, AEPC, and AOPL, Comment Letter to the EPA and Corps' Proposal to Define "Waters of the United States," Docket No. EPA-HQ-OW-2018-0149, Apr. 15, 2019. Available at: <https://www.api.org/~media/Files/News/Letters-Comments/2019/april/WOTUS-2019.pdf>

economically developing and supplying energy resources for consumers.

**IPAA** serves as an informed voice for the exploration and production segment of the industry and advocates its members' views before the United States Congress, The White House, and federal agencies. IPAA represents the thousands of independent oil and natural gas producers and service companies across the United States.

**Western Energy Alliance** (the Alliance) is the leader and champion for independent oil and natural gas companies in the western United States. Working with a vibrant membership base for over 50 years, the Alliance stands as a credible leader, advocate, and champion of industry. Alliance members engage in all aspects of environmentally responsible exploration and development of oil and natural gas. Our expert staff, active member committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all.

**AOGA** is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry in Alaska for the benefit of all Alaskans. AOGA's 14 member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska."

**COGA** is a non-profit trade organization that represents over 200 companies throughout the state of Colorado. For nearly 40 years, COGA has sought to create a thriving, innovative and respected oil and natural gas industry in Colorado that embodies the values of our communities, prioritizes the protection of our environment, and provides the natural resources that advance our society. COGA provides a positive, unified, and proactive voice for the oil and natural gas industry in Colorado.

**MPA** is a Montana-based trade association representing over 150 member-companies involved in all aspects of the oil and natural gas industry. MPA's members include producers, refiners, suppliers, pipeline operators, transporters, and mineral owners as well as service and supply companies that support all segments of the industry and employ a substantial number of hard-working Montanans.

**NMOGA** is a coalition of oil and natural gas companies, individuals, and stakeholders dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico. Representing over 1,000 members, NMOGA works with elected officials, community leaders, industry experts, and the general public, to advocate for responsible oil and natural gas policies and increase public understanding of industry operations and contributions to the state. New Mexico's oil and natural gas activity is concentrated in two areas: the Permian Basin in the southeast and the San Juan Basin in the northwest. New Mexico is one of the United States' leading producers, ranking 2nd in annual oil production and 9th in annual natural gas production. New Mexico is attracting interest and attention from around the globe, as the Permian Basin undergoes a resurgence of production and investment activity.

Established in 1952, **NDPC** is a trade association that represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. Our members have an extensive history of responsible oil and gas development and environmental stewardship in North Dakota, which boasts some of the cleanest air and water in the country.

The **Petroleum Alliance of Oklahoma** is the largest oil and gas trade association in the Mid-Continent and the only trade association in Oklahoma to represent all sectors of the state's oil and natural gas industry. Representing more than 1,700 individuals and member companies, the Alliance's membership includes oil and natural gas producers, service providers to the oil and natural gas industry, midstream companies, refiners, and other associated businesses. Our members include companies of all sizes, ranging from small, family-owned companies to large, publicly traded corporations. Our members are responsible for 83% of all operated crude oil and natural gas production in Oklahoma. When non-operated production is considered, we estimate our members produce, transport, process, and refine more than 97% of Oklahoma's crude oil and natural gas. Additionally, our members have operations, assets, or interests in most of the United States' oil and natural gas producing regions as well as internationally. Our members develop private, state, and federal minerals and operate on federal lands in Oklahoma and in other states.

**UPA** is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. UPA members operate extensively on federal lands and have a long history of stewardship and conservation.

The **CLNG** represents LNG producers, shippers, and multinational developers in the United States. It serves as a resource for educational and technical information to help policymakers fully realize the potential of LNG to meet the world's energy needs while reducing emissions, and supporting domestic economic growth.

The **NGSA** represents integrated and independent companies that supply natural gas. Founded in 1965, NGSA is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA advocates for regulatory certainty and well-functioning markets for natural gas. Through our support for innovative technologies and partnerships with all energy sources, NGSA is dedicated to sustainably meeting our nation's growing energy demand.

### III. Responses to Solicitation of Input on Potential Future Changes to NWP.

“Reducing unnecessary paperwork and delays”<sup>12</sup> is a shared goal and we applaud the Corps for proactively undertaking this solicitation of input in furtherance of efforts to streamline the authorization process for activities authorized under the CWA Section 404 and RHA Section 10. We also appreciate the Corps emphasizing that the NWP program “is designed to provide timely authorization for the regulated public while protecting the jurisdictional aquatic resources.”<sup>13</sup>

Our members have been key stakeholders in the NWP reissuance process for several rulemakings. Based on our extensive experience with NWPs, we are pleased to provide comments. The Corps also welcomes input on all aspects of the NWP program and as noted above, we also incorporate our 2025 NWPs Comments which included several comments for future rulemaking.

We understand the time constraints surrounding the 2026 Reissuance process, and we appreciated the Corps’ timely and swift reissuance of the NWPs. For future rulemaking and understanding dynamics at play outside of the Corps’ control, we would encourage a regulatory process that provides at least a 90-day comment period given the complexities involved with NWPs and a process that is started at least one year prior to the expiration date. We also support all NWPs issued in the same cycle and having the same effective and expiration dates. This will greatly aid the regulated public in providing regulatory certainty as well as the Corps staff with enforcement and compliance efforts.

Overall, we fully agree with the Corps on key concepts that comprise the longstanding NWP program including the notice and hearing process that allows for NWPs to be issued on a nation-wide basis for any category of activities involving the discharge and dredged or fill material into waters of the U.S.

Within the process, since 1977, the Corps has issued legally durable NWPs such as the longstanding NWP 12, as well as NWP 57 and NWP 58, authorizing utility line activities that meet the 1/2-acre limit, PCN triggers and submittal requirements, GCs, additional conditions embedded in the applicable NWP, and any regional-specific or case-specific conditions. An added backstop is the discretionary authority given to the district to modify, suspend, or revoke NWPs in specific geographic areas.

Yet, we find that over time, the NWP program has strayed from its core mission of authorizing general permits for categories of activities with minimal impacts efficiently and in a timely manner. As the Corps states, “General permits provide applicants a streamlined process to obtain DA authorization in exchange for avoiding and minimizing impacts to jurisdictional aquatic resources.”<sup>14</sup>

We encourage and support the Corps to consider revisions to the NWP program that are course corrections in an otherwise legally-robust permitting program. Applicants require regulatory certainty and

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<sup>12</sup> 91 Fed. Reg. at 12,591.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

consistent applications of core terms and processes across the Corps Districts. Inconsistent decision making can lead to delays in permitting processes, and even unnecessary elevations to individual permit reviews. In sum, the NWP terms and definitions should be consistently applied to NWP-authorized activities, and even where PCNs are triggered, those activities should be processed without undue delay.

We are pleased to provide detailed response to the Corps' specific questions.

**1. What measures should the Corps consider that would eliminate unnecessary review over jurisdictional activities that do not require heightened scrutiny? For instance, are there any PCN requirements, NWP impact limits, or GCs that should be modified or should remain unchanged?**

**a. Retain certain PCNs, refine overly broad PCNs, and remove unnecessary PCNs.**

NWPs are designed to regulate with little, if any, delay or paperwork.<sup>15</sup> We support removing PCN requirements in situations where the PCN triggers are overly broad and untethered to reasoned justification. In cases where PCNs are triggered, we ask the Corps to review the submittal requirements and refine and remove requirements that are burdensome and unnecessary for activities with minimal impacts. We also request a review of all PCN requirements for consistency with other similar requirements, and to ensure that PCN triggers are reasonable and narrowly tailored.

Timely authorization of routine maintenance and integrity-driven activities is also an important component of effective risk management. These activities are undertaken to address known conditions identified through federally regulated inspection and integrity programs, including those overseen by the Pipeline and Hazardous Materials Safety Administration. When authorization timelines align with maintenance planning, corrective actions can be implemented as intended; conversely, extended review periods can unnecessarily lengthen the duration during which identified, regulated conditions remain under active monitoring. Ensuring that routine maintenance activities remain subject to appropriately streamlined review supports the purpose of the NWP program while complementing existing safety and environmental regulatory frameworks. In that context, our detailed comments are included in our 2025 comment letter and we highlight the following:

**NWP 12, NWP 57, and NWP 58.** First, we recommend that the PCN triggers remain the same for all three NWPs that authorize utility line activities. Second, we support the continued removal of the 5 unnecessary PCN requirements as first adopted in 2021 NWP 12 and continuing into 2026 reissuance. For future rulemakings, we support retaining two PCN triggers relating to utility lines crossing navigable waters subject to RHA Section 10, and utility line activities resulting in the loss of greater than 1/10-acre of waters of the U.S. under the CWA. As provided in the 2025 NWPs comments, we also urge the Corps to remove the NWP 12-specific 250-mile PCN threshold for new oil and natural gas pipeline projects

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<sup>15</sup> 33 CFR 330.1(b).

that are greater than 250 miles in length. This additional threshold unfairly targets NWP 12 activities and adds an arbitrary 250-mile PCN threshold without any reasoned justification.

**NWP 39.** We recommend that the Corps consider a tailored approach rather than one-size-fits-all method that folds in more activities for PCN review than necessary for a program that is intended to be streamlined for activities with minimal impacts. We appreciate the Corps' response to our 2025 NWPs Comments, but we continue to urge a review of NWP 39's (Commercial and industrial developments) acreage limit.

NWP 39 is important in that it authorizes discharges of dredged or fill material into non-tidal waters of the U.S. for the construction of commercial and institutional building foundation and building pads, and attendant features that are necessary for the use and maintenance of the structures. There are "including but not limited to" attendant features and examples of commercial developments such as roads, parking lots, garages, and yards. This NWP is crucial to our members as well as in meeting the nation's energy needs because it also be used for energy infrastructure projects relating to power plants, refineries, oil wells and drilling pads, and other types of energy projects. NWP 39 has even broader application to national security because in 2026, this NWP was revised and now also explicitly includes data centers such as artificial intelligence and machine learning facilities.

We recommend a review and revision of the blanket PCN requirement for all NWP 39 activities that either removes the unnecessary PCN threshold or adopts a tailored approach similar to NWP 14 which requires PCNs only if loss of waters of the U.S. exceed 1/10-acre or if there is a discharge in a special aquatic site.

- b. Retain existing 1/2-acreage impact limits, clarify that the limit applies to a *complete loss* of waters of the U.S. rather than temporary or long-term impacts, and recommend refinements.**

**1/2-acreage Limit.** At a minimum, consistent with our comments in 2025 as related to NWPs of interest to the oil and natural gas industry, we recommend retaining the 1/2-acre impact limits, and no further lowering of the limits is necessary. We also recommend that the Corps clarify that the 1/2-acre impact limit applies to discharges that would result in a *complete loss* of waters of the U.S. rather than temporary or long-term impacts of waters of the U.S., as has been inconsistently interpreted by some Corps Districts based on some of our members' experience. We request that the Corps provide clear direction that the 1/2-acre impact limit applies to discharges that would result in a *complete loss* of waters of the U.S. (i.e. conversion to a terrestrial habitat or grey infrastructure) rather than the temporary or long-term impacts to the waters of the U.S. (e.g. conversion of forested wetland to an emergent wetland within a newly maintained right of way). That is, there may be loss or change in one sense, but it may not result in a permanent loss of waters of the U.S. which should be the determinative criteria in assessing the 1/2-acreage limit. Providing this important clarification would improve predictability, reduce unnecessary permitting burdens, and ensure that the rule is implemented as intended.

We also ask the Corps to maintain its longstanding position that for the purposes of NWP's related to linear activities, each separate and distant crossing of jurisdictional waters for the linear project is considered as a single and complete project, and the 1/2-acre impact limits for loss of waters of the U.S. applies to each separate and distant crossing of a waters of the U.S. No additional definition is needed for separate and distant as the term is clearly understood and applied by the Corps.

**NWP 6, 14, and 18.** The Associations recommend that additional acreage limits including the current 1/10-acre for NWP 6 (Survey activities) and NWP 18 (Minor discharges), and 1/3-acre for tidal waters for NWP 14 (Linear transportation projects) should be reassessed and revised as necessary for consistency with other similar NWP's that have a 1/2-acre impact limit for loss of waters of the U.S. For example, NWP 14 includes a separate 1/3-acre limit for tidal waters which is inconsistent with similarly authorized activities in the current NWP 12 or NWP 51, and we recommend that the requirement be changed to 1/2-acre impact limit for consistency. This comment was previously made in 2020 and in 2025, and while the comment was acknowledged, no change was made.

In keeping with the policies set out by the current administration for streamlining the permitting process and for removing unnecessary burdens that prevent efficiencies in the NWP process, we ask for a reconsideration with an appropriate consistency review of the acreage limits of NWP's 6, 14, and 18. We also recommend making NWP 14's minimum acreage limits for NWP authorizations consistent with linear project activities under NWP 12, NWP 57, and NWP 58. We appreciate the Corps' response to our 2025 NWP's Comments and we continue urging a review and reconsideration. The Corps has already established that 1/2-acre limit is sufficient to meet the minimum impacts requirement under the CWA for several NWP's including NWP 12, NWP 57, and NWP 58. We understand that the 1/3-acre limit for tidal waters has been in place since it was first introduced; however, that does not mean its PCN threshold cannot be reassessed and streamlined to be consistent with other similar activities.

- c. We support GCs and recommend certain revisions including removing GC 23's (Mitigation) 3/100-acre mitigation threshold and associated GC 32(b)(6) (PCN).**

**Revise and remove unnecessary GC requirements.** Generally, we are supportive of the 32 GCs and request that they mostly remain unchanged and without additional onerous requirements added. We also recommend reviewing and revising GC 18 (Endangered species), GC 20 (Historic properties), and GC 32 (PCN) as discussed below, and in our 2025 NWP's Comments.

We also urge the Corps to reconsider GC 23 (Mitigation) given the NWP's core mission related to activities with minor environmental impacts, and at a minimum, remove GC 23's new 3/100-acre mitigation threshold for streams and associated requirement in GC 32(b)(6). The DE has the discretion to determine compensatory mitigation on a case-by-case basis for NWP activities (which can, in addition, include additional on-site avoidance and minimization of adverse impacts to jurisdictional waters). This process recognizes regional variations and places responsibility at the

district level. Instead of additional unnecessary mitigation thresholds at the national level, we recommend leaning into the district engineer’s discretionary authority to decide on case-by-case basis or through regional conditioning.

Additionally, we encourage the Corps to continue maintaining the GCs as nationwide conditions and refrain from adopting prescriptive best management type provisions that are more appropriate at the district engineer level where BMPs may vary by region and industry sector. For example, the 2026 NWP added BMP type language to GC 11 (Equipment) which we believe should be removed. It is not necessary to include the additional language that specifies that areas affected by temporary mats must be restored. Such practices are already a part of industry’s BMPs, and otherwise, should be addressed as part of regional conditioning based on local conditions and the district engineer’s discretion as appropriate. The adopted language utilizes broad terms that are unnecessary and will only promote further confusion and uncertainty. For example, the language provides for “significant soil compaction” and yet no further guidance or clarity is provided. Such a broad term is ambiguous and creates difficulty from compliance perspective for the permittee as well as limits enforcement for the Corps. Depending on regional variation relating to soil types, there may be different definitions of soil compaction leading to greater regulatory uncertainty. Clearly there is a process laid out in the NWP for such circumstances which would be voluntary compliance and where that fails, there is the additional safeguard of the district engineer being able to step in with regional or specific conditions.

**2. What measures should the Corps consider that would improve or maintain efficiency in the review of pre-construction notifications or issuance of NWP verifications? For instance, are there any requirements for agency coordination of a PCN, contents of a complete PCN, or verification compliance with applicable federal procedural laws and implementing regulations that should be modified or remain unchanged?**

We applaud the Corps requesting meaningful measures to improve and maintain efficiency in the review of PCNs or issuance of NWP verifications. This is an area where we see the most misalignment with the mission of NWP program in terms of unnecessary paperwork and delays in authorizations of activities due to onerous requirements. We highlight areas of major concern with specific comments provided in our 2025 NWP Comments.

**a. We recommend streamlined timelines and submittals for situations where PCNs are triggered under GC 18 (Endangered Species) and GC 20 (Historic properties).**

**Timely processing and reviews of PCNs.** In situations where PCNs are triggered under GC 18 and GC 20, we recommend streamlined timelines for completion of review. Under GC 18 and GC 20, the PCN trigger requirement can serve to delay or even stop an energy project. For example, under GC 18(c), the district engineer makes the initial determination whether a proposed activity for non-federal permittees “may affect” or will have “no effect” on listed species or designated critical

habitat within 45-days of receipt of a completed PCN. GC 18(c) further provides, however, that if the applicant has not heard back from the Corps within 45 days, it must wait for notification from the Corps regarding the district engineer's determination whether the proposed NWP activity "may affect" or will have "no effect" on listed species or designated critical habitat. Similar provisions are in GC 20 relating to the PCN submittal requirements triggering review if an activity "might have the potential to cause effects." The PCN review then is without any time constraints and can significantly hinder a permittee's ability to move forward on a project that by its nature is designed to have minimal impacts. In essence, this step has the effect of slowing down the permit processing times considerably at the detriment of crucial energy projects.

To ensure timely processing and review of PCNs, the Associations recommend that the Corps adhere to the 45-day review time from receipt of a completed PCN for the district engineer to make a determination; or as alternative, rewrite the provision with a not-to-exceed 90-day review requirement for PCN verification in the event this provision is triggered to ensure the district engineer timely reviews and responds to these PCNs.

In addition, the 45-day requirement default authorization (except for certain GC or NWP exceptions such as if GC 18 or GC 20 consultations are triggered) can simply be restarted if the district engineer finds the PCN submittal incomplete. We recommend the Corps assess this process and, evaluate options within its existing authority under 33 CFR Section 330.1(e) to further refine and streamline the review times. Processes such as notifying applicants within 30-days if a PCN is deemed incomplete are helpful but a shorter time of 15-days would aid in streamlining the NWP review. For wetland delineations, we also recommend that applicants should be able to provide sufficiently detailed information which would deem the PCN complete and trigger the 45-day requirement under GC 32(b)(5).

Beyond refining and narrowing PCN regulatory triggers and submittal requirements, the Corps may also wish to consider optional process-related, non-regulatory efficiencies for recurring, low-impact activities, such as programmatic or batched PCN approaches for substantially similar activities conducted within a defined corridor or time period. Where appropriate and notwithstanding established regulatory requirements (e.g. each oil or natural gas pipeline crossing of a single waterbody being considered "separate and distant," and evaluated separately for the 1/2-acreage limit and 1/10-acre PCN trigger), we believe that allowing reliance on previously reviewed methodologies or mitigation measures for repetitive work could reduce duplicative review while preserving district engineer discretion and ensuring continued compliance with applicable environmental requirements.

Additionally, the Corps should allow the use of desktop materials where appropriate and final approval of these NWPs should not be based solely on completed wetland delineations per Corps methods.

- b. We recommend review and removal of many unnecessary submittal requirements under GC 32 (PCN).**

**Contents of a complete PCN.** Unfortunately, the requirements for PCN submittals have increased significantly and our comments have gone unheeded. Overall, this GC has been inundated with onerous information requirements resembling requirements for an individual permit. That was clearly not the intent of Congress in creating the NWP program. We recommend a thorough review of GC 32 and all the content requirements that have been added, especially in the 2021 NWPs, and the removal of many of the unnecessary PCN content requirements.

Targeted provisions for single and complete linear projects are unnecessary and onerous with the PCN requiring the inclusion of “quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters.”<sup>16</sup> Further targeting linear projects, GC 32(b)(4)(ii) also requires applicants to submit onerous information for other separate and distant crossings for linear projects that do not even require PCNs. Similar to individual permit requirements, GC 32(b)(4)(i) also asks for information in the PCN submittals to include “anticipated amount of loss of wetlands” resulting from the NWP activity, “in acres, linear feet, or other appropriate unit of measure” as well as “a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity.” As a reminder, the NWPS are only designed for activities with minimal environmental impacts, and yet the PCN submittal requirements appear to be more appropriate for an individual permit evaluation.

**c. We support the Corps’ voluntary verification compliance approach.**

**Voluntary verification requests.** We support the Corps’ voluntary verification compliance approach as an appropriate balance of regulatory oversight to ensure compliance. Voluntary verification requests are an essential tool that are available where no PCN is required. It is important to note that district engineers have the discretionary authority to require PCNs for activities through regional conditions; and for activities where a PCN is not required, the district engineers also can have the opportunity to review PCNs submitted through the voluntary NWP verification process. While improvements can always be made, we believe that generally no changes or revisions are required in this voluntary verification process.

**d. We recommend revising internal processes related to GC 18 (Endangered species) and GC 20 (Historic properties).**

**Review of PCNS as related to GC 18 and GC 20.** Generally, we support the Corps’ determination that all activities authorized by the NWPs comply with Section 7 of the Endangered Species Act (“ESA”), consistent with the NWP regulations and GC 18. We also agree with the Corps that federal agencies should follow their own procedures for complying with the requirements of the ESA; and that the respective federal agency should be responsible for fulfilling its obligations under Section 7 of the ESA. As discussed in our 2025 NWPs Comments, we support the Corps’ determinations related to historic properties and statutory authority as well. However, as discussed above, GC 18 along with GC 20 have significant issues relating to the delays in receiving timely

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<sup>16</sup> GC 32(b)(4).

authorizations, and require a thorough review and reconsideration of its applicable Corps regulations, PCN thresholds, and internal permitting processes. In their current form, GC 18 and GC 20 processes mimic the timing and review of an individual permit which is not appropriate for NWP's designed only for minimal impacts.

Our members also find inconsistencies in the reviews of PCN triggers and application of terms, and we request further guidance on the ambiguous language “in the vicinity of the project” under 33 CFR Section 330.4(f)(2) as well as GC 18(c) (note: GC 28(c) (Use of Multiple NWP's) refers to the “activity” instead of “project”). A reasonable application of “in the vicinity of the project” (or activity) language by the Corps should be restricted by factors such as the nature of activity, nature of impact, and regulatory requirements of the threatened and/or endangered species in question, as well as impacts to jurisdictional waters. Clarifying the reasonable scope of this language will help both the permitting agencies as well as the permittees in processing the NWP-authorized activities correctly and in a timely manner.

We also recommend that the Corps clarify and apply provisions under GC 20 relating to historic properties consistently across districts, including the terms “might have the potential to cause effects.” The terms under GC 20(c), “might have the potential to cause” or “potentially eligible,” are vague standards and our experience indicates that districts are applying these requirements inconsistently and more expansively than is appropriate. We request that GC 20 be drafted to clarify that it is up to the non-federal permittee to decide whether the threshold “might have the potential” standard has been met based upon experienced professional advice and the nature of the activity. This includes the determination of whether the NWP activity might have the potential to cause effects to “any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Properties.” Without this clarification, we believe that districts will continue to seek information regarding cultural resources along the entirety of a linear project, for example, which has the effect of making every crossing into one for which a PCN is required.

To provide permittees certainty in meeting the PCN requirement for those NWP activities that “might have the potential to cause effects on any historic properties,” we recommend that GC 20(c) be revised to include the professional qualifications of the non-federal permittee who would make such as a National Historic Preservation Act (“NHPA”) Section 106 compliance determination (i.e. a qualified person who satisfies the Secretary of the Interior’s Standards for Professional Qualifications in Archaeology and Historic Preservation). The Corps has stated in its response to our comments that it is not appropriate to add such a stipulation because this determination “may be made by a variety of agency officials, including Corps district staff.”<sup>17</sup> Yet, as the Corps explains, the “Non-federal permittees are responsible for determining if an activity ‘might have the potential to cause effects to historic properties,’” and that, the Corps is “ultimately responsible” for determining Section 106 compliance.<sup>18</sup> This expansive and broad scope of review for NHPA

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<sup>17</sup> 90 Fed. Reg. 768, 832 (Jan. 8, 2026).

<sup>18</sup> *Id.*

Section 106 determinations by a myriad of Corps team members across the board introduces delays and inconsistent processes.

The stipulation we request would provide front-end accountability and aid in reducing unnecessary and duplicative Corps' review. We continue to ask the Corps to review this internal process and improve efficiencies. Review by a team without clear direction and no tie-in to the Secretary's Standards for Professional Qualifications in Archaeology and Historic Preservation, lead to inconsistencies and continual changes to final scopes of review which hurt applicants' planning process and can result in delays as additional last minute and unanticipated requests. Our recommended language is: "Non-federal permittees must submit a PCN to a DE . . . as determined by an individual meeting the Secretary of the Interior's Standards for Professional Qualifications in Archaeology and Historic Preservation."

Amending the process by which PCNs are triggered and reviewed under GC 18's and GC 20's PCN triggers, will lead to a more streamlined process for the NWP program while providing benefits as resources are freed up to focus on more complex individual permits.

**3. What categories of activities that are similar in nature should the Corps consider for establishing new NWPs?**

- a. We recommend consistency and strict adherence to the plain meaning of the CWA Section 404(e)(1)'s term "similar in nature" as well as to the jurisdictional boundaries of the Corps' authorities, and longstanding practice, when considering new categories of activities for establishing new NWPs.**

**Similar in Nature.** We recommend consistency and strict adherence to the plain meaning of the CWA Section 404's term "similar in nature" as well as to the jurisdictional boundaries of the Corps' statutory authorities, and longstanding agency practices, when considering new categories of activities for establishing NWPs.

As background, CWA Section 404 authorizes the Corps to issue permits for discharges of dredged or fill material into waters of the U.S. Congress amended Section 404 of the CWA in 1977 to authorize the Corps to issue general permits for categories of activities that (1) "are similar in nature;" (2) will cause only minimal adverse effects; and (3) will have only minimal cumulative adverse effects.<sup>19</sup>

As the Corps has stated in the past, "[t]he 'similar in nature' requirement does not mean that activities authorized by an NWP must be identical to each other"<sup>20</sup> and "[w]e believe that the 'categories of activities that are similar in nature' requirement of [S]ection 404(e) is to be

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<sup>19</sup> 33 U.S.C. Section 1344(e).

<sup>20</sup> 71 Fed. Reg. 56,258, 56,259-56,260 (Sept. 26, 2006).

interpreted broadly, for practical implementation of this general permit program.”<sup>21</sup> We would caution against arbitrarily separating activities in ways that would be administratively burdensome and is not justified. For example, the longstanding NWP 12 relating to utility line activities was split up with three subtypes of authorized activities within that broad category even though the basic structure of the 2017 NWP 12 was retained for all three NWPs since it could apply to any utility line, regardless of what substance it conveyed.

Understanding that the Corps declined to keep NWP 12 as is, we are simply asking that for any future rulemaking, the Corps approach “similar in nature” conservatively with strict adherence to the statutory language and supported by reasoned justification. As a baseline, we do not support any further changes to NWP 12 and any entirely new categories of activities that the Corps may be contemplating should not introduce new administrative or procedural challenges with the implementation of existing NWPs.

If the Corps considers future refinements to the NWP program, it should evaluate whether routine maintenance and integrity activities — already authorized under existing NWPs — could benefit from additional clarification to promote consistent and efficient implementation.

- 4. What measures should the Corps consider to ensure that discharges of dredged or fill material into waters of the United States would cause no more than minimal adverse environmental effects both individually and cumulatively? For instance, are there NWP terms, GCs, or processes that should be modified or remain unchanged?**
  - a. At a minimum, we strongly recommend maintaining that all NWPs terms, GCs, and processes are robust, and cause no more than minimal adverse environmental impacts.**

**Robust NWPs.** We recommend changes concerning greater streamlining and efficiencies; however, we want to be clear that no additional measures are required to ensure that discharges of dredged or fill material in the waters of the United State would cause no more than minimal adverse environment effects both individually and cumulatively. The NWP program, including the 2026 NWPs, with its stringent acreage limits, PCN reviews, GCs, regional and case-specific conditions, and processes including the discretionary authority provided to district engineers to modify, suspend, or revoke NWPs, are robust and more than legally sufficient in meeting all the statutory requirements. The national reissuance process — including the decision documents — is an appropriate evaluation of potential environmental consequences, and there are additional mechanisms in place at the regional and site-specific scales. In addition, all other statutory requirements have been met including but not limited to the ESA and NHPA Section 106.

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<sup>21</sup> *Id.*

5. **What measures should the Corps consider to develop NWP, terms, GCs, or processes for the transportation and disposal of dredged material into ocean waters?**
- a. **Currently neutral on the development of new NWP but recommend review and consistency with existing NWP relating to ocean waters under CWA Section 404 and RHA Section 10 and if NWP are developed, suggest separate Marine Protection, Research, and Sanctuaries Act (“MPRSA”)-based NWP, and not in combination with existing NWP.**

**NWPS authorized under the MPRSA.** The Corps explains that it has not issued any NWP under Section 103 of the MPRSA, however, it notes that 33 CFR 330.1(g) provides authority for the Corps to issue NWP under this statute that was first adopted in 1972 and amended several times since.<sup>22</sup> The 33 CFR Section 330.1(g) first appears in 1986 under 33 CFR Section 320.2 titled “Authorities to issue permits”<sup>23</sup> and includes RHA of 1899, CWA, and MPRSA. The current language of Section 330.1(g) was adopted in 1991 and clearly stated that NWP can be issued to satisfy the permit requirements of these statutory authorities, “or some combination thereof” and that the applicable authority will be indicated at the end of each NWP.<sup>24</sup> This language continues to today.

It is not clear as to why the NWP program and all NWP issued to-date have been authorized under the CWA Section 404 and RHA Section 10 and have not included MPRSA. In response to the Corps’ solicitation of comments on this issue, we do not have a position on developing any new NWP under MPRSA except that it is untested. If the Corps were to activate MPRSA for NWP development, we would encourage the Corps to propose a program that is similar to the current NWP in that it is consistent with the underlying statutory authorities, and the associated NWP terms, GCs, and processes provide for a legally durable permitting program.

We recommend a review of existing robust and legally sufficient NWP that currently allow for the disposal of dredged materials into ocean waters as authorized under the territorial seas under the CWA (about 3 nautical miles), as well as RHA Section 10 waters which includes the Outer Continental Shelf (e.g., NWP 8, Oil and gas structures). Appropriate consideration for acreage impacts should be given to activities in aquatic environments. For example, the new NWP 60 for fish passage projects has a 1-acre acreage impact limit which is higher than other NWP. PCN thresholds, if necessary, should be targeted and narrowly tailored to the activity. Also, NWP already cover oceanic activities like aids to navigation, bank stabilization, minor dredging, subaqueous pipelines, and bridge construction under established NWP (e.g. NWP 12 covers oil and natural gas pipeline activities, NWP 3 (Maintenance) and NWP 19 (Minor dredging) covers maintenance and minor dredging in ocean and coastal areas, and NWP 6 (Survey activities) is also

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<sup>22</sup> 91 Fed. Reg. at 12,591.

<sup>23</sup> 51 Fed. Reg. 41,206, 41,221 (Nov. 13, 1986).

<sup>24</sup> 56 Fed. Reg. 59,110, 59,135 (Nov. 22, 1991).

important to the oil and natural gas industry for permitting survey activities, including drilling for data collection). Any new NWP should strive for consistency with these longstanding NWPs.

We appreciate the Corps adopting a new severability clause that states each NWP operates independently and is an individual agency action, thus if an NWP or if the application of any NWP to a specific activity in a particular location is rendered invalid, the NWP would remain applicable to all eligible activities.<sup>25</sup> However, CWA Section 404 and RHA Section 10 authorities are braided into each NWP as a basis for permitting terms, and while 33 CFR 330.1(g) does allow adding MPRSA-specific activities (or “in combination thereof”), there is no general permitting authority in MPRSA similar to CWA Section 404(e).

For our members, regulatory certainty and legally durable NWPs are key to planning long-term infrastructure projects, and introducing new requirements under MPRSA may lead to added complexities and potentially open new fronts for challenges. As such, we suggest any MPRSA-based NWPs, if proposed, should be promulgated as its own separate NWP.

- 6. What measures should the Corps consider to improve existing regulations regarding general permits or the implementation of the nationwide permit program? For instance, what changes should the Corps consider that would increase the efficiency of the Chief of Engineer's decision-making process to reissue the NWPs.**
  - a. Support existing CFR regulations pertaining to the NWP program, the district engineer's discretionary authority, and provide comments on ways to increase efficiencies.**

**33 CFR Part 330.** We appreciate the opportunity to comment on ways to increase the efficiency of the Chief of Engineer's decision-making process to reissue the NWPs. The longstanding NWP regulations under 33 CFR Part 330 establish the policy, procedures and requirements for the Chief Engineer to follow. We fully support the processes in place and recommend no substantive changes especially with 33 CFR Section 330.1 clearly stating that NWPs are designed to regulate with minimal delay or paperwork and focusing on activities with minor environmental impacts. We also support key definitions such as “Single and complete project” under 33 Section CFR 330.2. And 33 CFR Section 330.5 is important in providing authority to the district engineer to issue, modify, suspend, or revoke NWPs. Additionally, we provide detailed recommendations to improve efficiencies regarding the review of NHPA Section 106 and ESA issues (see above), and corresponding changes to 33 CFR 330.4(f) and (g) should be considered. Furthermore, we recommend removing “proposed for listing” from 33 CFR 330.4(f) which was the basis for language added to GC 18 in the 2026 NWPs. This would allow the Corps to focus its resources on listed species.

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<sup>25</sup> 91 Fed. Reg. at 773-774.

**Consistency and collaboration amongst the Corps Districts.** Overall, we support the NWP process, and we support the district engineer’s discretionary authority and recommend greater consistency across the Corps Districts in the use of this discretionary authority. We recommend a coordinated approach across districts with applying regulatory requirements consistently such that region-specific district engineer determinations remain reasonable, and that any district engineer-driven conditions are not overly broad. We also applaud initiatives such as the Corps’ designation of a lead district for permitting that cross district or state boundaries and we support similar programs for greater collaborations. Building on the lead district designation, we also suggest a team of national subject matter experts that can serve as a resource to district-level staff and assist with providing regulatory interpretations to ensure consistency in applying rules across the board. We continue to support these types of measures to further assist in greater coordination amongst the Corps Districts, especially for projects that cross multiple state and district boundaries.

There are also areas for improvements and examples of inconsistencies in applying the terms, including but limited to GC 23 (Mitigation) where there are variations in types of compensatory mitigation required for wetlands impacts; GC 20 (Historic properties) where there are inconsistent interpretations of historical property determinations “that might have the potential to be affected”; and GC 6 (Suitable materials) where there are variations in what various districts consider to be “unsuitable materials.”

**Online repository.** Furthermore, we appreciate the regional conditions, Section 401 water quality certifications and Coastal Zone Management Act consistency concurrences were posted in the regulatory docket for the 2026 NWPs. However, we would urge the Corps to also develop a user-friendly display of NWPs and all related documents at a central easy-to-find Corps online repository.

#### **IV. Conclusion.**

The Associations greatly appreciate the opportunity to provide input on potential future changes to NWPs. We wholeheartedly support the Corps’ mission for reducing paperwork and delays in the NWP program that is intended for authorizing activities that has minimal environmental impact. We emphasize the need for a durable NWP program that does not unnecessarily encumber permittees with overly broad terms or burdensome requirements and otherwise create regulatory uncertainty.

Thank you for your time and your careful review of this document. We look forward to engaging as stakeholders in any rulemakings concerning NWPs. We encourage you to reach out to the lead signatory below for clarification if you have any questions.

Sincerely,



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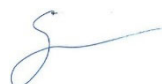
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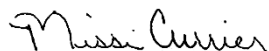
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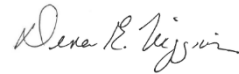
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