November 16, 2020

Submitted via Regulations.gov and via email to nationwidepermits2020@usace.army.mil

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

Re: Comments in Response to Department of the Army, Corps of Engineers’ Proposal to Reissue and Modify Nationwide Permits, Docket No. COE-2020-0002

Dear Mr. Olson:

The undersigned 117 conservation, faith, and health organizations and businesses urge the U.S. Army Corps of Engineers (Corps) to withdraw its rushed Proposal to Reissue and Modify Nationwide Permits (NWPs). This proposal would weaken clean water protections and fast-track greater destruction and degradation of water quality and aquatic habitat. On behalf of our millions of members and supporters, we urge the Corps to make full use of the standard five-year NWP revision cycle, postponing this NWP reissuance until 2022, to ensure that activities authorized under the NWPs cause only minimal harm, as required by the Clean Water Act.

The Corps of Engineers has needlessly cut short the five-year NWP revision cycle by two years, failing to rigorously assess the impacts of both the existing NWPs issued in 2017 and the proposed NWPs. Even so, it is clear that the NWPs as proposed would violate Clean Water Act requirements for NWP-authorized activities to cause no more than minimal impacts, individually or cumulatively. Proposed changes to NWP terms and conditions would roll back critical protections for clean water, especially smaller streams, compounding the harm from other recent roll backs, including but not limited to: the drastic narrowing of the definition of “Waters of the United States” protected by the Clean Water Act, undercutting states’ and tribes’ water quality certification authority under Clean Water Act Section 401, and gutting National Environmental Policy Act implementing regulations.

Instead of rushing to issue a NWP package, the Corps should adopt the recommendations below to ensure that activities authorized under the NWPs cause no more than minimal harm, as required by law:

- **Strengthen or at a minimum retain, rather than remove or weaken, limits to the extent of impacts of activities authorized under NWPs.** The proposed removal of the 300-linear-foot limit for streambed losses for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 is unacceptable and would be especially harmful to smaller streams. The Corps should instead reinforce the importance of the linear foot limitations on NWPs affecting stream beds. Across all NWPs, the Corps should at a minimum retain, and for high impact NWPs reduce, the existing acreage and linear feet limitations in the NWPs, and impose acreage and linear feet limits for the numerous NWPs that currently have no limits. NWPs that lack such limitations on their face allow unlimited impacts to waters of the United States in violation of Clean Water Act §404(e).

1For example, a project that impacts 300 linear feet of a 5-foot-wide stream would currently trigger a compensatory mitigation requirement, and an Individual Permit would be required if the impacts exceeded 300 linear feet. Under the Corps’ proposal, that project could impact more than 870 feet of that same stream without triggering the need for an Individual Permit or compensatory mitigation.  
• **Strengthen the pre-construction notification (PCN) requirements to improve understanding and analysis of individual and cumulative impacts.** The Corps should require PCNs for all activities authorized under NWPs, not weaken PCN thresholds as proposed for many NWPs. Without the detailed information in a PCN, decision-makers have no ability to assess whether the impacts of a proposed project are in fact minimal. Furthermore, the Corps should abandon the proposal to automatically allow projects to proceed if the District Engineer does not respond to a PCN within 45 days.

• **Eliminate the ability to use multiple NWPs to authorize individual segments of high impact linear projects, including pipelines and bank stabilization projects.** This violates the Clean Water Act §404(e) minimal impact limitation; and the Clean Water Act, National Environmental Policy Act, Endangered Species Act and other legal requirements for rigorous and transparent environmental reviews and safeguards to protect the nation’s waters.

• **Rigorously assess the direct, indirect, and cumulative impacts of each NWP and the NWP program before issuing a final NWP package.** Without this information, the Corps cannot ensure that the NWPs will cause only minimal individual and cumulative impacts as required by law.

**Comments on Individual Nationwide Permits**

• We urge the Corps to withdraw **Proposed NWP A (Seaweed Mariculture Activities)** and **Proposed NWP B (Finfish Mariculture Activities)**. There is not sufficient information to inform whether or not the activities covered under the proposed NWPs would cause no more than minimal impacts to comply with Clean Water Act §404(e).

• As currently drafted, **NWP 3 (Maintenance)** authorizes activities that cause significant adverse impacts, violating Clean Water Act §404(e). The Corps is proposing changes that would further expand the adverse impacts of this permit, allowing maintenance activities on structures that did not have a permit at the time of construction. Our organizations urge the Corps to withdraw NWP 3 as formulated. An improved NWP for maintenance activities should, at a minimum, impose stricter impact limitations (both areal and linear) and restrict covered activities to those that are in fact similar in nature, as required by law.

• We urge the Corps to withdraw **NWP 12 (Oil or Natural Gas Pipeline Activities, currently NWP 12 Utility Line Activities)**, **Proposed NWP C (Electric Utility Line and Telecommunications Activities)**, and **Proposed NWP D (Utility Line Activities for Water and Other Substances)**, as they authorize activities that cause significant adverse impacts in violation of Clean Water Act §404(e), and instead require individual permits for these activities. At minimum, these NWPs should be further limited to ensure only minimal adverse impacts, and PCN requirements for all should be strengthened instead of weakened. Our organizations also oppose explicitly allowing multiple segments of the same pipeline to qualify for NWP authorization, in violation of the Clean Water Act §404(e) minimal impact limitation; and the Clean Water Act, National Environmental Policy Act, Endangered Species Act and other legal requirements for rigorous and transparent environmental reviews and safeguards.2

• As currently drafted, **NWP 13 (Bank Stabilization)** authorizes activities that cause significant adverse impacts, violating Clean Water Act §404(e). Our organizations urge the Corps to withdraw NWP 13 or at minimum modify the permit to: (1) significantly reduce the linear feet impact limit; (2) require

---

2 The note states, in part: “For utility line activities crossing a single waterbody more than one time a separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization.” NWP 12 currently allows use for multiple segments of the same pipeline through an inappropriate definition and interpretation of the term “single and complete linear project,” and this definition and practice should also be prohibited.
PCNs; and (3) require that any applicant for a structural bank stabilization method must first demonstrate that a nature-based approach such as a living shoreline would be insufficient to stabilize the shoreline, and that the applicant’s proposed method would be the least environmentally damaging practicable alternative.

- Our organizations urge the Corps to withdraw **NWP 17 (Hydropower Projects)**, as it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e), and instead require individual permits. At a minimum, the Corps should abandon the proposed change to increase from 5,000 kw to 10,000 kw the total allowable generating capacity for hydropower project eligible for authorization under NWP 17.

- Our organizations urge the Corps to withdraw **NWP 31 (Maintenance of Existing Flood Control Facilities)**, as it authorizes activities that cause significant adverse impacts in violation of Clean Water Act §404(e), and instead require individual permits. At a minimum, the Corps should: (1) impose strict impact limitations (both areal and linear) rather than continuing to allow unlimited impacts to waters of the United States, including both wetlands and streams; (2) restrict covered activities to those that are in fact similar in nature as required by law; and (3) not limit mitigation to one time only despite the fact that maintenance efforts could be carried out on multiple occasions causing adverse impacts each time. The impacts of NWP 31 are exacerbated by the fact that it also authorizes removal of vegetation from levees, which would instead be best addressed by a regional approach based on science and permitted individually, with public notice and comment as well as state and federal interagency consultation.

**Comments on General Conditions**

- Our organizations urge the Corps not to change the definition of effect in **General Condition 18 (Endangered Species)**, which would increase the likelihood of endangered species suffering adverse impacts from activities authorized under NWPs.

- **General Condition 23 (Mitigation)**, and each NWP as appropriate, should be revised to: (1) eliminate all language allowing the use of mitigation buy-downs to justify a finding that an activity has less than minimal impacts; (2) require that permit applicants take all steps practicable to avoid and minimize adverse impacts, as required by law; (3) eliminate the ability of the District Engineer to allow riparian area compensatory mitigation in lieu of compensatory wetland mitigation for wetland losses; and (4) make mitigation requirements consistent for all NWPs with both areal and linear impact thresholds. The Corps should also abandon proposed changes to: (1) allow District Engineers to waive compensatory mitigation requirements for NWP-authorized activities and (2) apply a weaker 1/10-acre threshold instead of a 300 linear foot threshold for streambed losses to require mitigation.

**Conclusion**

Our 117 organizations and businesses urge the Corps to withdraw the rushed Proposal to Reissue and Modify Nationwide Permits (NWPs). Instead, the Corps should continue the five-year NWP revision cycle and adopt the recommendations above in order to meaningfully assess NWP impacts and fix the mistaken approach to permitting activities that would be authorized through the NWP package as proposed. Please do not hesitate to contact Melissa Samet at sametm@nwf.org with regard to these comments.

Sincerely,

Cindy Lowry
Executive Director
Alabama Rivers Alliance

Molly Flanagan
COO and Vice President for Programs
Alliance for the Great Lakes
Susan Inman
Coastkeeper

Altamaha Coastkeeper

Joseph Zupan
Executive Director

Amigos Bravos

Thomas Anderson
Administrative Director

Amigos De Bolsa Chica

Derek Teaney
Deputy Director

Appalachian Mountain Advocates, Inc.

Barbara Vlamis
Executive Director

AquAlliance

Scott Garlid
Executive Director

Arizona Wildlife Federation

Larry A. Larson, P.E., CFM
Director Emeritus-Senior Policy Advisor

Association of State Floodplain Managers

Dean Wilson
Executive Director

Atchafalaya Basinkeeper

Dan Scheiman
Bird Conservation Director

Audubon Arkansas

Jordan Macha
Executive Director and Waterkeeper

Bayou City Waterkeeper

Charles Scribner
Executive Director

Black Warrior Riverkeeper

Anne Millbrooke
Designated Signer

Bozeman Birders

Laura-Ashley Overdyke
Executive Director

Caddo Lake Institute

Trish Rolfe
Executive Director

Center for Environmental Law & Policy

Amy van Saun
Senior Attorney

Center for Food Safety

Michael Mullen
Riverkeeper

Choctawhatchee Riverkeeper

Carin High
Co-Chair

Citizens Committee to Complete the Refuge

Cindy Zipf
Executive Director

Clean Ocean Action

Jennifer Peters
Water Programs Director

Clean Water Action/Clean Water Fund

Garry Brown
Executive Director/Waterkeeper

Coachella Valley Waterkeeper

Emily Vuxton
Policy Director

Coalition to Restore Coastal Louisiana

Clark Bullard
Director

Committee on the Middle Fork Vermilion River

Brigid Lawlor
U.S. Provinces Advocacy Liaison

Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces

Ellie Ezekiel
Environmental Advocate

Delaware Nature Society
Dan Silver  
Executive Director  
**Endangered Habitats League**

Morgan Patton  
Executive Director  
**Environmental Action Committee of West Marin**

Ann Mesnikoff  
Federal Legislative Director  
**Environmental Law & Policy Center**

Tom H. Logan  
Chairman, FFI Board Conservation Committee  
**Fly Fishers International**

Virginia McLean  
President  
**Friends for Our Riverfront**

Bob Clarke  
President  
**Friends of the Central Sands**

Hallie Templeton  
Senior Oceans Campaigner  
**Friends of the Earth**

Dawn Buehler  
Kansas Riverkeeper & Executive Director  
**Friends of the Kaw**

Trevor A Russell  
Water Program Director  
**Friends of the Mississippi River**

Bill Tanger  
Chair  
**Friends of the Rivers of Virginia (FORVA)**

Bob Stokes  
President  
**Galveston Bay Foundation**

Rachael Thompson  
Executive Director  
**Glynn Environmental Coalition**

Fred Akers  
Administrator  
**Great Egg Harbor Watershed Association**

Bruce Morrison  
President  
**Great Rivers Environmental Law Center**

David Stokes  
Executive Director  
**Great Rivers Habitat Alliance**

Mariana Del Valle Prieto Cervantes  
Clean Waters and Ocean Advocate  
**GreenLatinos**

Cynthia Sarthou  
Executive Director  
**Healthy Gulf**

Indra Frank  
Director of Environmental Health and Water Policy  
**Hoosier Environmental Council**

Edward L Michael  
Government Affairs Chair  
**Illinois Council of Trout Unlimited**

Garry Brown  
Executive Director/Waterkeeper  
**Inland Empire Waterkeeper**

Mary Anne Piacentini  
President and CEO  
**Katy Prairie Conservancy**

Lane Boldman  
Executive Director  
**Kentucky Conservation Committee**

Tom FitzGerald  
Director  
**Kentucky Resources Council, Inc.**

Ward Wilson  
Executive Director  
**Kentucky Waterways Alliance**
John Capece
Kissimmee Waterkeeper

Lori Fisher
Executive Director
Lake Champlain Committee

Earl Hatley
Grand Riverkeeper
LEAD Agency, Inc.

Madeleine Foote
Deputy Legislative Director
League of Conservation Voters

Mary Ploeser
Co-chair LWV UMRR ILO
League of Women Voters Upper Mississippi River Region Inter League Organization

David Schmitt
Executive Director
Mill Creek Alliance

Cheryl Nenn
Riverkeeper
Milwaukee Riverkeeper

Albert Ettinger
Counsel
Mississippi River Collaborative

Dayna M. Stock
Interim Executive Director
Missouri Coalition for the Environment

Rachel Bartels
Director
Missouri Confluence Waterkeeper

Frank Szollosi
Executive Director
Montana Wildlife Federation

Gray Jernigan
Green Riverkeeper
MountainTrue

Lawrence Couch
Director
National Advocacy Center of the Sisters of the Good Shepherd

Jessie Ritter
Director, Water Resources and Coastal Policy
National Wildlife Federation

Gerald H Meral
Director, California Water Program
Natural Heritage Institute

George Cunningham
Board President
Nebraska Wildlife Federation

Eileen Murphy
Vice President, Government Relations
New Jersey Audubon

Manley Fuller
Vice President of Conservation Policy
North Carolina Wildlife Federation

John Bradley
Executive Director
North Dakota Wildlife Federation

Michael Stocker
Director
Ocean Conservation Research

Diane Hoskins
Campaign Director
Oceana

Rich Cogen
Executive Director
Ohio River Foundation

William Hoppes
President
Ohlone Audubon Society

Collin Rees
Senior Campaigner
Oil Change U.S.
Garry Brown  
Executive Director/Coastkeeper  
Orange County Coastkeeper

Rev. Sandra L. Strauss  
Director of Advocacy and Ecumenical Outreach  
Pennsylvania Council of Churches

Jonas Minton  
Senior Water Policy Advisor  
Planning and Conservation League

Ryan Grosso  
Water Resources Associate  
Prairie Rivers Network

Alyssa Barton  
Policy Manager  
Puget Soundkeeper Alliance

Mark River Peoples  
Head River Guide & Vice President of Operations  
Quapaw Canoe Company

Gregory A. Remaud  
Baykeeper & CEO  
Raritan Baykeeper, Inc  
(dba NY/NJ Baykeeper)

Eleanor Hines  
North Sound Baykeeper, Lead Scientist  
RE Sources

Chance Cutrano  
Director of Programs  
Resource Renewal Institute

Daniel Hayden  
President & CEO  
Restore America's Estuaries

Kathy Wine  
Executive Director  
River Action, Inc.

Jeremy Cherson  
Legislative Advocacy Manager  
Riverkeeper

Renee Fortner  
Watershed Resources Manager  
RiverLink, Inc.

Diane Wilson  
Executive Director  
San Antonio Bay Estuarine Waterkeeper

Susan Chadwick  
President and Executive Director  
Save Buffalo Bayou

Kate McPherson  
Narragansett Bay Riverkeeper  
Save the Bay

Michael Rice  
Director  
Save the Cape

John Peach  
Executive Director and Upper St. Lawrence Riverkeeper  
Save The River Upper St. Lawrence Riverkeeper

William Lucey  
Long Island Soundkeeper  
Save The Sound

Joseph Campbell  
President  
Seneca Lake Guardian,  
A Waterkeeper Alliance Affiliate

John E Livingston  
Chair of Executive Committee  
Shasta Group Sierra Club

Dalal Aboulhosn  
Deputy Director of Policy, Advocacy and Legal  
Sierra Club

Jane Fasullo  
Field Educator and Group Executive Committee Member  
Sierra Club Long Island Group

Carolyn Cromer  
Director of Ecological Sustainability  
Sisters of Charity of Nazareth
Chris Hesla  
Executive Director  
**South Dakota Wildlife Federation**

Melinda Booth  
Executive Director  
**South Yuba River Citizens League**

Jerry Jr White  
Executive Director  
**Spokane Riverkeeper**

Lisa Rinaman  
Riverkeeper  
**St. Johns Riverkeeper**

Mara Dias  
Water Quality Manager  
**Surfrider Foundation**

Megan Eakins  
Board Chair  
**Tampa Bay Waterkeeper**

David Whiteside  
Executive Director  
**Tennessee Riverkeeper**

Janice Bezanson  
Senior Policy Director  
**Texas Conservation Alliance**

Mike Petersen  
Executive Director  
**The Lands Council**

Melanie Winter  
Founder & Director  
**The River Project**

Paul Botts  
President & Executive Director  
**The Wetlands Initiative**

Jennifer McKay  
Policy Director  
**Tip of the Mitt Watershed Council**

Ashley Short  
Riverkeeper & In-House Counsel  
**Tualatin Riverkeepers**

Pamela Digel  
Upper Allegheny Waterkeeper  
**Upper Allegheny Waterkeeper**

David Groenfeldt  
Director  
**Water-Culture Institute**

Bart Mihailovich  
Organizing Manager, U.S.  
**Waterkeeper Alliance**

Robin Broder  
Deputy Director  
**Waterkeepers Chesapeake**

Cindy Rank  
Chair, WVHC Mining Committee  
**West Virginia Highlands Conservancy**

Angie Rosser  
Executive Director  
**West Virginia Rivers Coalition**