

NWC has created a spreadsheet of pending rules and regulations that impact the water and waterways community. Below is the status of the rules that NWC is tracking, along with NWC actions.

AGENCY	RULE	BACKGROUND	TIMING/COMMENTS	RESOURCES
ASACW	ASACW/NOAA memo on ESA consultations on existing structures	On January 5, 2022, the Assistant Secretary of the Army (Civil Works) signed a “Memorandum Between the Department of the Army (Civil Works) and the National Oceanic and Atmospheric Administration” on the process the agencies would use nationally for Endangered Species Act review for maintenance and other projects.	Effective immediately, however, the agencies are still working out how the new policies will be implemented nationally and associated impacts. NWC, and other groups, raised concerns that this policy, which did not go through public review, would increase costs and delays for water resource projects.	NWC fact sheet on Jan. 5 environmental baseline memo. Joint comment letter on Jan. 5 memo. ASACW/NOAA Jan. 5, 2022 memo
ASACW	Principles, Requirements and Guidelines (PR&G) Implementation NPRM, Expected in 2023.	PR&G would update the current 1983 Principles and Guidelines (P&G) which only has to show national economic development and environmental quality impacts. PR&G allows the Corps to consider a broader array of items for how USACE formulates and evaluates studies for major water resources projects.	The Assistant Secretary for the Army (Civil Works) (ASACW) took pre-comments on PR&G in August 2022. In our Aug. 2022 comments, NWC urged USACE to reaffirm Congressional intent that all benefits must be weighed equally.	NWC submitted detailed comments on PR&G Congressional Research Service Report on “Principles, Requirements and Guidelines for Federal Investments in Water Resources” (March 2017)

		P&G was included in WRDA 2007 but never implemented at USACE due to concerns from stakeholders and non-federal partners on how it would be implemented, by valuing environmental benefits over economic benefits.		
EPA/USACE	Revised Definition of “Waters of the United States	Waters of the U.S. is a term used in the Clean Water Act to differentiate between what waters are regulated at the federal versus the state level. In the past two decades, there have been several Supreme Court cases that have muddied the water on what should be jurisdiction. Every administration since Obama has tried to rewrite the definition unsuccessfully. Biden’s administration is currently working on a rule. Concurrently, this fall, the Supreme Court heard arguments in Sackett v. EPA, in a related case. A decision is expected early next year.	In Dec. 2021, EPA and USACE published a proposed rule on the Revised Definition of “Waters of the United States.”	NWC’s Feb. 2022 comments on the proposed “Waters of the U.S. rule.
FEMA	Updates to Floodplain Management and	FEMA plans to incorporate Federal Flood Risk	NWC previously raised concerns with FFRMS	

	Protection of Wetlands Regulations NPRM, March 2023	Management Standards (FFRMS) for floodplain and flood elevation requirements for federally funded projects.		
FEMA	Updates to the National Flood Insurance Program/Incorporation of Endangered Species Act considerations	On October 12, 2021, the Federal Emergency Management Agency published a request for information on potential changes to the National Flood Insurance Program, including incorporation of endangered species considerations into NFIP decisions. In the request, FEMA asks for comments on if, and how, NFIP should be changed, and examples on how they could include endangered species and habitat into NFIP plans and programs		NWC submitted joint comments
USACE	Update to Levee Design Manual (EM 1110-2-1913): Expected final, Dec. 2022	The Corps is proposing updates to its guidance for evaluating, designing, and constructing levees, Engineer Manual (EM) 1110-2-1913 – Evaluation, Design, and Construction of Levees. The Corps has informally made the draft updated manual available to the public for	NWC expressed serious concerns with the proposed changes to historical design manual standards and procedures that have worked for a number of years. Additionally, the proposed design manual moves toward a risk-based approach which would substantially revise the	<i>To see NWC's Oct. 2022 comments, click here.</i>

		review. The Corps originally requested feedback from the public by September 1, 2022, but informally extended the feedback submission period by 60 days, to the end of October 2022.	levee design, construction and evaluation process, which will have a significant impact on both the levee systems and the communities they serve.	
USACE	Revision of USACE's Section 408 process NPRM, expected in 2023.	Section 408 is derived from Section 14 of the Rivers and Harbors Appropriations Act of 1899 which gives the Secretary of the Army authority to grant permission to non-federal entities to do permanent or temporary alteration of any Corps Civil Works project. Under 408, the Corps certifies that the alteration will not impair the usefulness of the project or is injurious to the public interest. Earlier this year, USACE undertook a series of public listening sessions on the Sec. 408 process.	A notice of proposed rulemaking was expected in Jan. 2023, however, we've been told that the schedule has slipped since the proposed rule is still going through the internal review process. NWC's letter gave feedback on what is working and not working within the 408 program and offered recommendations for how the Corps can improve the program	Click here to read NWC's Sept. 2022 comment letter or here to read our May 2022 letter on Sec. 408.
USACE	Natural Disaster Procedures: Preparedness, Response and Recovery Activities of	On November 15, the U.S. Army Corps of Engineers announced a proposed rule on "Natural Disaster Procedures: Preparedness, Response and Recovery	NWC has convened a working group to draft a letter on potential impacts of the proposed rule. Comments are due Jan. 17, 2023.	

	the Corps of Engineers (PL 84-99)	Activities of the Corps of Engineers” which would potentially change how the P.L. 84-99 program is operated. According to the proposed rule, USACE is moving toward a risk-informed approach for the Rehabilitation Program and proposes to repeal and replace the current P.L. 84-99 rule.		
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