



TEXAS GENERAL LAND OFFICE
COMMISSIONER DAWN BUCKINGHAM, M.D.

August 29, 2025

United States Army Corps of Engineers (USACE)
Galveston District – Regulatory Division
P.O. Box 1229
Galveston, Texas 77553-1220
POC: Gerry Hidalgo

**Re: 2026 Nationwide Permits (NWP) and Texas Regional Conditions
CMP#: 25-1232-F2**

Dear United States Army Corps of Engineers:

This letter is in response to your June 24, 2025 letter requesting the Texas Coastal Management Program's (CMP) consistency concurrence, pursuant to §307(c)(1) of the Coastal Zone Management Act, for the reissuance of the USACE NWP (the "Project"). The Notice of Reissuance for the NWP was published in the Federal Register on June 16, 2025. Regional conditions for the NWP in Texas were proposed in a separate public notice on June 18, 2025.

On June 24, 2025, the USACE Galveston District submitted its Consistency Determination and supporting information, initiating the federal consistency review period. The Texas General Land Office (GLO) has reviewed the Project for consistency with the CMP goals and enforceable policies pursuant to 31 Tex. Admin. Code (TAC) §30.20. The GLO concurs that the Project, as proposed, is consistent with the CMP to the maximum extent practicable. To help clarify and further strengthen the NWP, the GLO asks the USACE to consider the following comments and recommendations.

I. GLO COMMENTS

Definitions

Ecological reference modification - The USACE's proposed revision to this definition discusses three types of ecological references: (1) an aquatic ecosystem type or riparian area type that currently exists in the region (i.e., a contemporary ecological reference); (2) an aquatic ecosystem type or riparian area type that existed in the region in the past (i.e., an historic ecological reference); and (3) indigenous and local ecological knowledge that applies to the aquatic ecosystem type or riparian area type (i.e., an ecological reference based on a cultural ecosystem) include cultural ecosystems, which are defined as "ecosystems that have developed under the joint influence of natural processes and human-imposed organization."

Based on this definition, it is unclear what indigenous and local ecological knowledge entails and how it will be included in establishing an ecological reference. How will this information be generated and incorporated? How will the USACE handle any conflicting data between the multiple sources of information?

Nationwide Permit 13 – Bank Stabilization

The USACE proposes adding Note 2 which clarifies that a landowner has the general right to protect their property from erosion. The GLO recommends USACE incorporate the language included in NWP 54, which states, “This NWP does not authorize land reclamation activities.”

Nationwide Permit 27 - Aquatic Ecosystem Restoration, Enhancement, and Establishment Activities

Revision to the Paragraph on Ecological References

See Ecological reference definition comment above.

Modification to the Prohibition Against Conversions of Non-tidal Aquatic Ecosystem Types

The USACE proposes modifying the NWP by removing a sentence that specifies the NWP does not authorize the conversion of a stream or natural wetland to another aquatic type. Specifically, the USACE would remove the following: “Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands.”

Coastal wetlands are a Coastal Natural Resource Area and Critical Area under the CMP, and the conversion of these Areas to another habitat may constitute a net loss regardless of the benefit to another habitat type, especially if it is converted to a non-Critical Area habitat (i.e. coastal wetlands converted to an upland). The GLO recommends that NWP 27 should not authorize conversion of over 1/2-acre of Critical Areas. The GLO also recommends that NWP 27 should not authorize conversion of Critical Areas or coastal natural resource areas to uplands (unless the applicant has proven the project will provide an ecological lift or benefit to the ecosystem).

Removal and Replacement of the Pre-Construction Notification (PCN) Requirement

The USACE’s proposed revisions to NWP 27 eliminate the requirement of a PCN and instead require the permittee to submit a report to the district engineer. Will this report be distributed to the commenting agencies? If not, how will the agencies be notified that a project that may require a state authorization (coastal lease, water quality certification, etc.) is occurring?

The PCN is an opportunity for the USACE to review proposed NWP activities and determine eligibility and offers an opportunity to facilitate coordination between federal and state agency partners. If the PCN is removed, the USACE will have reduced opportunity to influence project outcomes, including the ability to track and evaluate temporary and cumulative effects, recommend measures to avoid/minimize adverse effects, and require mitigation for unavoidable

impacts to aquatic resources. Additionally, natural resource agencies would not have less opportunity to ensure that state interests are considered during the issuance of federal permits.

II. GLO RECOMMENDATIONS

The GLO recommends adding the following regional conditions specific to the Galveston District:

Notification to the GLO for All Activities Proposed for Authorization by NWP 13 on or Adjacent to State-Owned Submerged Lands

The GLO is responsible for managing state-owned submerged land dedicated to the Permanent School Fund. Projects involving structures and/or fill material placed on state-owned submerged land (below mean high tide) require obtaining a lease or easement from the GLO or School Land Board (SLB) under Chapter 33 or 51 of the Texas Natural Resources Code (TNRC). These projects must comply with 31 TAC §155.3(f), which provides GLO/SLB criteria for evaluating project proposals and includes the GLO/SLB prohibition against granting a lease or easement for fill projects proposed for the sole purpose of land reclamation. Depending on the location, some projects may also be prohibited under the GLO beach dune rules (31 TAC §§15.6(c) and (d) prohibit individuals from building or repairing erosion response structures on Gulf-facing beaches). Finally, some projects may require a Coastal Boundary Survey to be conducted pursuant to TNRC §33.136 and approved by the GLO prior to starting construction.

The GLO generally supports nature-based solutions where appropriate to address shoreline erosion, but there are concerns that the new note encouraging additional types of bank stabilization may result in increased use of this NWP without pre-construction notification to the GLO. The GLO is concerned this note could confuse an applicant and imply a state or local coastal lease, easement, or permit is not needed for these activities on state-owned submerged land. The GLO requests notification from the USACE of NWP 13 applications prior to the USACE issuing project authorization. This coordination will prevent future compliance issues with the GLO.

The GLO recommends the USACE provide the GLO with pre-construction notifications for all activities proposed for authorization by NWP 13 on or adjacent to state-owned submerged land prior to USACE issuing project authorization. The GLO recommends clarifying that work may not be conducted, or structures placed on state-owned land, until all necessary authorizations are obtained, including any required by the GLO or SLB.

Notification to the GLO for All Activities Proposed for Authorization by NWP 27 on or Adjacent to State-Owned Submerged Lands

Projects involving structures and/or fill material placed on state-owned submerged land require obtaining a lease or easement from the GLO or SLB. Depending on the location, certain projects may be prohibited by GLO rules, or they may require the applicant to conduct and receive GLO approval of a Coastal Boundary Survey prior to starting construction. Overall, the GLO supports this NWP as the GLO builds, supports, and funds numerous coastal restoration, protection, and

enhancement projects in Texas bays, including those developed in the USACE-GLO Coastal Texas Study and listed within the GLO's Texas Coastal Resiliency Master Plan. Furthermore, the GLO agrees that the removal of examples of authorized activities will encourage new and more regionally appropriate restoration techniques. However, the GLO wants to ensure these projects comply with state rules and applicants obtain all required state authorizations prior to construction. The GLO recommends the USACE provide the GLO with pre-construction notification for NWP 27 applications prior to the USACE issuing project authorization to prevent future compliance issues and user conflict.

Regarding Note 2, if an activity authorized by this NWP requires a PCN because of an NWP general condition (e.g., NWP general condition 18, endangered species) or a regional condition imposed by a division engineer, the information required by paragraph (3) of the reporting requirement substitutes for the delineation of waters, wetlands, and other special aquatic sites required by paragraph (b)(5) of general condition 32.

It appears Note 2 eliminates the need for wetland delineations and surveys of special aquatic sites (seagrass, oyster, wetlands). What mechanism will the USACE utilize to ensure habitat assessments are accurate and conducted by a trained individual? Special aquatic sites are considered coastal natural resources areas under the CMP, and NWP projects should adequately assess their impacts to ensure projects are being authorized under the appropriate USACE mechanism (USACE NWP vs. Individual Permits). The USACE is proposing to remove language prohibiting the conversion of wetlands to other habitat type. If the applicant is not required to conduct a wetland delineation, seagrass, or oyster survey, the full impact of the project on Critical Areas may not be adequately assessed and result in more than minimal impacts. It would also be difficult to determine whether the project provided an ecological lift or benefit if the project impacts were not fully or accurately determined.

Nationwide Permit A - Activities to Improve Passage of Fish and Other Aquatic Organisms

The USACE proposes issuing a new NWP to authorize structures and work in navigable waters of the United States and the discharge of dredged or fill material into waters of the United States for activities that restore or enhance the passage of fish and other aquatic organisms through river and stream networks as well as other types of waters. The USACE is proposing a one-acre limit for this NWP. The one-acre limit applies to "losses of waters of the United States" as that phrase is defined in Section F of the proposed NWPs. The proposed one-acre limit would apply to waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. According to the prepublication, permanent fills in rivers and streams or other aquatic habitats may occur through the placement of boulders, cobbles, large wood, and other materials to construct a nature-like fishway or the construction of a conventional fishway, or the replacement of a culvert. The construction of bypass channels around dams or weirs could involve filling or excavating wetlands or river or stream channels.

Of all the existing NWPs, only three have an acreage limit of an acre or more of allowable impact to waters of the United States (NWP 32, 34 and 46). NWP A does not specify a specific impact threshold for special aquatic sites or Critical Areas that would not be eligible for

authorization. If the one-acre threshold of “losses of waters of the United States” applies to these areas, the GLO recommends NWP A does not result in the loss of greater than 1/2-acre of waters of the United States. for each single and complete project, and does not authorize a discharge of dredged or fill material into Critical Areas.

32 - Pre-Construction Notification

See NWP 27 comment above.

If you have any questions or concerns, please contact me at (512) 463-7497 or at federal.consistency@glo.texas.gov.

Sincerely,



Leslie Koza
Federal Consistency Coordinator
Texas General Land Office