



July 18, 2025

**Via Regulations.gov**

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

**Re: COE-2025-0002; Proposal to Reissue and Modify Nationwide Permits, 90  
Fed. Reg. 26100 (June 18, 2025)**

Dear Sir or Madam,

GPA Midstream Association ("GPA Midstream") appreciates the opportunity to provide comments to the U.S. Army Corps of Engineers ("Corps") on its Proposal to Reissue and Modify Nationwide Permits ("NWP"), 90 Fed. Reg. 26100 (June 18, 2025) ("2025 Proposal").

GPA Midstream has served the U.S. energy industry since 1921 and has over 50 corporate members that directly employ more than 55,000 employees that are engaged in the gathering, transportation, processing, treating, storage, and marketing of natural gas, natural gas liquids ("NGLs"), crude oil, and refined products, commonly referred to as "midstream activities." The work of our members indirectly creates or impacts an additional 400,000 jobs across the U.S. economy. In 2023, GPA Midstream members had an economic impact of \$206.2 billion through operating more than 500,000 miles of pipelines, gathering more than 91 billion cubic feet per day of natural gas, and operating more than 365 natural gas processing facilities that delivered pipeline quality gas into markets across a majority of the U.S. interstate and intrastate pipeline systems.

**Summary**

GPA Midstream members include companies that frequently use NWPs to construct and maintain vital energy infrastructure. These projects are often small in scale and must be constructed quickly to maintain the integrity of the nation's infrastructure and to avoid interrupting the nation's supply of natural gas, crude oil, NGLs, and essential products derived therefrom. Midstream companies rely on NWPs to keep pace with market needs for natural gas, crude oil, and NGLs—including maintaining the availability and reliability of the U.S. domestic energy supply. Pipeline infrastructure is used to transport refined products, and to move raw materials and feedstock used to manufacture materials in nearly every sector of the U.S. economy. Therefore, the ability to use NWPs to eliminate unnecessary delay, costs, and burdens to cross streams, construct access roads, and maintain infrastructure is imperative to the mission of GPA Midstream members and to critical supply chains nationwide.

GPA Midstream Association  
Sixty Sixty American Plaza, Suite 700  
Tulsa, Oklahoma 74135  
(918) 493-3872

As explained in more detail below, GPA Midstream offers the following comments on the 2025 Proposal:

- GPA Midstream strongly supports the Corps' decision to add an NWP for fish passage (proposed NWP A).
- GPA Midstream supports the Corps' clarification that Section 401 water quality certification is limited to discharges directly from point sources into waters of the United States.
- The Corps should clarify certain General Conditions being reissued in the 2025 Proposal, including by limiting the scope of General Condition ("GC") 18 to conform with endangered species consultation authorities and by defining the applicable vicinity for submitting pre-construction notification ("PCN") under GC 18 and GC 20.
- GPA Midstream opposes the proposed changes to GC 11. The Corps should retain the flexibility included in the current GC 11, to limit additional equipment operation that would otherwise need to occur and allow for site-specific restorative methods.
- Submitting as-built drawings should not be a condition of any NWP and would exceed the Corps' authority; therefore, GPA Midstream agrees with the Corps' decision to recommend - but not to require - the submission of as-builts.
- GPA Midstream suggests improvements to NWP 14, 18, and 39 regarding pre-construction notification requirements.

#### **I. Proposed New NWP A Should be Adopted.**

The proposed issuance of new NWP A is a welcome development for activities that may improve the passage of fish and other aquatic organisms. This new NWP provides a regulatory path for pipeline operators and infrastructure developers to undertake environmentally beneficial retrofits where, in recent years, project proponents have an increased expectation to address aquatic connectivity and aquatic habitat. NWP A responds to this need by reducing permitting friction for voluntary and mitigation-driven projects that improve stream function.

NWP A would promote the use of nature-based and hybrid solutions by providing flexibility to conduct structural improvements—such as the installation of fish screens or the modification of outdated crossing structures—under a general permit, significantly reducing delays and uncertainty in the permitting process. It also enables integration of any required ecological enhancements into routine maintenance. For these reasons, the Corps should adopt NWP A.

#### **II. Revising General Condition 25 (Water Quality) to Confirm a Section 401 Water Quality Certification is Required Only for a Point Source Discharge to a Water of the US is a Sound Clarification to the NWPs.**

GPA Midstream interprets the proposed revision to GC 25 as clarifying that a Clean Water Act Section 401 water quality certification is required only for a “discharge from a point source into waters of the United States,” as opposed to simply a “proposed discharge,” where the latter might be interpreted ambiguously. With that framing, GPA Midstream supports the Corps’ proposed revision as it provides regulatory clarity. The revision reduces uncertainty surrounding when and where a state may require certification, particularly for linear projects where temporary fills or non-jurisdictional activities may be mistakenly subjected to state-level certification reviews.

For the midstream sector, clarity regarding when a Section 401 water quality certification is required is critical to managing project timelines and avoiding unnecessary procedural delays. Some states have erroneously asserted Section 401 authority over activities that do not clearly result in point source discharges into jurisdictional waters, creating delays and added compliance costs. To the extent the Corps’ proposed language reaffirms the correct statutory limit of Section 401, it helps applicants focus limited resources on appropriate water quality protection measures rather than boundless state reviews. This additional clarity supports more efficient infrastructure development without compromising environmental standards, consistent with the Clean Water Act’s cooperative federalism framework.

### **III. General Condition 18 (Endangered Species)**

#### **A. General Condition 18 Should Be Limited to Listed Species and Designated Critical Habitat, Not Those Proposed for Listing/Designation.**

GC 18 ensures that activities authorized under NWPs do not jeopardize the existence of listed threatened or endangered species or adversely modify designated critical habitat. However, the current (2021) GC further requires preconstruction notification (“PCN”) when species or critical habitat merely “proposed” for listing or designation “might be affected or is in the vicinity of the activity.” This requirement introduces regulatory uncertainty and imposes unnecessary burdens on permit applicants.

With recent increases in the number of proposed species, some of which cover large portions of the United States, GC 18 obligates many projects to submit a PCN where consultation under the Endangered Species Act may not be required. The status of proposed species is inherently uncertain and subject to change, creating moving targets for both regulators and applicants. The permissiveness of Section 7(a)(4) of the Endangered Species Act (ESA), which requires an agency to “confer” regarding actions “likely to jeopardize the continued existence of any species proposed to be listed ... or result in the destruction or adverse modification of critical habitat proposed to be designated for such species,” does not mandate this result. *See* 16 U.S. Code § 1536(a)(4).

The inclusion of *proposed* species and critical habitat thus frustrates the purpose of the NWP program by causing unnecessary delays for consultations without a corresponding benefit to threatened or endangered species. Instead of streamlining the authorization of activities with minimal impacts, the current GC 18 introduces additional administrative burdens. The Corps

should remove “proposed” species and critical habitats from the scope of GC 18 to ensure proper focus is given to protected threatened and endangered species and their critical habitats.

**B. The Scope of General Condition 18 Should Be Clarified to Exclude Activities with No Likely Adverse Effects.**

GC 18 currently requires PCN where listed species or designated critical habitat “*might* be affected or is in the *vicinity* of the activity” (emphasis added). GC 18 further provides that “[n]o activity is authorized under any NWP which ‘may affect’ a listed species or critical habitat” without Section 7 consultation. The Corps should align this threshold with the ESA Section 7 approach to consultation, which is tied to adverse effects on listed species or designated critical habitat. The PCN requirement should be limited, for example, by excluding instances when an action may affect, but is not likely to adversely affect listed species or designated critical habitat. Such an approach would facilitate the usage of NWPs while reducing PCN submittals where there is no reasonable anticipation of any adverse effect.

Including a requirement within GC 18 for PCN submittal when listed species or designated critical habitat “might be affected” ignores the distinction between formal and informal consultation provided in the regulations (i.e., at 50 C.F.R., Part 420) and incorporates unnecessary consultations into situations with little to no risk of adverse effects. As the Corps acknowledges, the use of “might” is intended to exceed the statutory threshold for consultation (i.e., to be more stringent than required). *See* 91 Fed. Reg. 26127. Thousands of consultations are initiated each year, leading to unnecessary PCNs and extended review timelines. *See* 91 Fed. Reg. 26129. Aligning the PCN threshold with a trigger based on likely adverse effects would strike a better balance between environmental protection and administrative efficiency. Furthermore, the absence of anticipated adverse effects would not impact the Corps’ continued conclusion that the issuance or reissuance of NWPs has “no effect” on listed species or designated critical habitat. *See id.*

Similarly, the language “or is in the vicinity of the activity” should be deleted from GC 18. The uncertainty surrounding this language creates risk for projects in deciding whether PCN is required and is too vague to be implemented reliably. Particularly with projects creating small disturbances—i.e., many projects for which NWPs are designed to be used, such as water crossings for linear projects—determining the appropriate “vicinity” to consider adds a burden for using the NWP without a corresponding benefit where impacts to listed species or designated critical habitat are unlikely. In the alternative, “vicinity” should be defined using the same framework as is used for historic properties (e.g., 300 feet on either side of the jurisdictional feature), discussed further below.

In summary, GC 18 should be revised (i) to exclude PCN when an activity may affect but is not likely to adversely affect listed species or designated critical habitat, and (ii) to provide certainty regarding the applicable vicinity for PCN. These changes would reduce burdens on activities with little or no impacts and preserve agency resources for impactful activities, consistent with the ESA statutory framework.

**IV. General Condition 20 Should Define the Area for PCN Where Applicants May Have the Potential to Cause Effects to Historic Properties.**

Under GC 20, non-federal permittees must submit a PCN for any proposed activity with the potential to cause effects to historic properties listed in or eligible for listing in the National Register of Historic Places. Yet, GC 20 fails to define the boundaries around a jurisdictional feature where an applicant is considered to have the potential to cause such effects. This ambiguity results in varied interpretations from Corps districts applying GC 20, including in a manner that extends the PCN requirement beyond the jurisdictional feature of the project.

GC 20 is currently ambiguous such that applicants have considerable uncertainty in assessing potential affects on historic property for which a PCN may be required. The current framing frustrates the basic purpose of the NWP program, which is to allow for an expedited authorization to construct projects with minimal adverse environmental impacts. The Corps should add language to GC 20 to clarify the scope of “in the vicinity” to create certainty for applicants in determining whether a project will trigger a PCN. Specifically, the Corps could provide a delineated boundary for considering potential effects, such as 300 feet on either side of the jurisdictional feature. This type of boundary would substantially improve clarity for project proponents based on a reasonable range for assessing impacts and drawing conclusions about whether PCN is required.

**V. General Condition 11 (Equipment and Matting) Should not be Revised, and the Current, More Flexible Formulation of GC 11 Should be Retained.**

The proposed revision to GC 11, which would require the restoration of pre-construction elevations and active soil decompaction following the use of construction mats, poses significant operational and logistical challenges for infrastructure development and maintenance activities. In remote or soft-soil areas, mats are often deployed over large distances for temporary access roads, laydown yards, and trenching corridors essential for pipeline installation and maintenance (among other things). Imposing a universal requirement to restore every square foot of matting footprint to its original elevation—particularly when these areas may have been minimally disturbed or naturally variable—introduces both technical ambiguity and substantial cost implications. This could delay project schedules and increase equipment mobilization, especially for linear projects that span multiple jurisdictional boundaries.

The revised GC 11 language lacks sufficient flexibility to account for varying degrees of impact from mat use and fails to distinguish between high-sensitivity areas and those already heavily disturbed. In many cases, the ground disturbance associated with mats is negligible, and restoration activities—particularly mechanical soil decompaction—can sometimes be more disruptive than the original installation. Additionally, the revised language as proposed may unintentionally conflict with best management practices already developed under state programs or local/regional guidance.

Given these concerns, the Corps should retain the current, more flexible formulation of GC 11. Flexibility is critical to balancing environmental protection with the practical realities of

delivering necessary infrastructure across complex terrain. At a minimum, any revisions to GC 11 should be clearly limited to taking reasonable restorative measures to prevent substantial impairment of hydrologic and soil functions in areas depressed by equipment (i.e., based on holding surface water where it would not previously have been present).

**VI. Proposed Note to Recommend but not Require Submission of As-Built Drawings is an Appropriate, Balanced Policy.**

The Corps appropriately decided to limit to a non-mandatory recommendation, its revised note encouraging permittees to submit as-built drawings to NOAA's National Ocean Service (NOS) and to coordinate with the U.S. Coast Guard (USCG). This approach properly promotes interagency coordination to support navigation safety and accurate nautical charting, while avoiding imposing requirements that fall outside the Corps' statutory authority under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act. Encouraging, rather than requiring, such actions strike an appropriate balance between regulatory efficiency and the public interest.

Importantly, by presenting this coordination as a recommended best practice, the Corps maintains flexibility for a wide range of NWP-covered activities—many of which pose minimal risk to navigation or do not materially affect federal charting. This advisory approach supports efficient permitting while respecting the roles and authorities of NOS and the USCG, thereby preserving the integrity and legal clarity of the Nationwide Permit program.

**VII. Improvements to Individual NWP Pre-construction Notification Requirements**

**A. NWP 14 - Linear Transportation Projects**

The language in NWP 14 reads, “The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge of dredged or fill material in a special aquatic site, including wetlands. (See GC 32.) (Authorities: Sections 10 and 404)”

Wetlands are included as a type of special aquatic site, but not all wetlands are created equal with many low-quality wetlands in existence that aren't ‘significantly influencing or positively contributing to the general overall environmental health or vitality of the ecosystem’ as outlined in the definition of Special aquatic site in 40 CFR Part 230 Section 230.3(m). As such, the Corps should include a dual threshold that averages wetland quality with an acreage amount when examining wetlands specifically.

For example, less than 1/10-acre to a low quality/Palustrine Emergent Wetland should be exempt from pre-construction notification requirements. Similarly, isolated wetlands should be clearly exempt from the definition of special aquatic site.

**B. NWP 18 Minor Discharges**

The language in the NWP 18 reads “Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- a. The quantity of discharged dredged or fill material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line
- b. The discharge of dredged or fill material will not cause the loss of more than 1/10-acre of waters of the United States

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge of dredged or fill material or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge of dredged or fill material is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)”

Similar to the concerns expressed under NWP 14, GPA Midstream requests the Corps recognize that not all wetlands meet the definition of ‘special aquatic site’ and incorporate some type of wetland quality threshold into the criteria to submit a pre-construction notification.

Additionally, item “a” in the criteria section of the NWP includes language that is confusing and thereby has led to districts interpreting the language differently. First, the Corps doesn’t typically regulate the removal or excavation of material, so the inclusion of “and the volume of area excavated” is inappropriate. Second, wetlands don’t have an ‘ordinary high water mark or high tide line’; therefore, one would assume the 25 cubic yard threshold would be irrelevant for a wetland since the criteria is written to be dependent on one or the other. Some districts agree and others do not. The Corps should simplify the language to read, “a. The quantity of discharged dredged or fill material does not exceed 25 cubic yards within waters of the United States.”.

### **C. NWP 39 Commercial and Institutional Developments**

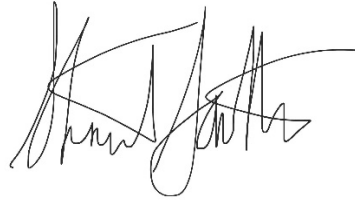
The language in the NWP 39 reads “The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404) Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities”

The Corps should add an acreage threshold or fill material threshold to avoid pre-construction notifications for minor projects. This request is generally accepted as a screening protocol for other NWPs and should also be used here. This will expedite NWP 39 permitting for minor impact projects, decrease costs and decrease the effort of the Corps permit reviewers allowing them to focus on more complex projects.

\*\*\*

GPA Midstream appreciates the opportunity to submit these comments and is standing by to answer any questions the agency may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stuart Salters", with a stylized, cursive script.

Stuart Salters  
Vice President, Federal Affairs  
GPA Midstream Association