

US Army Corps of Engineers Finalizes 2026 Nationwide Permit Package

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On January 8, 2026, the [U.S. Army Corps of Engineers](#) finalized [57 Nationwide Permits](#) first proposed in June of last year. Nationwide Permits (NWP) are streamlined federal permits for activities that affect waters of the United States, ranging from routine development and infrastructure projects to major projects. In this action, the Corps:

- Reissues and modifies the existing suite of NWPs;
- Adds a new permit for fish passage projects;
- Explicitly makes data centers eligible for NWP coverage; and
- Clarifies how several high-profile permits for pipelines and renewable energy are intended to operate.

The Corps also clarifies, for the first time, that each NWP is a separate, independent action. If a court or law invalidates one NWP — or its use in a specific project or location — that decision **does not** affect the validity or continued use of the other NWPs, nor the use of that NWP for other eligible activities.

The 2026 NWPs take effect March 15, 2026, and run through March 15, 2031. The current 2021/2022 NWPs expire March 14, 2026, with a limited one-year grace period for projects that have started construction — or are under contract to start — before that date. Projects that do not fit within that transition window will need to be covered under the 2026 NWPs or obtain other Corps authorization.

New Nationwide Permit 60 for Fish Passage

Nationwide Permit 60 is a new permit focused on activities that improve passage for fish and other aquatic organisms at existing infrastructure. Examples include:

- Fishways and fish ladders;
- Fish screens; and
- Certain culvert and grade control modifications.

Key points about NWP 60 are that it is subject to acreage and impact limits, it does not authorize dam removal, and projects that may affect listed species or critical habitat still trigger Endangered Species Act review, meaning many fish passage projects will continue to involve close coordination with the Corps and resource agencies.

Data Centers Under Nationwide Permit 39

During the public comment period, the Corps received recommendations to clarify that data centers — including artificial intelligence and machine learning facilities — are examples of commercial developments covered by NWP 39. In response, the Corps:

- Revises NWP 39 to include “data centers (to include for example, artificial intelligence and machine learning facilities)” in the list of commercial development examples; but
- Does not change the underlying scope of the permit.

These types of facilities were already eligible for authorization under previous iterations of NWP 39, so long as they met applicable impact thresholds, general conditions, and regional conditions. The final action simply makes that coverage more explicit by adding “data centers” to the examples.

Pipeline and Energy Related NWPs: 12, 51, and 58

The Corps also addresses three NWPs that are central to pipeline and energy development:

NWP 12 – Oil and Natural Gas Pipelines

NWP 12 remains the primary NWP for oil and natural gas pipeline activities in waters of the United States. The Corps:

- Retains the familiar “per crossing” approach to evaluating impacts;
- Clarifies that its role is limited to in-water work and discharges, not upland routing decisions or pipeline safety regulation; and
- Highlights expected coordination with NOAA and the U.S. Coast Guard where pipeline work intersects navigable waters and navigation safety concerns.

NWP 51 – Land-Based Renewable Energy

NWP 51 continues to cover discharges to waters associated with land-based renewable energy projects, such as wind and solar facilities. The Corps:

- Confirms that battery energy storage systems can be authorized under NWP 51 when they are part of a broader renewable energy project; and
- Maintains the basic impact limits and pre-construction notification (PCN) framework, with more detail provided through general and regional conditions.

NWP 58 – Utility Lines for Water and Other Substances

NWP 58 governs utility line activities for water and “other substances” that are not oil or natural gas. The Corps explains that this is the primary NWP for pipelines carrying, among other things, CO₂ and hydrogen. Like NWP 12, NWP 58:

- Is structured as a linear project permit with per-crossing impact limits;
- Includes navigation safety expectations for work in navigable waters; and

- Leaves siting and safety oversight for these lines to other agencies.

For all three permits — NWP 12, 51, and 58 — the Corps emphasizes that general conditions, regional conditions, and state/tribal approvals will continue to shape how, and where, they can be used.

Nature-Based Solutions and Restoration

The final 2026 NWP package explicitly incorporates “nature-based solutions” into the program, with the Corps emphasizing this concept in several permits, including NWP 13 for Bank Stabilization, NWP 27 for Aquatic Ecosystem Restoration, and NWP 54 for Living Shorelines. Across these permits, the Corps indicates that nature-based and bioengineered designs are generally preferred where appropriate. For restoration projects authorized under NWP 27, the Corps places particular emphasis on achieving net improvements in aquatic ecosystem functions and on using ecological reference conditions — including historically and culturally influenced ecosystems — to guide project design.

General Conditions, Regional Conditions, and Approvals

The Corps reiterates that the text of each NWP is only part of the story, as project developers must also navigate general conditions — including those related to endangered species, historic properties, critical resource waters, and Wild and Scenic Rivers — regional conditions adopted by Corps districts that can impose location-specific restrictions or notification requirements, and state and tribal actions on Clean Water Act § 401 water quality certification^[1] and Coastal Zone Management Act consistency. In some cases, these external approvals can limit or effectively bar the use of particular NWPs in certain waters or jurisdictions.

PCNs, Mitigation, and Practical Implications

Most of the familiar features of the NWP program remain in place, including impact caps that limit the amount of authorized loss of waters and wetlands, pre-construction notification thresholds that determine when applicants must notify the Corps before using an NWP, and compensatory mitigation requirements for projects that exceed certain loss thresholds or affect sensitive resources. The Corps continues to rely on these mechanisms — together with general and regional conditions — to keep NWP-authorized impacts “no more than minimal.”

Practical effects of the 2026 NWP package will vary significantly by project type, location, and jurisdiction, particularly for projects considering NWPs 12, 39, 51, 58, and the new NWP 60. The real-world availability of these permits will continue to be shaped by Corps district regional conditions and by state and tribal water quality certification and coastal zone consistency decisions.

Remember that both the 2017 and 2021 versions of NWP 12 were challenged in court, and litigation over the 2021 NWP 12 remains pending in federal district court in Washington, D.C. It is also possible that environmental nongovernmental organizations will challenge the new 2026 NWP 12 — along with other NWPs — based on their ongoing assertion that the Corps was required, but failed, to undertake ESA Section 7 consultation with the Services before issuing or reissuing the NWPs. Troutman Pepper Locke continues to monitor these developments and their implications for project planning and permitting.

Nationwide Permits and General Conditions – Summary Table

Nationwide permit / General condition	Changes
NWP 12	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.
NWP 13	Added new paragraph clarifying that this NWP authorizes nature-based solutions to provide habitat and other ecosystem functions and services with bank stabilization activities. Added a new Note to reference the Corps' regulations about selecting bank stabilization approaches, and examples of the factors to be considered.
NWP 15	Added General Bridge Act of 1946 as an applicable statutory authority for bridges authorized by the U.S. Coast Guard.
NWP 23	Modified paragraph (a) to reference sections 106, 109, and 111(1) of NEPA. Modified text to state that any changes to approved categorical exclusions applicable to this NWP will be announced in the Federal Register.
NWP 24	Removed Florida from list of states that have assumed the Clean Water Act Section 404 permit program.
NWP 27	Changed title of NWP. Revised ecological reference requirement to include historic ecosystems, cultural ecosystems, and indigenous and local ecological knowledge. Removed list of examples. Required reports for all activities and modified report requirements. Removed PCN thresholds. Excluded dam removal activities. Added new note to address delineation requirement when NWP 27 activities require PCNs because of general conditions or regional conditions imposed by division engineers.
NWP 39	Added “data centers (to include for example, artificial intelligence and machine learning facilities), pharmaceutical manufacturing facilities,” and “storage facilities” to the list of examples of commercial facilities authorized by this NWP.
NWP 43	Replaced “green infrastructure” and “low impact development integrated management features” with “nature-based solutions” and provided additional examples of nature-based solutions related to stormwater management.
NWP 45	Modified “Notification” paragraph to extend timeframe within which the permittee must submit a PCN to the district engineer from 12 to 18 months of the date of the damage.
NWP 48	Excluded marine and estuarine waters within Washington State. Revised Note recommending permittee contact USCG about project. Added Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.
NWP 52	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.
NWP 54	Added gravel and cobble to types of substrate used for living shorelines. Clarified that small pocket beaches can be authorized. Added text to NWP to specify that it also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the living shoreline activity.

NWP 55	Revised Note recommending permittee contact USCG about project. Added Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting.
NWP 57	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project.
NWP 58	Revised Note recommending permittee provide information to National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS) for charting. Added Note recommending permittee contact USCG about project. Added clarifying language to correct inconsistency in language about activities which require authorization under Section 10 of RHA.
NWP 60	Issued new NWP to authorize activities to improve passage of fish and other aquatic organisms.
General condition 9 – Management of Water Flows	Added “including tidal flows” to clarify that tidal flows should be considered as “expected high flows.”
General condition 11 – Equipment	Added a sentence requiring affected areas to be returned to pre-construction elevations, and revegetated as appropriate to rectify soil compaction that may occur from using mats.
General condition 18 – Endangered Species	Removed the reference to 50 CFR 402.17 because that section was removed by a final rule issued by the Services in 2024.
General condition 25 – Water Quality	Added “into waters of the United States” after “discharge” to make it clear that the discharge must be into waters of the United States.
General condition 28 – Use of Multiple NWPs	Modified general condition to clarify application to NWPs with different numeric limits.
General condition 30 – Compliance certifications	Modified general condition to change “successful” to “successful completion” to clarify that any required permittee-responsible mitigation has to be successfully completed by the permittee.
General condition 32 – Pre-Construction Notification	Modified paragraph (a)(2) to include species proposed for listing and critical habitat proposed for designation. Modified paragraph (b)(5) to refer to Note 2 of NWP 27 when an NWP 27 activity requires a PCN.

[1] On January 13, 2026, the EPA announced a proposed rule to revise the current Section 401 water quality certification regulations. A public comment period will begin when the [proposed rule](#) is published in the Federal

Register.

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