Maryland Waters and Wetlands Regulatory Guidance for Permits, Authorizations and Exemptions for Agricultural Activities

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Request for MDE General Permit Authorization (NRCS RLOA Version) - Located in eFOTG, Sec. 1 (Web Link)

SCD Certification and MDE Concurrence for Proposed Agricultural Activities in Nontidal Wetlands - Located in eFOTG, Sec. 1 (Web Link)

MDE Nontidal Wetlands Mitigation Plan Requirements (Web Link)

Individual Federal/State Permit Application (Web Link)

Additional information on MDE's Wetlands and Waterways Programs can be found at http://www.mde.state.md.us/programs/Water/WetlandsandWaterways/Pages/Programs/WaterPrograms/wetlands_waterways/index.aspx.

Additional information on the USACE Baltimore District's Regulatory Program can be found at http://www.nab.usace.army.mil/Missions/Regulatory.aspx.

SUMMARY OF RESPONSIBILITIES, EXEMPTIONS, AND STATEWIDE PERMITS AND APPROVALS FOR ACTIVITIES CONDUCTED IN WATERS, WETLANDS, AND 100-YEAR FLOODPLAINS

Maryland Department of the Environment

A. **Background**. The Maryland Department of the Environment (MDE) regulates activities conducted in tidal waters, nontidal waters and their 100-year floodplains, and nontidal wetlands. Regulated activities include draining, dredging, excavating, filling, grading, shaping, flooding, changing the hydrology, or removing vegetation in waterbodies, watercourses, floodplains, and wetlands. Within the context of MDE regulations, a distinction is made between the terms waters *and* wetlands.

B. **MDE's Tidal Wetlands Regulations** - Requires permits or licenses for activities conducted in tidal waters and tidal wetlands. Regulated activities include filling, dredging, bulkheads, revetments, breakwaters, boat ramps, piers, utility crossings, storm drain outfalls, and restoration of tidal marshes.

C. **Surface Water Quality Protection** – Surface water quality in Maryland is regulated (COMAR 26.08.02) to protect public health, enhance water quality, protect aquatic resources, and meet the requirements of the Section 401 of the Clean Water Act (CWA). Surface waters are assigned certain designated uses relating to aquatic life, recreational use, and public water supply. Water quality criteria and antidegradation policy have been established to protect the designated uses. Permits for activities in surface waters typically refer to *designated uses* in reference to in-stream construction prohibition periods. Stream segment designated uses can be found in COMAR 26.08.02.08.

D. **MDE's Nontidal Waters and Floodplain Regulations** - Requires permits for activities that change the course, current or cross-section of nontidal waters (perennial and intermittent streams, or other waterbodies), including the 100-year floodplain. Note: MDE does not regulate waters that have only ephemeral flow (i.e., water flows only during and immediately following storm events, but there is no base flow).

Regulated activities in nontidal waters and floodplains require an individual or general permit prior to conducting the activities. In some cases, an exemption may be applicable. Permits require that disturbance to nontidal waters and the 100-year floodplain are limited to the minimum necessary to conduct the permitted activity.

1. Exemptions

Agricultural drainage systems, for the purpose of lowering the level of water in the soil, are exempt from these regulations provided that the total drainage area is 2,500 acres or less. Public Drainage Associations (PDAs) with a drainage area of 2,500 acres or less are exempt only if they have a State-approved O&M plan as required by the Maryland Department of Agriculture's regulations. The maintenance or repair must be performed within the original size, scope, and design of the project. Permits are needed in areas of PDAs that have a drainage area greater than 2,500 acres, or where new activities (not maintenance or repair) are proposed in PDAs of any size. (Note: Under nontidal wetland regulations, mitigation may be required for impacts to wetlands.)

2. General Permits

a. ***General Waterway Construction Permit*** allows regulated activities to occur if they disturb less than 5,000 SF of land and less than 100 CY of material, provided that no habitable structures are built and there are no permanent obstructions that can affect the hydraulic characteristics of the floodplain. The permit requires written 30-day notice to MDE. No in-stream construction is allowed during specified fish spawning periods. This permit is not valid for activities in the floodplain or channel of mainstem state designated Scenic & Wild Rivers, as follows: Anacostia, Deer Creek, Monocacy, Patuxent, Pocomoke, Potomac in Montgomery and Frederick counties, Severn, Wicomico in Charles County, and Youghiogheny.

b. ***General Waterway Construction Permit: Regional Letter of Authorization for Agricultural Best Management Practices***. This permit applies to specific BMPs installed with NRCS technical and/or financial assistance. Included are livestock watering systems, stream crossings, fencing, and connecting the outlets of pipelines, grassed waterways, diversions, drop structures, etc. to nontidal waters, nontidal wetlands and the 100-year floodplain (including streams). Projects cannot cause adverse impacts to sensitive fish and wildlife habitats. In the 100-year floodplain, activities may disturb up to 5,000 SF of land and 100 CY of earth, but no habitable structures or permanent obstructions that would affect the hydraulic characteristics of the floodplain are allowed. If impacts to nontidal wetlands are less than 5,000 SF (or less than 1 acre, if isolated), with no Significant Plant or Wildlife Value, mitigation is not required. If wetland impacts are 5,000 SF or more (or greater than 1 acre, if isolated), or if they occur in the Critical Area, mitigation is required. If there is Significant Plant or Wildlife Value, mitigation is required regardless of the size. An SCD approved soil conservation and water quality plan and 30-day written notification to MDE are required. No in-stream construction is allowed during specified fish spawning periods. This permit is not valid for activities in the floodplain of state designated Scenic & Wild Rivers.

c. ***General Waterway Construction Permit: Regional Letter of Authorization for Wetland Restoration, Wetland Creation, and Shallow Water Areas***. Similar to the previously described General Permit, but impacts to nontidal wetlands are not limited to 5,000 SF. Disturbance limits of 5,000 SF and 100 CY of earth in the 100-year floodplain remain in effect. This permit applies to restored or created wetlands, and shallow water areas, that will be installed with NRCS technical and/or financial assistance. For impacts to nontidal wooded or other natural wetlands, this permit only applies to wetland restorations designed to restore the site to natural conditions, and generally limited to ditch plugs and water control structures. Projects cannot cause adverse impacts to sensitive fish and wildlife habitats, or to the hydraulic characteristics of floodplains. This permit requires written 30-day notice to MDE. No in-stream construction is allowed during specified fish spawning periods. This permit is not valid for activities in the floodplain of state designated Scenic & Wild Rivers.

E. **MDE's Nontidal Wetlands Regulations** - Requires permits for activities in nontidal wetlands or their 25-foot buffers (100-foot buffers for Wetlands of Special State Concern). Regulated activities include grading, filling, excavating, dredging, changing the hydrology, and destroying or removing vegetation.

An individual permit must be applied for and obtained before conducting any regulated activity. For some activities, an exemption or general permit may be applicable. Permits require that disturbance to nontidal waters and the 100-year floodplain are limited to the minimum necessary to conduct the permitted activity.

1. Exemptions

a. ***Agricultural activities*** are exempt from the requirements to obtain an MDE Nontidal Wetlands permit, and to maintain nontidal wetland buffers. Agricultural activities include plowing, cropping, cultivating, grazing and raising of livestock, aquaculture, sod production, production of tobacco, nursery stock, and Christmas trees, installation of BMPs associated with agricultural operations, and construction of farm ponds. (Ponds are not considered agricultural when the primary use is wildlife.) MDE approvals and mitigation may be required, depending on the activity. If impacts to nontidal wetlands are less than 5,000 SF (or 1 acre, if isolated), with no Significant Plant or Wildlife Value, mitigation is not required.

Mitigation is not required for repair and maintenance of serviceable structures, as long as the work does not change the size or scope of a project beyond its original design, or otherwise convert any wetlands that were not previously impacted by the project. Reconstruction of farm ponds that failed years ago and have reverted to natural conditions is not included in this maintenance exemption.

b. ***Forestry activities*** are exempt from the requirements to obtain an MDE Nontidal Wetlands permit, and to maintain nontidal wetland buffers. There are no mitigation requirements for forestry. Forestry activities include planting, cultivating, thinning, harvesting, and related actions that support the use and management of forest resources.

A registered professional forester must prepare a sediment and erosion control plan. This plan must include BMPs to minimize wetland impacts. If nontidal wetlands of Special State Concern are present, the plan must include primary and secondary protection areas identified in consultation with DNR's Natural Heritage Program. The sediment and erosion control plan must be submitted to and approved by the SCD.

c. ***Other exemptions***. There are other exemptions not related to agriculture and forestry. See COMAR 26.23.01.02 for details.

2. General Permits

a. ***General Waterway Construction Permit: Regional Letter of Authorization for Agricultural Best Management Practices***. This permit applies to specific BMPs installed with NRCS technical and/or financial assistance. (Also see C.2.b., above.) This permit is primarily needed for compliance with waterway construction regulations, but nontidal wetlands are also included.

b. ***General Waterway Construction Permit: Regional Letter of Authorization for Wetland Restoration, Wetland Creation, and Shallow Water Areas***. This permit applies to restored or created wetlands, and shallow water areas, that will be installed with NRCS technical and/or financial assistance. (Also see C.2.c., above.)

U.S. Army Corps of Engineers

A. **Background**. Section 404 of the Clean Water Act, and Section 10 of the Rivers and Harbors Act, provide the legal basis for the Corps to regulate activities in "waters of the U.S." Section 404 of the Clean Water Act regulates the discharge of dredged or fill material into waters of the U.S. These

waters include oceans, bays, rivers, streams, and wetlands, and are defined at 33 CFR Part 328.3. Ephemeral streams are not specifically mentioned here, but they are not specifically excluded, either. Section 10 of the Rivers and Harbors Act regulates activities in navigable waters only.

The limit of Corps jurisdiction in nontidal waters (such as a stream) is the "ordinary high water mark" (OHWM). If adjacent wetlands are also present, the limit of jurisdiction extends to the limit of the adjacent wetlands (33 CFR 328.4). The Baltimore District of the Corps of Engineers announced that it will regulate ephemeral streams and channels, provided that they have an OHWM, unless an exemption is applicable. Based on a recent Supreme Court ruling, the Corps will not be regulating most intrastate isolated waters that have no surface connection to interstate waters.

B. **Permits**. The Corps has the option to issue two types of permits: individual permits, and general permits. Nationwide permits (NWPs) are a type of general permit. Maryland's "MDSPGP" is also a type of general permit issued by the Baltimore District Corps to the State. The MDSPGP allows the State's nontidal wetlands program to assume some of the regulatory responsibilities of the Corps. Because of the MDSPGP, the Baltimore District Corps suspended the use of most of the NWPs in Maryland.

NWP 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, has not been suspended, and is applicable for the restoration and creation of wetlands, and activities conducted for improving or restoring nontidal streams and waters, provided that the activities result in net increases in aquatic resource functions. NWP 27 does not authorize the conversion of a stream or wetland to another type of aquatic habitat. NWP 27 requires the minimization of adverse impacts to waters and wetlands to the extent possible. Notification to the Corps must be submitted at least 30 days prior to commencement of work. (72 FR 11185-11186)

Individual permits are required for regulated activities that are not covered by general permits. As part of the individual permit process, an applicant may need to provide an "alternatives analysis" as required by Section 404(b)(1) guidelines. This means that alternatives to the proposed action need to be considered, including avoidance and minimization of impacts to wetlands. (For example, consider whether there are one or more alternatives that would achieve the basic project purpose, but with less or no wetland impacts.) The permit application should include a discussion of the alternatives considered, and a justification of why the proposed action is the only practicable way to accomplish the objectives of the project. This justification is especially important for projects that will impact more than a minimal amount of wetlands, for example, more than 1/2 acre. Even if mitigation is proposed by an applicant, the Corps may deny a permit for a project if the adverse impacts are too great.

C. **Section 404(f) Exemptions**. Certain agricultural and forestry activities are categorically exempt from 404 permit requirements. The following activities in waters and wetlands do not need Section 404 permits:

1. ***Normal farming and silvicultural activities*** including plowing, seeding, cultivating, minor drainage, and harvesting, as well as upland soil conservation practices, if these activities are part of an on-going farming or forestry operation (33 CFR 324.4 (a)(1)(i)).

   This exemption does not include activities that are intended to bring wetland areas into agricultural production, for example, clearing a wooded wetland for row crop production. Farmed wetland cropland (FW) and farmed wetland pasture and hayland (FWP) are

jurisdictional wetlands, but are exempt from permit requirements as long as there is no change in the on-going use of these areas.

"Minor drainage" associated with normal farming operations refers to the incidental draining or filling of small wetland areas, especially where it is necessary to connect upland drainage facilities (such as field ditches, tile lines, grassed waterways, diversions, and drop structures) to a suitable outlet in a stream or wetland. Minor drainage is limited to activities in areas that are already part of established farming or silvicultural operations.

The Interpretive Rule Regarding Applicability of the Exemption from Permitting under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices (signed March 25, 2014 by the U.S. EPA and the U.S. Army Corps of Engineers) expressed that 56 NRCS conservation practices that protect and enhance water quality are considered "normal farming" activities, and therefore are exempt from permit requirements associated with the discharge of dredged or fill material in a waters of the U.S. under Section 404(f)(1)(A) of the CWA. These NRCS conservation practices, when implemented in accordance with NRCS standards and specs, are exempt from permit requirements under Section 404(f)(1)(A) when they will not convert the land to a more intensive use, such as from forested wetland to agriculture. See Clean Water Act Intepretive Rule and the USDA, EPA and USACE MOU in the appendix of this handbook for more information.

2. ***Repair or replacement of damaged structures*** or fills, to the extent of the original design (33 CFR 324.4 (a)(2)). Action must be taken within a reasonable amount of time after the damage occurs and before the area reverts to natural conditions.

3. ***Construction of farm ponds*** for the purpose of supplying livestock water, irrigation water, or fire protection (33 CFR 324.4 (a)(3)). The size of the pond must be consistent with the volume of water needed to support the principal agricultural use. This exemption does not apply if the pond impounds a stream.

4. ***Maintenance of farm ponds and drainage ditches***, to the extent of the original design (33 CFR 324.4 (a)(3)). Maintenance should be part of a regular maintenance program. If ditch maintenance is deferred to the extent that complete reconstruction is needed, it is no longer considered maintenance. Reconstruction of ponds that failed years ago and have reverted to natural conditions is <u>not</u> included in this maintenance exemption.

5. ***Construction or maintenance of farm roads***, forest roads, or temporary roads for moving mining equipment (33 CFR 324.4 (a)(6)). Roads and associated stream crossings must be held to the minimum feasible number, width, and length consistent with the specific farming, silvicultural, or mining activity. BMP's must be used to minimize adverse effects to wetlands and streams.

U.S. Department of Agriculture

A. **<u>Background</u>**. The Wetland Conservation ("Swampbuster") provisions of the Farm Bill restrict the conversion of wetlands for annual crop production. This law applies only to persons who are participating in USDA programs, and affects their eligibility for program payments. A Swampbuster violation occurs when a wetland is drained, dredged, filled, cleared, or otherwise altered to the extent that the site is capable of being planted to a commodity crop, even if a crop isn't actually planted.

B. <u>NRCS Responsibilities</u>.

1. ***Food Security Act and USDA Program Participants***. NRCS is responsible for delineating, or reviewing and certifying the delineation of wetlands for USDA program participants, or persons intending to become participants, on agricultural and non-agricultural lands when the proposed activity involves draining, dredging, filling, leveling, ditching, mechanized land clearing, or otherwise manipulating the land for the purpose of making possible the production of an agricultural commodity. NRCS also has the authority to make certified determinations if USDA participants are reported to have potential wetland violations involving Swampbuster compliance. The following applies to determinations made by NRCS:

   - An NRCS wetland determination is strictly for wetlands, and not for other waters (e.g. streams, ponds).

   - An NRCS certified determination is valid only while the land use remains agricultural.

   - NRCS wetland determinations may not be valid for Clean Water Act purposes[1], so coordination between NRCS and COE is recommended when making wetland determinations. NRCS will include the following language in all written wetland determinations provided to the landowner for the purposes of the Farm Bill: *This certified wetland determination/delineation has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985. This determination/delineation may not be valid for identifying the extent of the Army Corps of Engineers' (COE) Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting work.*

   NRCS is **not** responsible for wetland determinations in the following circumstances:

   - When a *Jurisdictional Determination* is requested for the purposes of the Clean Water Act. *Jurisdictional Determinations* are COE and MDE responsibilities.

   - On agricultural land for the purpose of changing to a non-agricultural use (e.g., subdivided lot on agricultural land).

   - On agricultural land when the COE or MDE have made or are in the process of making a wetland determination. In this case, the COE or MDE determination can be used for Farm Bill purposes, with one exception: lands previously labeled PC remain PC for Food Security Act purposes.

   - On non-agricultural land for purposes other than making possible the production of an agricultural commodity (e.g., constructing a poultry house in woodland would not make crop production possible).

[1] NRCS and COE *Joint Guidance on Conducting Wetland Determinations for the Food Security Act of 1985 and Section 404 of the Clean Water Act* (Feb 25, 2005).

Exception: NRCS may make wetland determinations for Farm Service Agency Farm Credit applicants when requested by the Farm Service Agency.

2. ***Technical Support to Districts***. NRCS may provide technical assistance to support Districts in wetland determination activities for agriculture. Districts have been authorized by Maryland state law to *conduct or review* wetland determinations and delineations for agricultural activities beyond the scope of the Food Security Act.

   Agricultural activities for which Districts have been given authority through COMAR do **not** necessarily coincide with agricultural activities under the NRCS/COE joint guidance on wetland determinations. For example, clearing woodland to build a poultry house would be considered an agricultural activity under COMAR, but would not be considered "for the purpose of making possible the production of an agricultural commodity" under the NRCS/COE joint guidance. A determination conducted for this example would be a District determination valid for the State of Maryland, but not necessarily valid for the CWA.

   Although NRCS and Districts have responsibility for making wetland determinations in the circumstances described above, activities that may affect wetlands require coordination with COE and MDE.

   See *Soil Conservation District* responsibilities below.

C. **Approvals**. NRCS is not a regulatory agency, and does not issue permits. However, USDA program participants need to contact NRCS and the Farm Service Agency (FSA) before they undertake any new activities that might affect wetlands. NRCS will determine whether any wetlands will be affected by a proposed activity, whether a Swampbuster exemption may apply, and whether any mitigation is needed. The one exception to this is when the participant is conducting ditch maintenance, for which it is their responsibility to ensure they do not increase the scope of the drainage beyond the original extent. The program participant is responsible for obtaining any necessary State, Federal, or local permits and approvals. Failure to contact NRCS and FSA before a project is started may result in a Swampbuster violation, and a loss of USDA program benefits.

D. **Swampbuster Exemptions**. The Farm Bill provides certain exemptions that may be granted for wetland conversion activities. NRCS will determine if a proposed activity qualifies for any of the following exemptions:

1. **Corps Permit Decision (CPD)** - A proposed wetland conversion is in compliance with Swampbuster if all necessary permits have been obtained and permit conditions (including mitigation, if required) are met. Annual crops can be planted on the converted wetland if NRCS issues a "CPD exemption."

2. **Manipulated Wetland (WX)** - A wetland manipulated after December 23, 1985, but the manipulation was not for the purpose of making production possible and production was not made possible. These areas include wetlands manipulated by drainage maintenance agreements.

3. **Minimal Effect (MW)** - A proposed wetland conversion is in compliance with Swampbuster if the impact is less than 5,000 square feet, or less than 1 acre (if isolated, or is an FW, or FWP), and there are no significant resource concerns present. No mitigation is required for these small

wetland impacts. Annual crops can be planted on the converted wetland if NRCS issues a "Minimal Effect exemption." Use the *Minimal Effect Determination* form.

4. **Mitigation (MIW)** - A proposed wetland conversion is in compliance with Swampbuster if wetland impacts are replaced (mitigated) elsewhere, preferably on the same property. The MIW exemption is not needed if the CPD exemption is used (see above).

5. **Prior Converted (PC) Cropland** - This is a former wetland that was converted and planted to an annual crop at least once prior to 12/23/85. Flooding or ponding (if any) is present for less than 15 consecutive days during the growing season. PC Cropland is not considered a jurisdictional wetland by NRCS, so additional drainage can be installed or other alternations made without penalty from Swampbuster. (Caution: PC may be regulated as a jurisdictional wetland by MDE and the Corps if abandoned for 5 years or more, and wetland conditions have returned.)

Other Swampbuster exemptions may also apply, but those listed above are the most commonly used. Refer to the NRCS National Food Security Act Manual for additional details.

Soil Conservation Districts

Soil Conservation Districts (SCD's) have significant responsibilities under Maryland nontidal wetland regulations, which include the following:

- Delineating, or reviewing and approving the delineation of nontidal wetlands for agricultural (COMAR 26.23.05.01) and forestry activities (COMAR 26.23.05.02). For forestry activities, off-site wetland delineation (using hydric soil maps, USGS maps, and DNR Wetland maps) is acceptable.

- Determining the extent of impact for agricultural activities, and notifying MDE of their determination. If MDE has not responded within 60 days of notification, the SCD's determination is considered correct. MDE retains the right to concur with or reject the SCD's determination within the 60-day review period.

- Approving a soil conservation and water quality plan (SCWQP), and a mitigation plan, if required.

- Reviewing and approving sediment and erosion control plans, which are required for forestry activities that impact wetlands, and may be required for agricultural activities conducted under a permit.

Maryland Department of Agriculture

The Maryland Department of Agriculture (MDA) is responsible for reviewing and approving the design, construction, operation, and maintenance of agricultural drainage projects that are financed or managed by a Public Drainage Association (PDA). MDA regulations (COMAR 20.15.20.01) require the use of BMPs to protect water quality, wetlands, and riparian habitat. If an activity is included in an approved PDA O&M plan, no MDE permits (nontidal waters or nontidal wetlands) are needed, provided that the drainage area is 2,500 acres or less.

Other Maryland Environmental Laws

Maryland's Critical Area Act regulates activities conducted within 1,000 feet of tidal waters. Each Critical Area county has adopted its own regulations. These vary somewhat county-by-county.

County Regulations

Some counties have their own regulations concerning activities in floodplains, wetlands, streams, and stream buffers. These regulations vary considerably county-by-county.

NONTIDAL WETLANDS AND WATERWAYS PERMIT GUIDANCE TABLES

The following tables provide federal and state exemption and permit guidance for commonly occurring agricultural, forestry, and PDA maintenance activities that may affect nontidal wetlands, nontidal waters, and the 100-year floodplain. This guidance is based on "typical" activities. Contact the appropriate state or federal agency if there is a question about compliance requirements for a specific project.

All guidance assumes that the land use is not going to change as a result of the activity, except for the guidance in table 3. (Wetland restorations and creations, and shallow water areas are not considered agricultural activities by MDE.)

Local ordinances and regulations may impose additional permit or review requirements (e.g., Critical Area regulations, floodplain ordinances, grading permits, etc.).

List of Tables

The guidance in these tables is for reference purposes only. Consult the *Code of Maryland Regulations* for specific requirements.

Table 1. Normal Farming and Maintenance Activities, Including Management of PDA Systems

Table 2. Agricultural Construction Activities – Includes construction for erosion control practices, livestock facilities, land clearing, farm ponds, farm buildings, stream crossings, and drainage activities.

Table 3. Restoration and Creation of Wetlands and Shallow Water Area Development

Table 4. Forestry Activities

Sources of Information for Tables

- COMAR 26.23.05.01 MDE/Nontidal Wetlands/Agricultural and Forestry Activities/Agricultural Activities (Exemptions)
- COMAR 26.17.04.10 MDE/Water Management/Construction on Nontidal Waters and Floodplains/General Waterway Construction Permit
- General Waterway Construction Permit Regional Letter of Authorization for Agricultural BMPs for Installation of Certain BMPs(12-NT-0044/201260247)
- General Waterway Construction Permit Regional Letter of Authorization for Agricultural BMPs for Creation, Restoration, or Enhancement of Nontidal Wetlands and Shallow Water Habitats (11-NT-0440/201161728)
- Section 404 of the Clean Water Act in 33CFR323 (Exemptions) and USEPA and USACE Interpretive Rule March 25, 2014
- Maryland State Programmatic General Permit 4 (MDSPGP-4)

TABLE 1. NORMAL FARMING AND MAINTENANCE ACTIVITIES, INCLUDING MAINTENANCE OF PDA SYSTEMS

Considerations

- If the activities will result in impacts to nontidal wetlands, waters, or the 100-year floodplain outside the original scope of the permitted or grandfathered activity, or the activities do not meet the conditions listed, refer to table 2.
- Drainage ditch maintenance does not require a *scope and effect* determination by NRCS.
- It is recommended that the SCD is contacted prior to conducting repair activities or maintenance activities on large projects (e.g. ponds, large culverts).

Activity	Permit/ Notification	Conditions
Plowing, seeding, cultivating, grazing, and harvesting.	Exempt	Proposed activity does not change hydrology or remove natural herbaceous or woody vegetation.
Maintenance and repair of agricultural BMP's: Grassed waterways, diversions, terraces, surface and subsurface drainage systems, livestock watering facilities, stream crossings, and ponds.	Exempt	• The BMP is serviceable and not in complete disrepair; AND • The land use remains agricultural; AND • The maintenance or repair is performed within the original size, scope, and design; AND • BMP's must be used to minimize adverse impacts on wetlands during maintenance and repair work.
PDA non-structural maintenance, such as ditchbank mowing, brush control without use of chemicals, and debris removal.	None	If the activities are included in a PDA Operation and Management Plan approved by MDA.
Herbicidal brush control in and along banks of drainage ditches and waterways.	MDE Toxics Material Permit	Permit needed when spraying in or adjacent to waters.
PDA structural maintenance such as sediment removal, pipe replacement, and repair of bank failures and crossings.	None	• The drainage area is 2,500 acres or less; AND • The activities are included in a PDA Operation and Management Plan approved by MDA; AND • The maintenance or repair is performed within the original size, scope, and design; AND • The activity is not in the mainstem or 100-year floodplain of a State Scenic and Wild river; AND • The activity will not significantly affect the hydraulic characteristics of the floodplain.

Abbreviations: BMP – Best Management Practice , MDA – Maryland Department of Agriculture, MDE – Maryland Department of the Environment, PDA – Public Drainage Association

TABLE 2 INSTRUCTIONS – AGRICULTURAL CONSTRUCTION ACTIVITIES

1. Identify the category code for the activity and then refer to the appropriate column in the agricultural construction activities table.
2. Determine the type(s), isolation status, impact size and conditions of all waters being impacted by the activity. Not all activities will impact all water types, and activities that primarily affect one type of water may also affect another (e.g. construction of a stream crossing may also affect wetlands adjacent to the stream).
3. Looking at the columns for MDE and COE, determine the highest level of permit (IP > GP > E) required for all the water type(s) that will be impacted.
4. Refer to the definitions of the Food Security Act wetland labels for applicability and requirements for USDA program participants. Listed label is the most likely label to be used for the situation.

Category A	**Category B**
• Construction of grassed waterways, diversions, and terraces. • Construction of surface drainage. • Construction of subsurface drainage. • Installation of water control structures in drainage ditches (not streams). • Conversion of an existing drainage ditch within an agricultural field to a tile drainage system or grassed waterway/tile system (not streams). • Clearing, draining, and/or filling of nontidal wetlands to improve agricultural production, allow full operation of pivot irrigation, or increase cropland or pasture acreage. • Construction of a spring development for livestock watering systems.	• Installation of outlets from upland drainage practices into nontidal wetlands, nontidal waters, and the 100-year floodplain for diversion (362), grade stabilization structure (410), grassed waterway (412), lined waterway or outlet (468), subsurface drain (606), surface drain (607, 608), terrace (600), underground outlet (620). • Construction of a stream crossing where livestock or farm equipment currently cross. • Installation of a collection box or well ring in a stream to supply water to a trough, or to supply water to a farm pond for livestock water, irrigation, or fire protection. • Construction of temporary stream crossings. Must be removed upon completion of the project, or within one year of installation. Portable bridges are preferred.
Category C Construction of a farm pond for the purposes of livestock watering, irrigation, or fire protection.	**Category D** Construction of farm buildings or other agricultural structures.
Category E Relocation of an existing drainage ditch within an agricultural field to facilitate farming activities.	

TABLE 2. AGRICULTURAL CONSTRUCTION ACTIVITIES

				A			B			C			D			E		
Waters Impacted	**Isolated**	**Impact Size**	**Conditions**	**MDE**	**COE**	**USDA**	**MDE**	**COE**	**USDA**	**MDE**	**COE**	**USDA**	**MDE**	**COE**	**USDA**	**MDE**	**COE**	**USDA**
Farmed Wetlands	YES	< 1 AC	None	EX		MW or WX	EX	EX	MW or WX	EX	EX	WX	EX		WX	EX		MW
	NO	≤ ½ AC[4]	None		SP or EX[2]									SP			SP	
	YES	≥ 1 AC	None			MIW[1] or WX			MIW[1] or WX									MIW[1]
	NO	> ½ AC[4]	None		IP[1] or EX[2]	MW, MIW[1] or WX			MW, MIW[1] or WX					IP[1]			IP[1]	MW or MIW*
Nontidal Wetlands	YES	< 1 AC	No significant plant or wildlife value AND not in critical area	EX		MW or WX	EX	EX	MW or WX	EX		WX	EX		WX	EX		MW
	NO	< 5,000 SF	No significant plant or wildlife value AND not in critical area		SP or EX[2]						SP			IP[1]			SP	
	NO	< 5,000 SF	With significant plant or wildlife value OR in critical area	EX[3]	SP[3] or EX[2]	MIW[1] or WX	EX[3]		MIW[1] or WX	EX[1]	IP[1]		EX*			EX[1]	SP[1]	MIW[1]
	NO	≥ 5,000 SF	None		SP[3] or IP[1] or EX[2]												SP[1] or IP[1]	
100-year Floodplain	n/a	< 5,000 SF AND < 100 CY	Not in the 100-year floodplain of a State Scenic and Wild River	GP			GP									GP		
	n/a	Any	In the 100-year floodplain of a State Scenic and Wild River	IP[3]			IP[3]			IP[3]			IP[3]			IP[3]		
	n/a	≥ 5,000 SF OR ≥ 100 CY	None															
Intermittent Streams	n/a	< 5,000 SF AND < 100 CY AND ≤ 300 LF	Not in the 100-year floodplain of a State Scenic and Wild River	GP	SP[3] or EX[2]		GP	EX		GP	SP[3]		GP	SP[3]		GP	SP[3]	
Perennial Streams	n/a	< 5,000 SF AND < 100 CY AND ≤ 300 LF	Not in the 100-year floodplain of a State Scenic and Wild River		IP[3] or EX[2]						IP[3]			IP[3]			IP[3]	

Table 2 Notes

Notification Requirements

EX or GP on Farmed Wetlands - Notification not required. Document on Con-6 Assistance Notes

EX on Nontidal Wetlands - Notification to MDE via *SCD Certification and MDE Concurrence for Proposed Agricultural Activities in Nontidal Wetlands*

GP on Nontidal Wetlands, 100-Year Floodplain, and Streams - Notification to MDE via *Request for MDE General Waterway Construction Permit*

KEY

EX Exempt from permitting requirements. Activities on farmed wetlands that do not require an individual permit are also exempt from notification requirements. Activites that are normally exempt from Section 404 of the CWA, are not exempt if the activity will result in a change in use to which it was not previously subject.

GP Genral permit is applicable. For MDE, this includes General Waterway Construction Permit (GWCP) and Regional Letter of Authorization (RLOA) for Agricultural BMP's.

SP Maryland State Programmatic General Permit. The MDSPGP has an impact limit of 1/2-acre and 300 LF of stream. Activities not authorized in perennial streams. The MDSPGP is only applicable for agricultural activities when a minimal effect (MW) or mitigation wetland (MIW) exemption is issued. If the applicant is not a USDA program participant, mitigation is required for authorization under the MDSPGP.

IP Individual permit required. Use Joint Federal/State Permit Application.

1 Mitigation is required. For MDE, if mitigation is required, a Soil Conservation and Water Quality Plan (i.e. conservation plan) is also required.

2 Activity may be exempt if implemented under a NRCS conservation practice that is considered normal farming activity per the Interpretive Rule March 25, 2014.

3 Mitigation may be required. Where noted for COE on impacts to streams, mitigation may be required if impacts are > 200 LF.

4 The ½ AC threshold for non-isolated farmed wetlands is based on the Agricultural Activities section of the MDSPGP. See 'SP' above.

XXX Not regulated.

MDE Maryland Department of the Environment

COE U.S. Army Corps of Engineers

USDA Food Security Act Wetland Labels

MW Minimal Effect Wetland - requires minimal effect determination

MIW Mitigation Wetland

WX Manipulated Wetland - a wetland manipulated after December 23, 1985, but not for the purpose of make production possible and production was not made possible.

Definitions

Farmed Wetlands - Wetlands that were in production prior to December 23, 1985, and have not been abandoned (i.e., farming activities maintain a non-natural condition).

Nontidal Wetlands - Wetlands in natural condition (can have woody or natural herbaceous vegetation).

TABLE 3. RESTORATION AND CREATION OF NONTIDAL WETLANDS AND SHALLOW WATER AREAS

Waters Impacted	Isolated?	Impact Size	Conditions	MDE Permit	COE Permit	MDE/COE Action	Mitigation Required
PC Cropland	n/a	Any	None	Exempt	Exempt	None	NO
Farmed Wetland	YES or NO	Any	Minimum impact needed to achieve practice standards.	GWCP RLOA for Wetlands*	Exempt	Request for MDE GWCP	NO
Degraded/ Drained Nontidal Wetland	YES	Any	• **Applies to restoration only**; AND • Restored to approximate natural condition; AND • Impacts minimized; AND • Generally limited to use of ditch plugs	GWCP RLOA for Wetlands	Not Regulated	Request for MDE GWCP	NO
	NO	Any	• **Applies to restoration only**; AND • Restored to approximate natural condition; AND • Impacts minimized; AND • Generally limited to use of ditch plugs	GWCP RLOA for Wetlands	Exempt	Request for MDE GWCP	NO
	YES or NO	Any	Does not meet the constraints of RLOA for Wetlands	Individual Permit	Exempt	Individual Application	Maybe
100-year Floodplain	n/a	< 5,000 SF < 100 CY	Not in the 100-year floodplain of a State Scenic & Wild River	GWCP RLOA for Wetlands	Not Regulated	Request for MDE GWCP	NO
	n/a	Any	In the 100-year floodplain of a State Scenic & Wild River	Individual Permit	Not Regulated	Individual Application	Maybe
	n/a	≥ 5,000 SF OR ≥ 100 CY	None	Individual Permit	Not Regulated	Individual Application	Maybe
Streams	n/a	< 5,000 SF < 100 CY ≤ 300 LF	• Applies only to existing drainage ditches constructed in nontidal streams • Not in the 100-year floodplain of a State Scenic & Wild River • In-stream construction activities prohibited during specific time periods • Perennial and intermittent streams are not being impounded	GWCP RLOA for Wetlands	Exempt if meets conditions	Request for MDE GWCP	Maybe, if impacts > 200 LF

* If farmed wetland has become naturalized, site may not be eligible for shallow water development under the RLOA. Consult with MDE.

TABLE 4. FORESTRY ACTIVITIES

Forestry activities include planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity.

Conditions that apply to all potential impacts on nontidal wetlands and waters:

- Sediment and erosion control plan to minimize wetland impacts prepared by registered forester, and approved by the Soil Conservation District
- BMP's must be used to minimize adverse impacts on wetlands during maintenance and repair work.
- Cannot result in a change of land use.

Waters Impacted	Permit	Conditions
Nontidal wetland NOT of Special State Concern	Exempt	• Sediment and erosion control plan to minimize wetland impacts prepared by registered forester, and approved by the Soil Conservation District • BMP's must be used to minimize adverse impacts on wetlands during maintenance and repair work. • Cannot result in a change of land use.
Nontidal wetland of Special State Concern	Exempt	In addition to the conditions that apply to all potential impacts on nontidal wetlands and waters, requires establishment of primary and secondary protection areas in consultation with DNR-Natural Heritage Program (per COMAR 26.23.05.02).
Streams or 100-year Floodplain	MDE General Waterway Construction Permit	In addition to the conditions that apply to all potential impacts on nontidal wetlands and waters: • Impacts of < 5,000 SF and < 100 CY and < 300 LF; AND • The activity is not in the mainstem or 100-year floodplain of a State Scenic and Wild river; AND • The activity will not significantly affect the hydraulic characteristics of the floodplain.
Streams or 100-year Floodplain	Individual Permit	• Impacts of ≥ 5,000 SF or ≥ 100 CY or ≥ 300 LF; OR • The activity is in the mainstem or 100-year floodplain of a State Scenic and Wild river; OR • The activity will significantly affect the hydraulic characteristics of the floodplain.

APPENDICES

WATERWAYS AND WETLANDS REGULATORY CONTACTS

MDE Wetlands and Waterways Program Contacts

MDE Nontidal and Tidal Wetlands Consultant Lists

U.S. Army Corps of Engineers Regulatory Contacts

MDE GWCP/REGIONAL LETTER OF AUTHORIZATION FOR AGRICULTURAL BMPS

MARYLAND DEPARTMENT OF THE ENVIRONMENT
1800 Washington Boulevard • Baltimore MD 21230
410-537-3000 • 1-800-633-6101

Martin O'Malley
Governor

Anthony G. Brown
Lieutenant Governor

Robert M. Summers, Ph.D.
Secretary

February 16, 2012

United States Department of Agriculture
Natural Resources Conservation Service
339 Busch's Frontage Road
Suite 301
Annapolis, MD 21401
Attn: Jon Hall, State Conservationist

Re: General Waterway Construction Permit/Regional Letter of Authorization
For Agricultural BMP (12-NT-0044/201260247)

Dear Mr Hall:

Enclosed is the General Waterway Construction Permit/Regional Letter of Authorization (RLOA) from the Maryland Department of the Environment for the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS) for agricultural Best Management Practices. Please note the Special Conditions on page 1 of the conditions of the RLOA, which detail the procedure for utilizing the RLOA. Also, please be aware that NRCS must notify the Water Management Administration's Compliance Program of the planned activities, prior to commencement of the activities. Notification for larger projects will include the submission of plans. Multiple projects may be listed in a single notification.

Should you have any questions or comments, please feel free to contact me at 410-537-3766.

Sincerely,

Amanda Sigillito

Amanda L. Sigillito, Chief
Nontidal Wetlands Division

Enclosures
C: MDE – Compliance Program
MDE – Kelly Neff

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

GENERAL WATERWAY CONSTRUCTION PERMIT/ REGIONAL LETTER OF AUTHORIZATION FOR AGRICULTURAL BMPS

AUTHORIZATION NUMBER: 12-NT-0044/201260247

EFFECTIVE DATE: February 16, 2012

EXPIRATION DATE: September 30, 2016

AUTHORIZED PERSON: United States Department of Agriculture
Natural Resources Conservation Service
339 Busch's Frontage Road
Suite 301
Annapolis, MD 21401
Attn: Jon Hall, State Conservationist

IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(a) AND §5-906(a), ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME), COMAR 26.17.04, 26.08.02 AND 26.23.01, AND THE ATTACHED PERMIT CONDITIONS OF AUTHORIZATION, **United States Department of Agriculture, Natural Resources Conservation Service**, ("AUTHORIZED PERSON"), IS HEREBY AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION ("ADMINISTRATION") TO CONDUCT CERTAIN AUTHORIZED REGULATED ACTIVITIES IN NONTIDAL WETLANDS, BUFFERS, OR EXPANDED BUFFERS, AND/OR THE COURSE, CURRENT OR CROSS-SECTION OF WATERS OF THE STATE, IN ACCORDANCE WITH ATTACHED CONDITIONS, INCLUDING THE SUBMISSION OF PLANS WHERE APPLICABLE (APPROVED PLAN) AS DESCRIBED BELOW:

The alteration or other disturbance to regulated waterways, their 100-year floodplains, nontidal wetlands, their buffers or expanded buffers, for the purposes of installing certain best management practices, in accordance with NRCS Maryland Conservation Practice Standards. Included are Livestock Watering Systems, certain types of stream crossings, fence and providing stable outlets for specified upland drainage practices, as implemented with NRCS technical and/or financial assistance.

Note: Before beginning work, please see Special Conditions Nos. 1 and 2.

Amanda L. Sigillito, Chief
Nontidal Wetlands & Waterways Division

Attachments: Conditions of Authorization

cc: MDE - Compliance Program
Kelly Neff

THE FOLLOWING CONDITIONS OF AUTHORIZATION APPLY TO ALL ACTIVITIES AUTHORIZED BY AUTHORIZATION NO. 12-NT-0044/201260247 :

SPECIFIC CONDITIONS

1. Notification of Work to be Performed: Prior to beginning work, Authorized Person must fax a vicinity map and return email address to the Administration's Regulatory Services Division , at 410-537-3762. The Regulatory Service's Division will screen the project and determine if any cultural resources, and endangered species, or a species proposed for such designation, may be impacted by the project. If either cultural resources or endangered species or a species proposed for such designation, may be impacted by the project, the Authorized Person will be required to resolve the issue with the appropriate agency (either the Maryland Historical Trust or the Maryland Department of the Natural Resources.

2. Description of Project: Upon completion of Special Condition No. 1, and before initiation of work, Authorizer Person must contact the Administration's Nontidal Wetlands and Waterways Division at 410-537-3766 and provide a description of the project, estimated start and completion dates of the project and estimated impacts to regulated waterways, including the 100-year floodplain, nontidal wetlands or the nontidal wetland buffer.

GENERAL CONDITIONS

1. Validity: Authorization is valid only for use by Authorized Person. Authorization may be transferred only with prior written approval of the Administration. In the event of transfer, transferee agrees to comply with all terms and conditions of Authorization.

2. Initiation of Work, Modifications, and Extension of Term: Authorized Person shall initiate authorized activities within two (2) years of the Effective Date of this Authorization or the Authorization shall expire. Authorized Person may submit written requests to the Administration for (a) extension of the period for initiation of work, (b) modification of Authorization, including the Approved Plan, or, (c) not later than 45 days prior to Expiration Date, an extension of the term. Requests for modification shall be in accordance with applicable regulations and shall state reasons for changes, and shall indicate the impacts on nontidal wetlands, streams, and the floodplain, as applicable. The Administration may grant a request at its sole discretion.

3. Responsibility and Compliance: Authorized Person is fully responsible for all work performed and activities authorized by this Authorization shall be performed in compliance with this Authorization and Approved Plan. Authorized Person agrees that a copy of the Authorization and Approved Plan shall be kept at the construction site and provided to its employees, agents and contractors. A person (including Authorized Person, its employees, agents or contractors) who violates or fails to comply with the terms and conditions of this Authorization, Approved Plan or an administrative order may be subject to penalties in accordance with §5-514 and §5-911, Environment Article, Annotated Code of Maryland (1996 Replacement Volume).

4. Failure to Comply: If Authorized Person, its employees, agents or contractors fail to comply with this Authorization or Approved Plan, the Administration may, in its discretion, issue an administrative order requiring Authorized Person, its employees, agents and contractors to cease and desist any activities which violate this Authorization, or the Administration may take any other enforcement action available to it by law, including filing civil or criminal charges.

5. Suspension or Revocation: Authorization may be suspended or revoked by the Administration, after notice of opportunity for a hearing, if Authorized Person: (a) submits false or inaccurate information in required Permit application, as part of the notification, or subsequently required submittals; (b) deviates from the Approved Plan, specifications, terms and conditions; (c) violates, or is about to violate terms and conditions of this Authorization; (d) violates, or is about to violate, any regulation promulgated pursuant to Title 5, Environment Article, Annotated

Code of Maryland as amended; (e) fails to allow authorized representatives of the Administration to enter the site of authorized activities at any reasonable time to conduct inspections and evaluations; (f) fails to comply with the requirements of an administrative action or order issued by the Administration; or (g) does not have vested rights under this Authorization and new information, changes in site conditions, or amended regulatory requirements necessitate revocation or suspension.

6. Other Approvals: Authorization does not authorize any injury to private property, any invasion of rights, or any infringement of federal, State or local laws or regulations, nor does it obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

7. Site Access: Authorized Person shall allow authorized representatives of the Administration access to the site of authorized activities during normal business hours to conduct inspections and evaluations necessary to assure compliance with this Authorization. Authorized Person shall provide necessary assistance to effectively and safely conduct such inspections and evaluations.

8. Inspection Notification: Authorized Person shall notify the Administration's Compliance Program at least five (5) days before starting authorized activities and five (5) days after completion. For Frederick, Washington, Allegany and Garrett counties, Authorized Person shall call (301) 689-8150. For all other counties, call the Baltimore office at (410) 537-3510.

9. Sediment Control: Authorized Person shall obtain approval from the Soil Conservation District or Department as appropriate, for a erosion and sediment control plan specifying soil erosion control measures. The approved grading and sediment control plan shall be included in the Approved Plan, and shall be available at the construction site.

10. Federally Mandated State Authorizations:
__X__ Water Quality Certification: Authorized activities shall be performed in accordance with the attached Water Quality Certification when applicable.
__X__ Coastal Zone Consistency: This Authorization constitutes official notification that authorized activities are consistent with the Maryland Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Activities within the following counties are not subject to this requirement: Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington.

11. Best Management Practices During Construction: Authorized Person, its employees, agents and contractors shall conduct authorized activities in a manner consistent with the Best Management Practices specified by the Administration.

12. Disposal of Excess: Unless otherwise shown on the Approved Plan, all excess fill, spoil material, debris, and construction material shall be disposed of outside of nontidal wetlands, nontidal wetlands buffers, and the 100-year floodplain, and in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands.

13. Temporary Staging Areas: Temporary construction trailers or structures, staging areas and stockpiles shall not be located within nontidal wetlands, nontidal wetlands buffers, or the 100-year floodplain unless specifically included on the Approved Plan.

14. Temporary Stream Access Crossings: Temporary stream access crossings shall not be constructed or utilized unless shown on the Approved Plan. If temporary stream access crossings are determined necessary prior to initiation of work or at any time during construction, Authorized Person, its employees, agents or contractors shall submit a written request to the Administration and secure the necessary permits or approvals for such crossings before installation of the crossings. Temporary stream access crossings shall be removed and the disturbance stabilized prior to completion of authorized activity or within one (1) year of installation.

15. Discharge: Runoff or accumulated water containing sediment or other suspended materials shall not be discharged into waters of the State unless treated by an approved sediment control device or structure.

16. Instream Construction Prohibition: To protect important aquatic species, activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08). Instream work may not be conducted from: for Use III waters October 1 through April 30, inclusive; for Use IV waters March 1 through May 31; inclusive; for all other waters from March 1 through June 15, inclusive, of any year.

17. Instream Blasting: Authorized Person shall obtain prior written approval from the Administration before blasting or using explosives in the stream channel.

18. Minimum Disturbance: Any disturbance of stream banks, channel bottom, wetlands, and wetlands buffer authorized by Permit or Approved Plan shall be the minimum necessary to conduct permitted activities. All disturbed areas shall be stabilized vegetatively no later than seven (7) days after construction is completed or in accordance with the approved grading or sediment and erosion control plan.

19. Restoration of Construction Site: Authorized Person shall restore the construction site according to the Approved Plan upon completion of authorized activities. Undercutting, meandering or degradation of the stream banks or channel bottom, any deposition of sediment or other materials, and any alteration of wetland vegetation, soils, or hydrology, resulting directly or indirectly from construction or authorized activities, shall be corrected by Authorized Person as directed by the Administration.

20. Reporting Notification: Authorized Person shall provide an executed landowner agreement containing landowner permission to conduct the proposed activities, applicable activity restrictions, and a project concept plan to the Administration prior to commencement of work in waterways or their 100-year floodplains, wetlands, their buffers or expanded buffers. The project concept plan shall include: location and identification of nontidal wetlands of special State concern, other wetlands, waterways and 100-year floodplain, proposed location of created, restored, or enhanced wetlands, area of disturbance, existing and proposed water control structures. Upon completion of construction or by the end of the calendar year, the Authorized Person shall provide to the Administration a report including the following information for all projects: landowner name, itemized extent of wetlands, floodplain, waterway, stream, buffer, or expanded buffer altered permanently or temporarily by the project; as-built plans; site location; and area of wetland created, restored, or enhanced.

21. Commencement of Work: Activities in waterways, their 100-year floodplains, wetlands, their buffers or expanded buffers may commence after the Administration verifies that the activities qualify under this Authorization. If the Administration provides no verification within 30 days after receipt of notification, the activities are presumed to qualify under the Authorization.

22. Restricted Activities: Activities in the waterways, their 100-year floodplains, wetlands, buffers, or expanded buffers must be conducted so as not to cause adverse impact to indigenous vegetation, fish and wildlife habitat in identified sensitive fisheries areas, or to the hydraulic characteristics of floodplains. Activities may include maintenance, repair, or replacement of existing structures.

23. Scenic and Wild Rivers Exclusion: This general waterways construction permit does not apply to activities in the floodplain of a Scenic and Wild River as defined by Natural Resources Article, 8-402.

MDE GWCP/REGIONAL LETTER OF AUTHORIZATION FOR WETLAND RESTORATION, CREATION, AND SHALLOW WATER AREAS

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

GENERAL WATERWAY CONSTRUCTION PERMIT/
REGIONAL LETTER OF AUTHORIZATION FOR AGRICULTURAL BMPS

AUTHORIZATION NUMBER: 11-NT-0440/201161728

EFFECTIVE DATE: November 17, 2011

EXPIRATION DATE: September 30, 2016

AUTHORIZED PERSON: United States Department of Agriculture
Natural Resources Conservation Service
339 Busch's Frontage Road
Suite 301
Annapolis, MD 21401
Attn: Virginia Murphy, State Conservationist

IN ACCORDANCE WITH ENVIRONMENT ARTICLE §5-503(a) AND §5-906(a), ANNOTATED CODE OF MARYLAND (1996 REPLACEMENT VOLUME), COMAR 26.17.04, 26.08.02 AND 26.23.01, AND THE ATTACHED PERMIT CONDITIONS OF AUTHORIZATION, **United States Department of Agriculture, Natural Resources Conservation Service**, ("AUTHORIZED PERSON"), IS HEREBY AUTHORIZED BY THE WATER MANAGEMENT ADMINISTRATION ("ADMINISTRATION") TO CONDUCT CERTAIN AUTHORIZED REGULATED ACTIVITIES IN NONTIDAL WETLANDS, BUFFERS, OR EXPANDED BUFFERS, AND/OR THE COURSE, CURRENT OR CROSS-SECTION OF WATERS OF THE STATE, IN ACCORDANCE WITH ATTACHED CONDITIONS, INCLUDING THE SUBMISSION OF PLANS WHERE APPLICABLE (APPROVED PLAN) AS DESCRIBED BELOW:

The alteration or other disturbance to regulated waterways, their 100-year floodplains, nontidal wetlands, their buffers or expanded buffers, for the creation, restoration, or enhancement of nontidal wetlands and shallow water habitats.

Note: Before beginning work, please see Special Conditions Nos. 1 and 2.

Amanda L. Sigillito, Chief
Nontidal Wetlands & Waterways Division

Attachments: Conditions of Authorization

cc: MDE - Compliance Program
Kelly Neff

THE FOLLOWING CONDITIONS OF AUTHORIZATION APPLY TO ALL ACTIVITIES AUTHORIZED BY AUTHORIZATION NO. 11-NT-0440/201161728:

SPECIFIC CONDITIONS

1. Notification of Work to be Performed: Prior to beginning work, Authorized Person must fax a vicinity map and return email address to the Administration's Regulatory Services Division , Attn: Mrs. Tressa Ellis, at 410-537-3751. Ms. Ellis will screen the project and determine if any cultural resources, and endangered species, or a species proposed for such designation, may be impacted by the project. If either cultural resources or endangered species or a species proposed for such designation, may be impacted by the project, the Authorized Person will be required to resolve the issue with the appropriate agency (either the Maryland Historical Trust or the Maryland Department of the Natural Resources.

2. Description of Project: Upon completion of Special Condition No. 1, and before initiation of work, Authorizer Person must contact the Administration's Nontidal Wetlands and Waterways Division at 410-537-3766 and provide a description of the project, estimated start and completion dates of the project and estimated impacts to regulated waterways, including the 100-year floodplain, nontidal wetlands or the nontidal wetland buffer.

GENERAL CONDITIONS

1. Validity: Authorization is valid only for use by Authorized Person. Authorization may be transferred only with prior written approval of the Administration. In the event of transfer, transferee agrees to comply with all terms and conditions of Authorization.

2. Initiation of Work, Modifications, and Extension of Term: Authorized Person shall initiate authorized activities within two (2) years of the Effective Date of this Authorization or the Authorization shall expire. Authorized Person may submit written requests to the Administration for (a) extension of the period for initiation of work, (b) modification of Authorization, including the Approved Plan, or, (c) not later than 45 days prior to Expiration Date, an extension of the term. Requests for modification shall be in accordance with applicable regulations and shall state reasons for changes, and shall indicate the impacts on nontidal wetlands, streams, and the floodplain, as applicable. The Administration may grant a request at its sole discretion.

3. Responsibility and Compliance: Authorized Person is fully responsible for all work performed and activities authorized by this Authorization shall be performed in compliance with this Authorization and Approved Plan. Authorized Person agrees that a copy of the Authorization and Approved Plan shall be kept at the construction site and provided to its employees, agents and contractors. A person (including Authorized Person, its employees, agents or contractors) who violates or fails to comply with the terms and conditions of this Authorization, Approved Plan or an administrative order may be subject to penalties in accordance with §5-514 and §5-911, Environment Article, Annotated Code of Maryland (1996 Replacement Volume).

4. Failure to Comply: If Authorized Person, its employees, agents or contractors fail to comply with this Authorization or Approved Plan, the Administration may, in its discretion, issue an administrative order requiring Authorized Person, its employees, agents and contractors to cease and desist any activities which violate this Authorization, or the Administration may take any other enforcement action available to it by law, including filing civil or criminal charges.

5. Suspension or Revocation: Authorization may be suspended or revoked by the Administration, after notice of opportunity for a hearing, if Authorized Person: (a) submits false or inaccurate information in required Permit application, as part of the notification, or subsequently required submittals; (b) deviates from the Approved Plan, specifications, terms and conditions; (c) violates, or is about to violate terms and conditions of this Authorization; (d) violates, or is about to violate, any regulation promulgated pursuant to Title 5, Environment Article, Annotated

Code of Maryland as amended; (e) fails to allow authorized representatives of the Administration to enter the site of authorized activities at any reasonable time to conduct inspections and evaluations; (f) fails to comply with the requirements of an administrative action or order issued by the Administration; or (g) does not have vested rights under this Authorization and new information, changes in site conditions, or amended regulatory requirements necessitate revocation or suspension.

6. Other Approvals: Authorization does not authorize any injury to private property, any invasion of rights, or any infringement of federal, State or local laws or regulations, nor does it obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

7. Site Access: Authorized Person shall allow authorized representatives of the Administration access to the site of authorized activities during normal business hours to conduct inspections and evaluations necessary to assure compliance with this Authorization. Authorized Person shall provide necessary assistance to effectively and safely conduct such inspections and evaluations.

8. Inspection Notification: Authorized Person shall notify the Administration's Compliance Program at least five (5) days before starting authorized activities and five (5) days after completion. For Frederick, Washington, Allegany and Garrett counties, Authorized Person shall call (301) 689-8150. For all other counties, call the Baltimore office at (410) 537-3510.

9. Sediment Control: Authorized Person shall obtain approval from the Soil Conservation District or Department as appropriate, for a erosion and sediment control plan specifying soil erosion control measures. The approved grading and sediment control plan shall be included in the Approved Plan, and shall be available at the construction site.

10. Federally Mandated State Authorizations:
__X__Water Quality Certification: Authorized activities shall be performed in accordance with the attached Water Quality Certification when applicable.
__X__Coastal Zone Consistency: This Authorization constitutes official notification that authorized activities are consistent with the Maryland Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Activities within the following counties are not subject to this requirement: Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington.

11. Best Management Practices During Construction: Authorized Person, its employees, agents and contractors shall conduct authorized activities in a manner consistent with the Best Management Practices specified by the Administration.

12. Disposal of Excess: Unless otherwise shown on the Approved Plan, all excess fill, spoil material, debris, and construction material shall be disposed of outside of nontidal wetlands, nontidal wetlands buffers, and the 100-year floodplain, and in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands.

13. Temporary Staging Areas: Temporary construction trailers or structures, staging areas and stockpiles shall not be located within nontidal wetlands, nontidal wetlands buffers, or the 100-year floodplain unless specifically included on the Approved Plan.

14. Temporary Stream Access Crossings: Temporary stream access crossings shall not be constructed or utilized unless shown on the Approved Plan. If temporary stream access crossings are determined necessary prior to initiation of work or at any time during construction, Authorized Person, its employees, agents or contractors shall submit a written request to the Administration and secure the necessary permits or approvals for such crossings before installation of the crossings. Temporary stream access crossings shall be removed and the disturbance stabilized prior to completion of authorized activity or within one (1) year of installation.

15. Discharge: Runoff or accumulated water containing sediment or other suspended materials shall not be discharged into waters of the State unless treated by an approved sediment control device or structure.

16. Instream Construction Prohibition: To protect important aquatic species, activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08). Instream work may not be conducted from: for Use III waters October 1 through April 30, inclusive; for Use IV waters March 1 through May 31; inclusive; for all other waters from March 1 through June 15, inclusive, of any year.

17. Instream Blasting: Authorized Person shall obtain prior written approval from the Administration before blasting or using explosives in the stream channel.

18. Minimum Disturbance: Any disturbance of stream banks, channel bottom, wetlands, and wetlands buffer authorized by Permit or Approved Plan shall be the minimum necessary to conduct permitted activities. All disturbed areas shall be stabilized vegetatively no later than seven (7) days after construction is completed or in accordance with the approved grading or sediment and erosion control plan.

19. Restoration of Construction Site: Authorized Person shall restore the construction site according to the Approved Plan upon completion of authorized activities. Undercutting, meandering or degradation of the stream banks or channel bottom, any deposition of sediment or other materials, and any alteration of wetland vegetation, soils, or hydrology, resulting directly or indirectly from construction or authorized activities, shall be corrected by Authorized Person as directed by the Administration.

20. Reporting Notification: Authorized Person shall provide an executed landowner agreement containing landowner permission to conduct the proposed activities, applicable activity restrictions, and a project concept plan to the Administration prior to commencement of work in waterways or their 100-year floodplains, wetlands, their buffers or expanded buffers. The project concept plan shall include: location and identification of nontidal wetlands of special State concern, other wetlands, waterways and 100-year floodplain, proposed location of created, restored, or enhanced wetlands, area of disturbance, existing and proposed water control structures. Upon completion of construction or by the end of the calendar year, the Authorized Person shall provide to the Administration a report including the following information for all projects: landowner name, itemized extent of wetlands, floodplain, waterway, stream, buffer, or expanded buffer altered permanently or temporarily by the project; as-built plans; site location; and area of wetland created, restored, or enhanced.

21. Commencement of Work: Activities in waterways, their 100-year floodplains, wetlands, their buffers or expanded buffers may commence after the Administration verifies that the activities qualify under this Authorization. If the Administration provides no verification within 30 days after receipt of notification, the activities are presumed to qualify under the Authorization.

22. Restricted Activities: Activities in the waterways, their 100-year floodplains, wetlands, buffers, or expanded buffers must be conducted so as not to cause adverse impact to indigenous vegetation, fish and wildlife habitat in identified sensitive fisheries areas, or to the hydraulic characteristics of floodplains. Activities may include maintenance, repair, or replacement of existing structures.

23. Scenic and Wild Rivers Exclusion: This general waterways construction permit does not apply to activities in the floodplain of a Scenic and Wild River as defined by Natural Resources Article, 8-402.

Additional Guidance for Use of the MDE Regional Letter of Authorization (RLOA) for Creation, Restoration, or Enhancement of Nontidal Wetlands and Shallow Water Habitats

1. **Design Standards -** Projects must be designed and built according to NRCS Maryland Conservation Practice Standards and approved designs. Maryland Conservation Practice Standards are available at *www.nrcs.usda.gov/technical/efotg/*.

2. **Design Issues and Considerations**

   a. Wherever possible, the use of ditch plugs to restore hydrology is preferred over the construction of berms. Wetland restoration projects proposing the use of ditch plugs, including the removal of a few trees will usually qualify to use the RLOA.

   b. Wetland restoration project designs should make every effort to restore the hydrology as close to historical levels as possible. Soil surveys and old aerials photos are useful tools. Six inches should be the maximum average water depth in normal pool areas. Unless there is historical data showing deeper water (Delmarva bays, etc.), and this evidence is provided to the agencies, the project may need additional review through the individual permit application process.

3. **"Fatal Flaws" – "**Fatal flaws" that will probably result in agency denial of the use of the RLOA include:

   a. The project is proposed in a natural stream or wetland corridor;

   b. The proposed project involves more than a minor permanent <u>conversion</u> of vegetated wetlands to open water, or forested wetlands to emergent wetlands;

   c. The proposed project does not demonstrate avoidance and minimization of impacts to existing wetlands or the project will result in a net loss of wetlands.

4. **Projects <u>not</u> covered by the RLOA** – Projects that do not qualify for use of the RLOA require a joint federal/state permit application. Projects that affect nontidal wetlands, 100-year floodplains and streams do not qualify if they:

   a. Involve the clearing of trees to construct berms; or

   b. Disturb more than 5,000 square feet or 100 cubic yards of earth <u>in the 100-year floodplain or stream channels</u>.

MDE GENERAL WATERWAY CONSTRUCTION PERMIT

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATON

GENERAL WATERWAY CONSTRUCTION PERMIT (GWCP)

COMAR 26.17.04.10 authorizes certain types of construction within the 100 year floodplain and eliminates the requirement for the issuance of individual permits under certain circumstances. The General Permit provision does not apply to any proposed construction in the channel or floodplain of a Scenic and Wild River as defined in Natural Resources Article, 8-402 (Anacostia, Deer Creek, Monocacy, Patuxent, Pocomoke, Potomac in Montgomery and Frederick counties, Severn, Wicomico in Charles County, and Youghiogheny).

ACTIVITIES ELIGIBLE FOR AUTHORIZATION UNDER THE GWCP

Authorized activities include the following:

1. Clearing and grading activities in the 100-year frequency floodplain when:

   (a) Less than 5,000 square feet of land area and less than 100 cubic yards of earth are disturbed,

   (b) Habitable structures are not constructed, and

   (c) Permanent structures are not created that would affect the hydraulic characteristics of the floodplain;

2. Temporary construction on the waters of the State which meet the special requirements of Regulation 26.17.04.08B, C, D and E, Construction on Nontidal Waters and Floodplains.

3. Minor maintenance and repair of existing structures.

_____

Amanda L. Sigillito, Chief
Nontidal Wetlands and Waters Division

General requirements that apply to work performed under the General Permit provisions include:

1. 30 day advance written notice to the Nontidal Wetlands and Waterways Division of the WMA;

2. Permission for WMA Compliance Program inspection;

3. Availability of plans and specifications on site;

4. Where applicable, approved sediment and erosion control plans;

5. Specifically designed sediment and erosion control measures for in-stream work even though the project may be exempt from the requirement to obtain an approved plan (from MDE or the local SCD).

6. Written notice to the Compliance Program of the WMA within 30 days after project completion.

Note: Applicants that propose to do work in the stream channel are advised of the following time of year prohibition for in-stream construction:

Use I waterways - from March 1 through June 15, inclusive;
Use III waterways - from October 1 though April 30, inclusive and
Use IV waterways - from March 1 through May 31, inclusive.

Information that must be submitted to the Nontidal Wetlands and Waterways Division of WMA, as appropriate:

1. Vicinity map

2. General plan including:

   a. land ownership

   b. existing and proposed topography

   c. location of the proposed activity

   d. construction schedule

   e. cross-section of the stream/floodplain

   f. sketch of the proposed activity

3. Storm drainage provisions (may be satisfied by issuance of local approval)

4. Description of predominant soil type

5. Type and sources of materials

6. Sediment and erosion control provisions and implementation schedule

Notes on the documentation

- Applicant must certify that the proposed activity will not increase flood risk

Notes on Corps of Engineers (COE) Permit Requirements

CATEGORY III ACTIVITIES REQUIRE AUTHORIZATION FROM THE COE PRIOR TO INITIATING WORK

Cat. I = Authorized under the MDSPGP, COE agency coordination not required
Cat IIIA = Authorized under the MDSPGP, COE agency coordination is required
Non-jurisd'l = No jurisdiction under Sect. 404

Notes on Water Quality Certification "WQC"

Certified = Water Quality Certified
GWQC 88-001R = General Water Quality Certification for Utilities
Non-jurisd'l = No jurisdiction under Sect. 401

Notes on the Local Floodplain Approval

Approval from the appropriate local agency as applicable for activities located in the 100-year frequency floodplain must be secured prior to initiating work.

ACTIVITIES INELIGIBLE FOR APPROVAL UNDER THE GWCP

Activities described herein are not eligible for approval under the General Waterway Construction Permit (COMAR 26.17.04):

Projects located in the stream channel or floodplain of a Scenic and Wild Rivers as defined in Natural Resources Article 8-402, Annotated Code of Maryland.

Replacement of existing bridges and culverts.

Extension of existing culverts.

Projects that impact nontidal wetlands (impact to nontidal wetlands must be authorized by individual an authorization or Regional Letters of Authorization).

DEFINITIONS

"Bridge" means, for the purposes of this Agreement, a stream or waterway crossing that retains an undisturbed and naturalized stream bed, and that is typically composed of: abutments on either side of the waterway; a superstructure with driving surface and safety walls or railings, and which may or may not have piers or pilings in the waterway.

"Complete & Entire Project" [see also "Single & Complete Project" 33 CFR ∋330.2(i)] means all work associated with all portions of a regulated activity, regardless of fragmentation by the applicant for the purposes of design or construction. This concept is particularly pertinent to linear activities (eg. utility lines, roads) where there are multiple and cumulative regulated resources impacted. The cumulative impacts of the Complete and Entire Project are used to determine the category of authorization, eligibility under the WCGP, mitigation requirements, etc.

"Culvert" means, for the purposes of this Agreement, a stream or waterway crossing that does not retain an undisturbed and naturalized stream bed, and that is typically "one piece" or integral structural units. Culverts may be concrete or corrugated metal pipe, pre-fabricated or built in place, and come in a variety of shapes and sizes. Depressed culverts are not considered to be bridges even if a naturalized streambed is established.

"Floodplain" means that area along or adjacent to a stream or a body of water within the waters of the State that is capable of storing or conveying floodwaters.

"General waterway construction permit" means the authorization established by Regulation 26.17.04.10 for certain categories of construction activities to take place without an individual waterway construction permit.

"Maintenance" means activities undertaken to prevent the deterioration, impairment, or need for repair of an authorized serviceable fill area, structure, right-of-way, or land use, which includes management of vegetation and replacement of structural components. Maintenance does not include dredging, excavating or filling unless conducted in a temporary sediment control structure, wash pond, or roadside ditch.

"MDSPGP" means the Maryland State Programmatic General Permit

"Standards and Specifications for Soil Erosion and Sediment Control" means the latest official handbook for sediment control principals, methods, and practices approved by the WMA, which is incorporated by reference under COMAR 26.17.01.11.

"Use I Waterways" this use designation means waters which are suitable for water contact recreation, the growth and propagation of fish (other than trout) and other aquatic life, and water supply (see COMAR 26.08.02.08).

"Use III Waterways" this use designation means waters having the potential to support or are capable of supporting natural trout populations, including propagation, and their associated food organisms (see COMAR 26.08.02.08).

"Use IV Waterways" this use designation means cold or warm waters having the potential to hold or support or capable of holding or supporting adult trout for put-and-take fishing, usually seasonal (see COMAR 26.08.02.08).

"Waters of the State" means rivers, streams or body of water within the State including the 100-year frequency floodplain of free-flowing waters. This does not include ephemeral systems, State or private wetlands, or areas subject to tidal flooding.

"WMA" means the Water Management Administration of Maryland Department of the Environment

U.S. ARMY CORPS OF ENGINEERS SPECIAL PUBLIC NOTE: RE-ISSUANCE OF MDSPGP

Public Notice

U.S. Army Corps of Engineers
Baltimore District

Date: September 28, 2011

Special Public Notice 11-77

Subject: Issuance of the Maryland State Programmatic General Permit-4 (MDSPGP-4) for a five year period.

This Public Notice is issued by the Baltimore District of the U.S. Army Corps of Engineers (Corps). This Public Notice may be viewed on the Baltimore District web site:
http://www.nab.usace.army.mil/Wetlands%20Permits/public_notices.htm

On October 1, 2006, the District Engineer for Baltimore District issued the Maryland State Programmatic General Permit (MDSPGP-3) for a five-year period. The MDSPGP-3 will expire on September 30, 2011.

On April 11, 2011, the District Engineer issued Special Public Notice #11-26 requesting comments on whether to: (1) reissue the MDSPGP-3 with modifications listed (MDSPGP-4), (2) reissue without modifications for a five-year period, or (3) not reissue the MDSPGP-3. Following a thorough review of all comments received in response to the special public notice and the public hearing held on June 17, 2011, the Corps has decided to issue the MDSPGP-4.

The purpose of this Public Notice is to inform the public that the Maryland State Programmatic General Permit-4 (MDSPGP-4) has been issued by Colonel David E. Anderson, District Engineer for the Baltimore District of the U.S. Army Corps of Engineers. The MDSPGP-4 will be implemented and in full effect within the State of Maryland on October 1, 2011.

A copy of the MDSPGP-4 can be viewed on the Baltimore District web site:
http://www.nab.usace.army.mil/Wetlands%20Permits/permits.htm . Interested persons, who do not have access to the Internet, may request a copy of this document by contacting: Ms. Aida Vasquez, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203, or by telephone at (410) 962-3670.

The people of the State of Maryland are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform work in waters of the United States as described in the MDSPGP-4. The Corps' authority and guidance to develop general permits is contained in Section 404(e) of the Clean Water Act (33 U.S.C. 1344(e)) and 33 CFR 325.2(e), 33 CFR 325.3(b), and Corps Regulatory Guidance Letter 83-7.

Activities with minimal adverse environmental effects, as specified by the terms, conditions, and limitations of this MDSPGP-4, are either non-reporting to the Corps (Category A) or will be reviewed by the Corps, Maryland Department of the Environment (MDE), resource agencies, and/or in certain cases the public (Category B). Applicants continue to be responsible for insuring that all required Federal, State, and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-4. This MDSPGP-4 does not affect the Corps Individual Permit review process or activities exempt from the Corps permit process.

THE FOLLOWING MODIFICATIONS HAVE BEEN INCORPORATED INTO THE MDSPGP-4:

The changes in the MDSPGP-4 are based on consistency with other Federal regulations, operational feedback, monitoring data, and public input. Specifically, during monitoring and evaluation of the MDSPGP-3, the Corps determined that restructuring, modifying and including new activity-specific requirements and thresholds, and coordination procedures were necessary to further ensure that only minimal individual and cumulative impacts to all aquatic resources including linear and riverine aquatic resources. The activity-specific modifications are consistent with new regulations since the issuance of the MDSPGP-3. Changes have also been made with the consideration of changes to the State program, compliance with the Magnuson-Stevens Fishery Conservation and Management Act and Section 7 of the Endangered Species Act, and issues identified through the Corps' monitoring results.

The substantive modifications in MDSPGP-4 include a new maximum total stream length impact threshold of 2,000

linear feet; stream mitigation requirements when total stream losses exceed 200 linear feet; Category I and Category III have been replaced by Category A (Corps review not required) and Category B (Corps review required), respectively; the elimination of Category II by including these current activities under the new Category B; specific acreage limits and requirements designated for each activity under both Category A and Category B; a reduction of impact limits for some Category A activities; two new activities; the addition of general conditions for the protection of endangered and threatened species, and installation of aerial transmission lines across navigable waters; and the addition and clarification of definitions.

The following are notable changes that were made to the MDSPGP-3:

1. **"Previously Authorized Activities" that have received written, project-specific verification under the MDSPGP-3 have until December 31, 2013 to complete the work under the terms and conditions of the MDSPGP-3. The project must receive written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures if the work cannot be completed by December 31, 2013. Requests for modifications of previously authorized work under the MDSPGP-3 and/or special conditions are not grandfathered and must be submitted in writing for written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures.** This general condition was changed to ensure that project-specific verifications that were issued late in the term of the MDSPGP-3 and that could be affected by the decreased thresholds in the MDSPGP-4 would have some additional time to complete the authorized work under the terms and conditions of their original MDSPGP-3 verification. Please contact your Maryland Section Regulatory Branch point of contact at our website for case-specific information: http://www.nab.usace.army.mil/Wetlands%20Permits/POCS/md-map.html

2. The new Linear Transportation Projects activity authorizes additional types of linear projects other than roads, including railways, trails, airport runways, and taxiways.

3. Many Category A activities now apply to only nontidal projects to ensure that these activities do not cause more than minimal adverse effects to navigation. This includes all three utility activities; linear transportation activities; SAMP Study projects; and Residential, Commercial and Institutional activities.

4. The method of measuring the linear footage of stream impact for purposes of categorical determinations under the MDSPGP-4 has changed, and is described and illustrated in the Definitions section on pages 56 and 57 under "linear footage of stream impact." In summary, the applicant is required to provide both the length and width stream dimensions. The linear footage of stream impact for categorical determination is the greater of these two measurements.

5. The Essential Fish Habitat (EFH) consultation process with the National Marine Fisheries Service (NMFS) resulted in the addition of activity-specific conditions that are necessary to minimize impacts to EFH and managed species, both individually and cumulatively. One most notable condition specifies countersinking requirements for permanent culvert pipe placement in Coastal Plain streams (tidal and nontidal), and Piedmont streams in Harford and Cecil Counties. Activities that include this countersinking condition are General Maintenance, Utility Access Roads, Linear Transportation projects, and Residential, Commercial, and Institutional Development projects. The Tidal Revetments and Tidal Shoreline Erosion Control Structures Other than Revetments and Toe Protection for New or Existing Bulkheads and The Tidal Marsh Creation/Beach Nourishment activity now includes conditions that require documentation of the shoreline condition. In addition, the Tidal Marsh Creation/Beach Nourishment activity limits authorization of projects proposed for the purpose of compensatory mitigation to Category B review process with Corps review and agency coordination. This activity includes an important notation to inform the public that NMFS will provide additional scrutiny to tidal marsh creation projects proposed for compensatory mitigation when these projects convert tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of subtidal waters into tidal wetlands. Additional requirements added to the Tidal Marsh Creation/Beach Nourishment activity include specifications for example sill design parameters to facilitate ingress/egress of estuarine fauna, a requirement for assessment of previous authorized impacts requiring mitigation in addition to those impacts associated with the proposed tidal marsh creation/compensatory mitigation project, and compliance with the 2008 Mitigation Rule. Construction measures that are to be considered when constructing open-pile walkways across tidal and nontidal emergent marsh have been added to the Pier activity to minimize marsh damage and minimize the risk of introducing invasive species.

6. Recommendations of NMFS have been added to the general conditions on pages 62 and 63 that apply to Category A activities. These conditions ensure that the activities will have "no effect" on Endangered Species Act-listed species and thus, in general, do not require Corps review. Most noteworthy are the best management practices concerning pile driving activities and the time of year restriction for sediment disturbing activities.

General Changes/Clarifications:

1. II.A. page 3. Applicability: A maximum total (temporary and permanent) stream length impact threshold of 2,000 linear feet of stream has been added.

2. II.A,2. page 3. Applicability: Re-named activity categories as Category A and Category B. Category A consists of the former Category I activities that do not require Corps review. Category B includes Category II and Category III activities requiring project-specific Corps review and verification.

3. II.B. pages 3 through 4. Activities Authorized by the MDSPGP-4: It has been clarified that some applications will be reviewed as Category B activities which will not require agency coordination with all Federal agencies. In such instances, the Corps will coordinate directly with the appropriate agency to resolve the outstanding resource issue, such as navigation, essential fish habitat, or historic properties.

4. II.D. page 5. General Criteria for Category A and Category B Activities: Clarified which applications the Corps will review.

5. II.E. 1-10. pages 5 through 6. Category B Activities Requiring Application Submittal: Heading changed from Notification Requirements. The section outlines the situations that require review as a Category B including applications that may meet the terms and conditions of Category A impacts but will need to be reviewed by the Corps under Category B. Also discusses compensatory mitigation.

6. III.A. page 6. Federal, State, and Local Approvals: Clarified that Federal and State jurisdictions may differ in some instances. This MDSPGP-4 may authorize projects that are not regulated by the State of Maryland (e.g., ephemeral streams).

7. III.B.1. page 7. Category A: Category A replaces Category I of the MDSPGP-3.

8. III.B.2. pages 7 through 9. Category B: Categories II and III of the MDSPGP-3 have been merged into Category B which will require Corps review and verification.

9. III.B.3. page 9. Agency Objection: Clarification to this section has been added to explain the process involved for resolution of Federal resource agency objections to projects placed on agency notification.

10. IV. page 10. MDSPGP-4 Categories: Category A and Category B consists of eight broad activity types (Boating and Navigation Activities, Repair and Maintenance Activities, Underground and Overhead Utility Lines, Linear Transportation Projects, Fill Activities, Shoreline and Stream Bank Stabilization Activities, Return Water from Upland Contained Disposal Areas, and Private Landowner Oyster Aquaculture). Two new activities have been added (Residential, Commercial, and Institutional Development Activities; and New Bulkheads). Three existing activity types have been modified (Underground and Overhead Utility Lines, Utility Road Crossings, and Shoreline/Bank Stabilization) into several separate activities. The Category List has been reorganized and entitled "Category A and Category B Activities."

Specific Activity Modifications:

11. IV.B.1.a.(1). page 11. Channel and Harbor Navigation Aids:

    Category A: Same as MDSPGP-3, Category I.
    Category B: Placement of aids along Federal channels requires an application for Corps authorization.

12. IV.B.1.a.(2). page 11. State Regulatory Markers:

    Category A: Same as MDSPGP-3, Category I.
    Category B: Markers along Federal channels require an application for Corps authorization.

13. IV.B. 1 a.(3). pages 11 through 14. Piers: This activity has been modified to authorize piers for non-marina commercial aquaculture use, and clarification has been added to identify that this activity restricts authorization of piers to only private, non-commercial, non-community, non-publicly owned, and non-governmental use. An alternate Corps permit review will be required for structures and floats associated with a public, commercial marina, community, or governmental pier or boating facility, as well as for structures or floats that are located within the horizontal setbacks of a Corps Federal channel, and for private piers that are located within the minimum extended property line setback requirements or may cause more than minimal adverse effect on navigation. We have clarified that compliance with the activity-specific design conditions of this activity are required for the entire project, including the proposed and existing, previously authorized structures. Also clarification has been added that the activity authorizes boatlift construction to existing authorized boat slip and that compliance with the specified activity-specific design conditions are required for the entire project, including the proposed and existing, previously authorized structures. In addition, we have clarified that construction mats installed in waters of the United States are not authorized by this activity and may be authorized under the Temporary Construction Access, Stream Diversion, and Dewatering activity (Section IV.B.1.e(7)) or alternate Corps permit review procedures, as appropriate.

Category A: Clarified that the state agency responsible for approving water ski courses is MD DNR.
Category B: Added piers 8 feet wide, 400 square feet platforms, 8 mooring pilings, and 4 three-foot-wide finger piers are the maximum limits of piers to be evaluated under Category B. Enclosed buildings or other structures, and piers exceeding 100 feet in length over vegetated wetlands will be reviewed either under Category B or alternate Corps permit review procedures, as appropriate. Added best management practices for the construction of open-pile walkways across tidal and nontidal emergent marsh.

14. IV.B.1.a.(4). pages 14 through 15. Marina/Community Piers Reconfiguration: Has been modified to allow for construction of a boat lift at an existing, previously authorized boat slip. Alternate Corps permit review procedures are required for marina/community pier reconfigurations that propose an increase in the existing marina footprint and any new buildings on the pier.

Category A: Does not authorize additional slips or dock spaces.
Category B: Authorizes reconfigurations that propose additional slips within the existing marina footprint (i.e., outer limits).

15. IV.B.1.a.(5). page 15. Boat Ramp Construction, Repair, and Expansion:

Category A: Maximum ramp width reduced to 12 feet. May not extend more than 30 feet channelward of the mean high water shoreline and/or into a water depth of -3 feet at mean low water, whichever is less.
Category B: Boat ramp may not exceed 24 feet in width and extend more than 25% of the width of the waterway or into water depth of -3 feet at mean low water, whichever is less. Discharge in waters of the U.S. must not exceed 50 cubic yards.

16. IV.B.1.a.(6). Page 16. Mooring Buoys: Water depths in mooring areas shall be sufficient that moored vessels float at all stages of the tide and boats should not hit bottom during low water conditions.

Category A: Same as MDSPGP-3, Category I.
Category B: Buoys along Federal channels require application for Corps review. Alternate Corps permit review required if proposed within the Federal channel setbacks.

17. IV.B.1.a.(7). page 16. Structures in Fleeting and Anchorage Areas: Anchorages or fleeting areas not established by the USCG require alternate Corps permit review.

Category A: Same as MDSPGP-3, Category I.
Category B: Structures in these areas that are along Federal channels require application for the Corps review.

18. IV.B.1.a.(8). pages 16 through 17. Temporary Recreational Structures: Alternate Corps permit review is required for temporary recreational structures that will be emplaced for longer than 30 days after the use is discontinued.

Category A: The reservoir manager must approve each individual buoy or marker at Corps of Engineers' reservoirs.
Category B: Structures that are along Federal channels require Corps review.

19. IV.B.1.a.(9). pages 17 through 18. Maintenance Dredging of Previously Authorized Dredge Areas in Tidal Waters: This activity has been clarified to apply to the maintenance dredging of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress and egress, whichever is less. The proposed maintenance dredging must have been previously authorized by the Corps and the dredging completed. The previous dredging must have been authorized and completed no more than 5 years prior the application date of the current proposal; this is a reduction from 10 years under the MDSPGP-3. Additionally, requirements of proof of previous verification and documentation of completed of authorized dredging may be required. The post-dredging bathymetric survey has been deleted. The required submerged aquatic vegetation time of year restriction has been deleted. Proper siltation control condition added. Dredging depths and footprint must not exceed what was previously authorized, including over dredging.

Category A: Reduced to a maximum dredge area of 1/2 acre. Dredge material volume may not exceed 500 cubic yards. Authorizes mechanical dredging only.
Category B: Includes mechanical and hydraulic dredging. Dredge area not to exceed 1 acre.

20. IV.B.1.a.(10). pages 18 through 19. New Minor Dredging in Tidal Waters: The post-dredging bathymetric survey has been deleted. Added requirement that any upland disposal area must be properly designated to contain the material.

Category A: Authorizes mechanical dredging only. The submerged aquatic vegetation survey requirement has been deleted.
Category B: Includes mechanical and hydraulic dredging. Dredge area not to exceed 1/2 acre. Dredge material volume not to exceed 400 cubic yards. An activity-specific submerged aquatic vegetation survey requirement has been added. Submerged aquatic vegetation survey requirements were added as an activity-specific requirement to these Category B activities that were previously addressed in Appendix B of the MDSPGP-3.

21. IV.B.1.b.(1). pages19 through 22. General Maintenance: Maintenance activities generally do not require compensatory mitigation; however, the Corps may require compensatory mitigation for all losses of waters of the United States that require a Category B review associated with maintenance activities in an effort to offset the unavoidable aquatic impacts. An application is required to be submitted to the Corps for previously authorized, currently serviceable structures located along Federally authorized navigation channels that are destroyed by an act of nature or other sudden event or that are proposed to be modified. Added activity-specific conditions for countersinking of culvert pipes and bridge/arch footers for projects located in Coastal Plain streams and Harford and Cecil County Piedmont streams. Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert. Access roads may be authorized under Temporary Construction Access, Stream Diversion, and Dewatering activity.

Category A: No application is required for Corps authorization except if located along Federally authorized navigation channels. Reduced total impacts not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers, or open waters.
Category B: Total impacts not to exceed 1 acre and/or 2,000 linear feet of streams, rivers, or open waters. Removal of sediments must not extend any further than 500 linear feet in any direction from the structure

22. IV.B.1.b.(2). pages 22 through 23. Armoring Bridges, Causeways, and Culverts: Added conditions for construction of low flow channels within armoring and/or scour protection for bridges, arches, and culverts that are applicable to Coastal Plain streams and Piedmont streams in Cecil and Harford Counties.

Category A: Total impacts are reduced so not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers or open waters. Armoring must not extend any further than 200 linear feet in any direction from the structure.
Category B: Total impacts not to exceed 1 acre and/or 2,000 linear feet of streams, rivers or open waters.

Armoring must not extend any further than 500 linear feet in any direction from the structure.

23. IV.B.1.b.(3). pages 23 through 24. Bulkhead Repair or Replacement:

Category A: Application is no longer required for Corps authorization under this category. No discharge of dredged or fill material may be placed into vegetated wetlands or submerged aquatic vegetation.
Category B: Bulkhead repair or replacement must not extend more than 3 feet channelward of the existing structure. Total impacts to waters of the United States may not exceed 10,000 square feet. The total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the bulkhead repair along the

shoreline in linear feet. This activity does not authorize the filling of wetlands behind free-standing bulkheads that have never been backfilled.

24. IV.B.1.b.(4). page 25. Maintenance of Tidal Roadside Ditches: The disposal of dredged material into wetlands and waters of the United States is not authorized.

Category A: The total impacts to tidal ditches and tidal wetlands have been reduced to not exceed 10,000 square feet and/or 500 linear feet.
Category B: Total impacts to tidal ditches and tidal wetlands are not to exceed 1 acre and/or 2,000 linear feet.

25. IV.B.1.b.(5). pages 25 through 26. Maintenance of Mosquito Control Ditches: Both categories allow for careful placement of excavated material onto adjacent wetlands to near wetland elevation and in a manner not to impede water movement across the wetland surface.

Category A: The total impacts to tidal ditches and tidal wetlands have been reduced to not exceed 10,000 square feet and/or 500 linear feet.
Category B: Total impacts to tidal ditches and tidal wetlands are not to exceed 1 acre and/or 2,000 linear feet.

26. IV.B.1.c.(1). pages 26 through 28. Utility Lines: This restructured activity authorizes the construction, maintenance, repair and removal of utility lines, including associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there are no changes in pre-construction contours. A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance. Utility lines also include any cable, line, or wire for the transmission of electricity, telephone and telegraph messages, radio, television, or other communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile, or French drains. The condition for underground utility lines that are installed in streams and wetlands has been modified by stating that using clay plugs, impervious membranes, or other materials may be placed in the trenches. A requirement has been added for aerial electric power transmission lines crossing navigable waters of the U.S. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose.

Category A: Has been restricted to nontidal impacts only. Total impacts have been reduced to not exceed 10,000 square feet of nontidal waters of the U.S. and/or 200 linear feet of streams, rivers, and nontidal open waters. Other additional requirements include the utility line must make a direct or perpendicular stream crossing, and open-cut pipeline installation must not parallel a channel for more than 100 feet along the ordinary high water mark within adjacent nontidal wetlands. Any utility line work that includes tidal impacts require review under the Category B or alternate Corps permit review procedures, as appropriate.
Category B: Total impacts to nontidal and tidal waters of the U.S. are not to exceed 1 acre and/or 2,000 linear feet of streams, rivers, and other tidal and nontidal open waters. A requirement has been added that the cross-sectional view drawings submitted with the application for submerged utility lines across navigable waters of the U.S. must show the utility line crossing from bank to bank in relationship to the waterway bottom. Also, the location and depth of a Federal navigation channel must be shown on the plans in relation to the proposed utility line.

27. IV.B.1.c.(2). pages 28 through 29. Foundations for Overhead Utility Line Towers, Poles, and Anchors: This restructured activity authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower or leg (rather than a larger single pad) are used where feasible. Minimum clearance requirements have been added for aerial electric power transmission lines crossing navigable waters of the U.S. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose.

Category A: Does not authorize discharges into tidal wetlands and waters. Total impacts to nontidal waters of the U.S. have been reduced to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers and other nontidal open waters. Any utility line work that includes tidal impacts require review under the Category B or alternate Corps permit review procedures, as appropriate. Overhead utility line towers, poles, and anchors must not be located within channels of nontidal streams.
Category B: Total impacts to waters of the U.S., which includes tidal and nontidal wetlands and other waters, are not to exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters.

28. IV.B.1.c.(3). pages 29 through 30. Utility Access Roads: This restructured activity authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines. Added activity-specific conditions for countersinking of culvert pipes and bridge/arch footers for projects located in Coastal Plain streams and Harford and Cecil County Piedmont streams. Extensions of existing pipes or culverts are not depressed below the stream invert are exempt from the requirement to depress the culvert. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose.

Category A: Does not authorize discharges for utility access roads into tidal wetlands and waters, or into nontidal wetlands adjacent to tidal waters. Total impacts to nontidal waters of the U.S. have been reduced to not exceed 5,000 square feet and/or 200 linear feet of nontidal streams, rivers, and other nontidal open waters due to construction of all permanent access roads associated with construction of the utility line. There are specific requirements concerning pipe and footer depression of permanent crossings. Those permanent crossings that cannot be depressed, in addition to those roads that include tidal impacts and impacts to nontidal wetlands adjacent to tidal waters, require review under the Category B or alternate Corps permit review procedures, as appropriate.
Category B: Reduced total impacts to waters of the U.S., which includes tidal and nontidal wetlands and other waters, from construction of all access roads to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters. Specific documentation must be provided by applicant if culvert depression is not practicable.

29. IV.B.1.d. pages 32 through 34. Linear Transportation Activities: The Road Crossing activity under the MDSPGP-3 has been restructured as this activity. This activity now authorizes discharges of dredged or fill material associated with new construction, expansion, modification, or improvement of temporary and permanent linear transportation projects (roads, highways, railways, trails, airport runways and taxiways), which cross waters of the U.S., including streams and wetlands. Does not include non-linear features such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers. Added activity-specific conditions for countersinking of culvert pipes and bridge/arch footers for projects located in Coastal Plain streams and Harford and Cecil County Piedmont streams. Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirements to depress the culvert.

Category A: Reduced total impact limits, which can consist of multiple road crossings, to not exceed 5,000 square feet of nontidal waters of the U.S. and 200 linear feet of nontidal streams, rivers, and other nontidal open waters. Those projects with tidal impacts require review under the Category B or alternate Corps permit review procedures, as appropriate. There are specific requirements concerning pipe and footer depression of permanent crossings. Those permanent crossings that cannot be depressed also require review under the Category B or alternate Corps permit review procedures, as appropriate.
Category B: Total impacts to tidal and nontidal waters of the U.S. not to exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters. Specific documentation must be provided by applicant if culvert depression is not practicable. Category B or alternate Corps permit review procedures are also required for stream relocation projects that do not propose natural stream design.

30. IV.B.1.e.(1). pages 34 through 35. Minor Nontidal Fills: Added that this activity cannot be used to authorize impacts associated with mitigation banks or in-lieu fee mitigation projects.

Category A: Reduced total impact limit to not exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.
Category B: Reduced total impact limit to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

31. IV.B.1.e.(2). Pages 35 through 36. Agricultural Activities: Clarification has been provided. It does not authorized construction of farm ponds or aquaculture ponds in nontidal streams. It also does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Category A: Reduced total impact limit to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters. Discharges into nontidal wetlands adjacent to tidal waters is not authorized.
Category B: Reduced total impact limits to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other nontidal open waters. The relocation of existing serviceable drainage ditches constructed in nontidal streams cannot exceed 300 linear feet.

32. IV.B.1.e.(3). pages 36 through 37. Soil Investigations, Scientific Measurement Devices and Survey Activities: Clarification has been provided concerning the term "exploratory trenching." Also this activity does not authorize permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas

exploration. Also, fill placed for temporary roads and other similar activities is not authorized by this activity; they shall be reviewed under the activity, "Temporary Construction Access, Stream Diversion, and Dewatering." There is a requirement to remove devices and associated features, and to restore exploratory trench areas and other temporarily disturbed areas to pre-construction elevations and revegetate. Added a requirement for seismic activities within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries to protect NMFS listed species.

Category A: Reduced total impact limit to all waters of the U.S. (tidal and nontidal) to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters. Added authorization of small weirs and flumes constructed to record water quantity and velocity provided the discharge is limited to 10 cubic yards. Added a requirement that seismic activities are not authorized and must be reviewed under Category B or alternate Corps permit review procedures.
Category B: Reduced total impact limit to all waters of the U.S. (tidal and nontidal) to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters. Added authorization of small weirs and flumes constructed to record water quantity and velocity provided the discharge is limited to 25 cubic yards. Added a requirement for seismic activities within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries to protect NMFS listed species.

33. <u>IV.B.1.e.(4). pages 37 through 38. Dry Fire Hydrants:</u>

Category A: Reduced total impacts to all waters of the U.S. (tidal and nontidal) to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters. Allows for removal of up to 25 cubic yards of sediment from the hydrant intake.
Category B: Reduced total impacts to all waters of the U.S. (tidal and nontidal) to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters.

34. <u>IV.B.1.e.(5). page 38. Clearing Debris and Windfalls:</u>

Category A: Reduced total impacts to all waters of the U.S. (tidal and nontidal) to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.
Category B: The total impacts to waters of the United States (tidal and nontidal) are not to exceed 1 acre and/or 2,000 linear feet of streams, rivers, and other open waters. Access roads may be authorized under Temporary Construction Access, Stream Diversion, and Dewatering activity.

35. <u>IV.B.1.e.(6). page 39. Special Area Management Plan (SAMP) Study Area Projects:</u>

Category A: Reduced the total impacts to nontidal waters of the U.S. to those areas determined to be eligible for impacts under a SAMP document not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters. Impacts to tidal wetlands and waters are must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.
Category B: Total impacts to tidal and nontidal waters of the U.S. is limited to those areas determined to be eligible for impacts under a SAMP document are not to exceed 1 acre and/or 2,000 linear feet of streams, rivers, and other open waters. Added requirement that water withdrawals; channelization; pipe installation; and construction of berms, dams, or any impoundments, including stormwater management facilities in tidal wetlands or tidal waters are not authorized.

36. <u>IV.B.1.e.(7). page 40. Temporary Construction, Access, Stream Diversions and Dewatering for Construction:</u> Added a clarification that this activity authorizes temporary structures, work, and discharges of dredged or fill material. Additional requirements for any temporary road crossing has been placed on this activity concerning minimization of fill and restoration of its impacts.

Category A: Reduced total temporary impacts to nontidal waters of the U.S. are to not exceed 10,000 square feet and/or 200 linear feet of nontidal streams, rivers, and other open waters. The entire length of diverted stream is considered impacted. Impacts to tidal wetlands and waters associated with causeways, approach fills (except for construction mats), and cofferdams are must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.
Category B: Total temporary impacts to all waters of the U.S. (tidal and nontidal) are not to exceed 1 acre and/or 2,000 linear feet of streams, rivers, and other open waters. The entire length of diverted stream is considered impacted.

37. IV.B.e.(8). page 41. Outfall Structures and Associated Intake Structures: Added a clarification that the activity also authorizes the modification of an outfall structure. Clarification was added that stream relocation using natural stream design is considered to be self-mitigation.

Category A: Reduced the total impacts to waters of the U.S. (tidal and nontidal) to not exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.
Category B: Reduced the total impacts to waters of the U.S. (tidal and nontidal) to not exceed 1/2 acre and/or 2,000 linear feet of streams, rivers, and other open waters.

38. IV.B.1.e.(9). pages 41 through 44. Residential, Commercial, and Institutional Development Activities: This is a new activity that authorizes the discharges of dredged or fill material into nontidal waters of the U.S. associated with residential, commercial and institutional development activities, including the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, sidewalks, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, trails, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include a single residence, multiple and single unit developments, and/or a residential subdivision. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, libraries, hospitals, and places of worship. It does not authorize new ski areas, or oil and gas wells. The condition for underground utility lines that are installed in streams and wetlands has been clarified stating that the utility trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect). New crossings of all waters of the U.S. will be reviewed based on the preference order of (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Also, written documentation must be provided to support the applicant's selected crossing method. Added activity-specific conditions for countersinking of culvert pipes and bridge/arch footer for projects located in Coastal Plain streams and Harford and Cecil County Piedmont streams. Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert. This activity authorizes discharges into nontidal waters of the U.S. only, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers.

Category A: The total impacts to nontidal waters of the U.S. are not to exceed 5,000 square feet and/or 200 linear feet of nontidal stream. Any discharges into nontidal wetlands adjacent to tidal waters must be reviewed under Category B or alternate Corps permit review procedures. Requirements for utility line construction, and placement, including depressing, of culvert pipes and footers associated with any permanent crossing are included. Culvert pipes and footers that cannot be depressed shall be reviewed by the Corps under Category B or another alternate Corps permit review procedures, as appropriate. This category does not authorize the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, dams, water withdrawals, or water diversions, or the construction of any kind of pond that would impound water into a stream or wetland. Category B or other alternate Corps permit review is required for pond or stormwater management facilities.
Category B: The total impacts to nontidal waters of the U.S. are not to exceed 1/2 acre and/or 2,000 linear feet of nontidal stream. A requirement has been added that the cross-sectional view drawings submitted with the application for submerged utility lines across navigable waters of the U.S. must show the utility line crossing from bank to bank in relationship to the waterway bottom. Also, the location and depth of a Federal navigation channel must be shown on the plans in relation to the proposed utility line.

NOTE: The "Shoreline and Stream Bank Stabilization Activities" has been restructured by separating it into 4 individual activities (see #39, 40, 41, and 42 below).

39. IV.B.f.(1). pages 45 through 46. New Tidal Revetments and Tidal Shoreline Erosion Control Structures other than Revetments, and Toe Protection for New or Existing Bulkheads: This activity authorizes the construction of tidal shoreline erosion control structures and construction of new tidal revetments.

Category A: Same impact limits as MDSPGP- 3, Category I. It has been revised to not authorize placement of dredged or fill material into special aquatic sites or anadromous fish spawning areas. Toe protection for new and existing bulkheads may not extend more than 10 feet channelward of the bulkhead structure.
Category B: Reduced total impacts to tidal waters of the U.S. to not exceed 1/2 acre, including no more than 2,000 linear feet in length along the shoreline. Structures may not extend more than 25 feet channelward of the mean high water shoreline. Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet. The

applicant must submit documentation of existing shoreline condition at the project site. Clearing and pruning of riparian trees and shrubs within the project area must be minimized.

40. IV.B.1.f.(2). pages 46 through 47. Tidal Marsh Creation / Beach Nourishment: Clarification has been provided that breakwaters are not authorized by this activity. Clearing and pruning of riparian trees and shrubs within the project area must be minimized.

    Category A: Reduced total impact limits to unvegetated (i.e., no adjacent marsh, wetland, or submerged aquatic vegetation) shallow waters to 17,500 square feet and 500 linear feet in length. Category A does not authorize any discharge of dredged or fill materials for the purpose of constructing any type of compensatory mitigation. Added a requirement that includes examples of acceptable design parameters for the construction of stone sills placed at the toe of constructed marsh to ensure design facilitates ingress/egress of estuarine fauna during regular tidal cycles. Native, non-structural shorelines must be experiencing documented erosion. Projects that do not meet this requirement will be reviewed under Category B or alternate Corps permit review procedures, as appropriate.
    Category B: Reduced total impact limits to tidal waters of the United States to 1/2 acre. Authorizes any fill and containment structures to a maximum encroachment of 50 feet channelward of the mean high water shoreline. Compensatory mitigation is not required if the total area of impacted vegetated wetlands does not exceed the length of the new tidal marsh/beach nourishment project along the shoreline. The applicant must submit documentation of shoreline condition at the project site identifying shoreline retreat or change. Added requirements specific to tidal marsh creation/beach restoration projects that are proposed for the purpose of providing compensatory mitigation.

41. IV.B.1.f.(3). page 49. New Bulkheads: This is a new activity that authorizes the construction of new bulkheads and associated backfill for the purpose of erosion protection. This activity also authorizes replacement of currently non-serviceable structures or fills.

    Category A: New bulkheads or replacement structures or fills must not exceed 500 linear feet in length and shall be placed at the mean high water shoreline. Does not authorize any impacts to special aquatic sites or anadromous fish spawning areas.
    Category B: Authorizes new bulkheads up to 3 feet channelward of the mean high water shoreline. Total impacts to tidal waters of the U.S., including tidal wetlands, may not exceed 1/2 acre and/or 2,000 linear feet of shoreline. Compensatory mitigation is not required if the total area of impacted vegetated wetlands does not exceed the length of the activity along the shoreline.

42. IV.B.1.f.(4). pages 50 through 51. Nontidal Bank Stabilization Activities: This activity authorizes discharges of dredged or fill material associated with installation of nontidal stream bank stabilization structures for the purpose of erosion protection. It does not authorize stream channelization or stream relocation projects.

    Category A: The nontidal bank stabilization is limited to a total length of 500 linear feet which is unchanged, but the total impact to nontidal waters of the U.S. is not to exceed 10,000 square feet. Discharges into vegetated wetlands or submerged aquatic vegetation are not authorized.
    Category B: The nontidal bank stabilization is limited to a total length of 2,000 linear feet, and the total impact to nontidal waters of the U.S. is not to exceed 1/2 acre.

43. IV.B.1.g. page 51. Return Water from Upland Contained Disposal Areas: Clarification has been provided concerning activities authorized by this activity.

    Category A: No application is required for Corps authorization.
    Category B: Circumstances are defined when an application is required to be submitted for Corps review.

44. IV.B.1.h. pages 51 through 52. Private Landowner Oyster Aquaculture: There have been no changes from the MDSPGP-3 other than clarifying when an application is required for Corps review (Category B).

Miscellaneous:

45. IV.B.2. pages 52 through 53, Category B Activities Requiring Application Submittal: This section under the MDSPGP-3 defined the various Category II activities. The MDSPGP-4 will include these Category II activities under the new Category B. "Activities Proposing 200 Linear Feet or More of Stream Impact" has been removed since any activity proposing 200 linear feet or more of stream impact is a Category B stream impact threshold that requires Corps review. The Corps will also review all applications submitted that require additional consultation due to the potential to affect historic properties and/or Federally threatened or endangered species.

46. V. pages 53 through 59. Definitions: New definitions have been provided for anadromous fish, breakwater, catadromous fish, compensatory mitigation, construction mats, currently serviceable, discharge of fill material, discharge of dredged material enhancement, establishment (creation), high tide line, historic property, linear footage of stream impact, linear projects, loss of waters of the United States, low profile sill, natural stream design, overall project, practicable, preservation, re-establishment, rehabilitation, restoration, stream channelization, and waters of the United States. Additional clarification has been provided for independent utility, and single and complete project.

47. VII.A.6. page 60. Single and Complete Projects: Clarification has been provided that a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility.

48. VII.A.7. page 61. Use of Multiple MDSPGP-4 Activities: This section has been updated to discuss the multiple use of Category A and/or Category B.

49. VII.A.8. page 61. Permit On-Site: This general condition has added the requirement that a copy of the MDSPGP-4 and accompanying authorization letter are to be located at the work site at all times. All contractors and sub-contractors must comply with all the authorization's conditions.

50. VII.A.9. pages 61. Authorized Activities in Navigable Waters: Two conditions have been added that pertain to permittee responsibilities.

51. VII.A.10. pages 61 through 62. For Aerial Transmission Lines Across Navigable Waters : Provides required minimum clearances for aerial electric power transmission lines crossing navigable waters of the United States as outlined in the National Electrical Safety Code.

52. VII.B.2. page 62. Tribal Rights: Condition added stating no activity or its operation may impair reserved tribal rights.

53. VII.B.4. pages 62 through 63. Endangered Species: Conditions have been added to meet Endangered Species Act (ESA) Requirements concerning NMFS ESA-listed species.

54. VII.B.5. page 64. Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act: This has been updated on the final status of the EFH coordination with NMFS. NMFS has determined that many of the MDSPGP-4 Category A activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. National Marine Fisheries Service, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category A of the MDSPGP-4 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category B review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps.

55. VII.B.10. page 65. Fills Within 100-Year Floodplain: Condition added that states activity must comply with applicable FEMA-approved State or local floodplain management requirements.

56. VII.B.11. page 65. Safety of Impoundment Structures: Condition added specifying possible requirements applicant may be required to meet to ensure impoundment structure is safely designed.

NOTE: Environmental Justice: The first published draft of the proposed MDSPGP-4 stated that all authorized activities must comply with Executive Order 12898. This was in error and the condition has been removed.

57. VII.C.2. page 65. Mitigation Standards: This condition has been expanded to provide specific requirements concerning wetland and stream mitigation.

58. VII.C.12. page 67. Management of Water Flows: Condition added concerning requirements to manage normal and high open water flows.

59. VII.C.13. page 67. Water Supply Intakes: Condition added stating that no discharge of dredged or fill material

may occur in the proximity of a public water supply intake.

60. VIII.B.2. page 69. Previously Authorized Activities: A revision has been made to this condition such that previously authorized activities that have received written, project-specific verification under the MDSPGP-3 have until December 31, 2013 to complete the work under the terms and conditions of the MDSPGP-3. The project must receive written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures if the work cannot be completed by December 31, 2013. Requests for modifications of previously authorized work under the MDSPGP-3 and/or special conditions are not grandfathered and must be submitted in writing for written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures.

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a statewide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses (for non-water dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. The Baltimore District Engineer will continue to evaluate the MDSPGP-4 process, to determine if activities have been authorized in accordance with the requirements of the MDSPGP-4 and in compliance with Federal Regulations.

The MDSPGP-4 will protect the aquatic resources of the State of Maryland within the Baltimore District of the U.S. Army Corps of Engineers' regulatory geographic boundaries and jurisdictional authorities; will reduce the administrative burden of the program for both the Corps of Engineers and the State of Maryland through interagency cooperation; will improve the regulatory response time; and will add predictability within specified limits to the permit program for the potential applicant and general public.

The MDSPGP-4 will be applicable for regulated activities in waters of the United States, including jurisdictional wetlands, in the State of Maryland that are located within the regulatory geographic boundaries of the Baltimore District.

The MDSPGP-4 is applicable for activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's regulatory geographic boundaries.

The decision to reissue the MDSPGP-3 as MDSPGP-4, with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-4 on the public interest. This decision reflects the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal was balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal were considered including the cumulative effects thereof; among those were conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act Consistency (CZM):

1. Water Quality Certification (WQC) from the MDE is required for the MDSPGP-4 pursuant to Section 401 of the Clean Water Act. As a result of coordination with MDE, WQC was issued by MDE on September 6, 2011, for Category A activities and activities that impact ephemeral streams that meets the terms and conditions of the MDSPGP-4. WQC has also been issued for Category B activities subject to the condition that applicants obtain all necessary permits and approvals from MDE. This condition assures that projects that are authorized under Category B activity(ies) will comply with applicable State water quality standards.

2. The Baltimore District determined that all activities authorized by the MDSPGP-4 will be carried out in a manner consistent with the Maryland Coastal Zone Management Program pursuant to Section 307 of the Federal

Coastal Zone Management Act of 1972, as amended. MDE concurred with the Corps' determination on September 6, 2011.

State or local authorizations, may be required, on a case-by-case basis, for the MDSPGP-4 authorization to be valid. A review of the MDSPGP-4 indicates that processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. Similarly, the MDSPGP-4 indicates that it complies with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended. The Baltimore District has determined in consultation with NMFS that the adverse effects of this MDSPGP-4 on EFH for Federally managed species are not substantial and an expanded consultation has been conducted with NMFS. A detailed written EFH assessment was submitted to NMFS. Mitigative measures have been incorporated into the MDSPGP-4 to minimize adverse effects on EFH.

Finally, the MDSPGP-4 is conditioned to assure that on a case-by-case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act. The applicant will notify the Corps if the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places.

Since the MDSPGP-4 is duplicative of some Nationwide Permits (NWPs) and offers a more simplified and streamlined regulatory process, the Corps has suspended those NWPs, which are applicable to activities qualifying for MDSPGP-4. Special Public Notice #07-37 dated September 11, 2007, further detailing the suspension of the NWPs, remains in effect. This Special Public Notice is available on the District web site at:
http://www.nab.usace.army.mil/Wetlands%20Permits/public_notices.htm

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Questions and comments may be directed to Ms. Beth E. Bachur, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203.

FOR THE DISTRICT ENGINEER:

WILLIAM P. SEIB
Chief, Regulatory Branch

MARYLAND STATE PROGRAMMATIC GENERAL PERMIT (MDSPGP)

DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
STATE OF MARYLAND

MDSPGP-4
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DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT
STATE OF MARYLAND

The Baltimore District of the U.S. Army Corps of Engineers (Corps) hereby issues the Maryland State Programmatic General Permit-4 (MDSPGP-4) for activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These excepted areas fall within the Corps Philadelphia District's regulatory geographic boundaries. Activities with minimal adverse environmental effects, as specified by the terms and conditions of this MDSPGP-4, are either non-reporting to the Corps (provided required State and local permits and required State certifications are received), or will be reviewed by the Corps, the resource agencies, and in certain cases the public, who may determine that such activities are eligible for authorization under the MDSPGP-4. This MDSPGP-4 does not affect the alternate Corps permit review processes or activities exempt from the Corps permit processes.

This MDSPGP-4 authorizes work in waters of the United States within the state of Maryland for activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions, and limitations contained herein. This MDSPGP-4 builds upon the existing Wetlands and Waterways Program of the Maryland Department of the Environment (MDE) and is designed to improve the regulatory process for applicants, reduce unnecessary duplicative project evaluations, and promote more effective and efficient use of Corps resources while providing equivalent environmental protection for aquatic resources. This programmatic general permit has been developed in a cooperative effort with the MDE, which has regulatory authority over waters of the State of Maryland.

I. **Authorities:**

A. **Federal Authorities:**

1. Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code [U.S.C.] 401 and 403).

2. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

3. Pursuant to Section 404 of the CWA and Section 10 of the Rivers and Harbors Act, the Corps has the authority to issue general permits, which can operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the Department of the Army (DA) regulatory program, provided that the activities authorized under the general permit are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

4. Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged or fill material or the placement of structures into waters of the United States including wetlands and navigable waters. These discharges and structures must comply with all terms and conditions identified in the MDSPGP-4. Discharges or structures that do not meet the terms and conditions of Category A will be reviewed by the Corps to determine their eligibility for authorization under the MDSPGP-4.

5. Section 404(c) of the CWA authorizes the Administrator of EPA to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

6. Section 404(q) of the CWA states that agreements are to be entered in order to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits. The Corps has entered into Memoranda of Agreement (MOA) with U. S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and U.S. Environmental Protection Agency (EPA) to outline the means for achieving these goals. The procedures established by these MOAs are maintained, where applicable, in this permit.

7. Section 404(t) of the CWA states that nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

B. **State Authorities:**

1. Nontidal Wetlands Protection Act, Annotated Code of Maryland, Environment Article, Section 5-901, et Seq.;

2. Appropriation or Use of Waters, Reservoirs, and Dams, Annotated Code of Maryland, Environment Article, Section 5-501 et Seq.;

3. Wetlands and Riparian Rights, Annotated Code of Maryland, Environment Article, Section 16-101;

4. Water Pollution Control, Annotated Code of Maryland, Environment Article, Sections 9-313 through 9-323; and

5. All other applicable regulations.

II. **Scope of Activities:**

A. **Applicability:** This programmatic general permit applies to the discharge of dredged or fill material and/or the placement of structures, that are components of a single and complete project, including all attendant features both temporary and/or permanent, which individually and/or cumulatively result in direct or indirect impacts not to exceed 1.0 acre (43,560 square feet) of waters of the United States, including jurisdictional wetlands and/or 2,000 linear feet of streams, for specific categories of activities as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. Authorization under the MDSPGP-4 requires compliance with all of the terms and conditions of the MDSPGP-4 and that the activities authorized have only minimal individual and cumulative adverse effects on the environment. All individual impacts for an overall project will be added cumulatively to determine eligibility for authorization under the MDSPGP-4.

1. Category A: Discharges of dredged or fill material or the placement of structures, as described in Category A of the Description of MDSPGP-4 Authorized Activities, that comply with the terms and conditions contained in the MDSPGP-4 and have only minimal individual and cumulative adverse effects on the environment are authorized by the Corps.

2. Category B: Discharges of dredged or fill material or the placement of structures, as described in Category B of the Description of MDSPGP-4 Authorized Activities, will be reviewed and verified by the Corps and appropriate resource agencies to determine whether such activities may be authorized under this MDSPGP-4.

The term “impacts to waters of the United States” as used herein for the purpose of determining MDSPGP-4 eligibility means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the filled area, both temporary and permanent, plus the area of waters of the United States, including jurisdictional wetlands, which are adversely affected by the project through mechanical land clearing and/or permanent flooding, excavation, or drainage because of the regulated activity. Acreage of impacts to stream channels shall be measured along the centerline of the stream and bank to bank at the ordinary high water line or the mean high water shoreline.

B. **Activities Authorized by the MDSPGP-4:** This MDSPGP-4 authorizes all activities listed in Category A of the MDSPGP-4 and those activities in Category B that comply with all terms and conditions of the MDSPGP-4, including the activity-specific requirements, and have no more than minimal individual and/or cumulative adverse environmental effects. As a condition of its use, the MDSPGP-4 requires verification in certain instances specified in the MDSPGP-4. Receipt of such

verification does not eliminate the requirement that, to be authorized under the MDSPGP-4, the activity must comply with all its terms and conditions. Several of the Category A activities require an application submittal to MDE for verification of Corps authorization prior to commencement of the proposed work. All Category B activities must be reviewed by the Corps and coordinated with the resource agencies and the public, as appropriate, to ensure that the project will result in no more than minimal adverse environmental effects, individually and/or cumulatively, before making a decision to verify eligibility of projects for authorization under the MDSPGP-4. Some examples of Category B projects that would not require resource agency/public coordination would include activities that are reporting to the Corps because of issues related to essential fish habitat (EFH), historic properties, or that are exempt or grandfathered from State of Maryland review or are located near Federal projects/channels, but that would otherwise meet the terms and activity-specific requirements of a Category A activity. However, the Corps will consult directly with the appropriate agency to resolve the outstanding resource issue (e.g., the Corps will consult with Maryland Historical Trust (MHT) regarding cultural resource issues). The MDSPGP-4 provides authorization in accordance with Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act.

C. **Activities Not Authorized by the MDSPGP-4:**

1. Single and complete projects that have more than minimal individual and/or cumulative adverse environmental effects.

2. Activities that do not comply with the terms and conditions of the MDSPGP-4, which includes the terms, conditions, and impact thresholds and requirements specific to each listed category of activities.

3. Single and complete projects, including all attendant features both temporary and permanent, which will result in more than one acre (43,560 square feet) of impact, both direct and indirect, to waters of the United States, including jurisdictional wetlands and/or 2,000 linear feet of streams, rivers, and other open waters. The acreage of impact to all waters of the United States includes the filled area, both temporary and permanent, plus those waters of the United States that are adversely affected by the project through permanent flooding, excavation, drainage, or mechanized land clearing because of the regulated activity.

4. Instances where EPA's Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under Section 404(c) of the CWA to prohibit, deny, restrict, or withdraw the use for specification, of any defined area for the discharge of dredged or fill material at the proposed site.

5. Activities that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have been denied Water Quality Certification (WQC) or a Coastal Zone Consistency (CZC) determination. Activities that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP-4 without prior review and approval under the appropriate category of the MDSPGP-4, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP-4 without prior approval by the Corps.

6. Activities that were initiated prior to the issuance of the MDSPGP-4 without proper Corps authorization or without notification and approval by the State until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.

7. Activities that are proposed for MDSPGP-4 authorization for the purpose of resolving violations of the CWA or the Rivers and Harbors Act of 1899 may not be authorized by the MDSPGP-4 without prior approval by the Corps. Proposed activities that are not themselves violations, but are part of the same project or that occur on the same property as the violation, may not be authorized by the MDSPGP-4 without prior verification by the Corps.

D. **General Criteria for Category A and Category B Activities:** In order for activities to qualify for this MDSPGP-4, they must meet the MDSPGP-4's terms, impact thresholds and activity-specific requirements (pages 11-52), and general conditions (pages 60-69), for Category A or Category B.

Under the MDSPGP-4, projects may qualify for the following:

- Category A: Corps review not required. Submittal of a Federal/State Joint Permit Application to MDE may or may not be required for verification of MDSPGP-4. See specific activity for further instructions.
- Category B: Corps review required. Submittal of a Federal/State Joint Permit Application is required, and written approval from the Corps must be received.

If your project is ineligible for Category A, it may qualify for Category B or alternate Corps permit review procedures. The thresholds for Categories A and B are defined in each category. This MDSPGP-4 does not affect the alternate Corps permit review procedures or activities exempt from Corps regulation.

E. **Category B Activities Requiring Application Submittal:** The following situations list the criteria which would require notification to the Corps via the Federal/State Joint Permit Application and review as a Category B activity. In certain situations, even though the proposed impacts to waters of the United States may be less than the activity-specific impact limits of the associated Category B activities, notification to the Corps' District Commander, via the submission of a Federal/State Joint Permit Application through MDE's Regulatory Services Coordination Office, and written verification from the Corps is required stating that the activity is eligible for authorization under the MDSPGP-4 prior to the commencement of the activity. The applicant shall not begin the project until notified by the Corps that the project may proceed under the MDSPGP-4 with any special conditions imposed by the Corps:

1. A project that does not meet the activity-specific impact limits and requirements of any activity described in Category A.

2. Proposed construction that will occur along and/or within 150 feet of the horizontal limits of a Federal navigation project (See Section IV.B.2.a.(1) and Section VII.B.7.a.). A Federal Navigation Channel Map is provided in the appendix of this permit. Please see the Baltimore District's Regulatory webpage to view the Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels: http://www.nab.usace.army.mil/Wetlands%20Permits/publications.htm.

3. Construction of a project that is proposed in or adjacent to proposed or existing Federally authorized civil works project, as described in Category B, Section IV.B.2.a.(2);

4. A project that is grandfathered by the State from MDE's permit requirements, as described in Category B, Section IV.B.2.b.;

5. A project that requires Corps authorization under Section 10 and/or 404 and that is exempt from MDE's permit requirements or not regulated by MDE's Wetlands and Waterways Program, as described in Category B, Section IV.B.2.c., except for those activities that have been identified as not requiring an application for Corps authorization ;

6. A project that has been previously denied a Corps or MDE authorization as described in Category B, Section IV.B.2.d.(1);

7. A project that is a violation of Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899 as described in Category B, Section IV.B.2.d.(2).

8. A project that may have effects to EFH and requires consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act as described in Category B, Section IV.B.2.e.

9. A project that has the potential to cause effects to any historic properties listed, determined to be eligible for listing, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance

regarding information on the location of or potential for the presence of historic resources can be sought from the MHT and the National Register of Historic Places (Section IV.B.2.f.).

10. A project that may have effects on any Federally listed threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the designated critical habitat of such species. The application must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work (Section IV.B.2.f.).

F. **Alternate Corps Permit Review:** Activities that require DA authorization, but that do not comply with the conditions, terms, and limitations of the MDSPGP-4 herein do not qualify for this MDSPGP-4 and will require separate DA authorizations/permits. A completed Federal/State Joint Permit Application Form must be submitted to MDE for Corps evaluation under alternate Corps permit review procedures. Individual WQC and CZC concurrence are required where applicable from the State of Maryland before Corps permit issuance.

III. **Procedures:** Applicants who propose regulated activities must complete the Federal/State Joint Permit Application Form (application) in accordance with the application instructions, unless indicated otherwise. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and in accordance with appropriate guidance issued by the Corps. Applicants must submit the complete permit application to the Regulatory Services Coordination Office, Water Management Administration, Maryland Department of the Environment. General information and application forms can be obtained by calling the Regulatory Services Coordination Office at 1-800-876-0200. The application can also be printed from MDE's web site: http://www.mde.state.md.us/programs/Water/WetlandsandWaterways/Pages/programs/waterprograms/wetlands_waterways/index.aspx. The complete application should be submitted by the applicant to the Regulatory Services Coordination Office at the earliest possible date. Submission of an application is not required for certain activities identified in Category A of the MDSPGP-4 Authorized Activity Index (Section IV.A.). All terms and conditions of the MDSPGP-4 still apply to these activities.

In reviewing the application materials for the proposed activity, the Corps will determine whether the activity authorized by the MDSPGP-4 will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires an application submittal for Corps authorization and will result in a loss greater than 5,000 square feet of wetlands and/or 200 linear feet of stream channel, the project applicant should submit a mitigation proposal with the application. Applicants may also propose compensatory mitigation for projects with smaller impacts. The Corps will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the MDSPGP-4 and that the adverse effects on the aquatic environment are minimal, after considering the mitigation, the Corps will notify the permittee and include any conditions the Corps deems necessary. When mitigation is required, no work in waters of the United States may occur until the Corps has approved a specific compensatory mitigation plan.

A. **Federal, State, and Local Approvals:** Applicants are responsible for ensuring that all required Federal, State and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-4. Federal and State jurisdictions may differ in some instances. This MDSPGP-4 may authorize projects that are not regulated by the State of Maryland (e.g., ephemeral streams). Required authorizations include, but are not limited to, the following State approvals, issued by the MDE, as applicable, which must be obtained in order for the MDSPGP-4 authorization to be valid:

1. Nontidal Wetlands authorization.

2. Waterway Construction authorization.

3. Tidal Wetlands authorization.

4. Water Quality Certification.

5. Coastal Zone Consistency.

B. **MDSPGP-4 Verification Procedures:**

1. **Category A (Corps Review Not Required):** Proposed activities that are subject to Corps jurisdiction and that are part of a single and complete project that results in no more than minimal individual and/or cumulative adverse environmental effects may proceed without review by the Corps, provided that all required State and local authorizations are obtained and the activities meet all terms and conditions of the MDSPGP-4, including the activity-specific impact limits and requirements identified in the Description of MDSPGP-4 Authorized Activities. Category A activities are shown on the MDSPGP-4 Authorized Activity Index (Section IV.A.). In all cases where an application is required, ONE of the following notifications must occur:

- The project applicant may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-4 and that work can proceed as a Category A activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-4, including activity-specific impact limits and requirements identified in the Description of MDSPGP-4 Authorized Activities, and any special conditions imposed by the Corps.

- Otherwise, the Corps will provide written notice to the applicant that an alternate Corps permit review process is required.

NOTE: Certain MDSPGP-4 Category A activities may require a public notice under State regulations (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, the project is located in Use III or IV waters or other sensitive habitats identified by State law or regulation). Under these circumstances, MDE will place the project on State public notice, in response to which the Corps may either provide comments, or invoke discretionary authority to require an alternate Corps permit review because of concerns for the aquatic environment or for any other public interest factor. At the conclusion of MDE's review, MDE will provide written verification to the applicant that the activity is eligible for authorization under the MDSPGP-4 and the work can proceed as a Category A activity, provided all required State and local authorizations are obtained and the Corps is not requiring an alternate Corps permit review.

2. **Category B (Corps Review Required):** Applications for projects whose total impacts, both direct and indirect, as well as temporary and permanent, exceed the Category A activity's impact limits and/or do not comply with the activity's specific terms and requirements, as specified in Section IV.B.1., and do not exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, will be reviewed by the Corps. If the Corps determines that the applicant's proposed project will result in no more than minimal individual and/or cumulative adverse environmental effects, meets the terms and conditions of the MDSPGP-4, and does not contain unresolved issues that would be of Federal interest (e.g., endangered or threatened species, historic properties, etc.), then the Corps will notify MDE and the applicant that it has determined that the proposed project is eligible for authorization under the MDSPGP-4, provided the required State and local authorizations are obtained. Category B activities also include activities located in or near Federally authorized civil works projects, located along and within 150 feet of the horizontal limits of a Federal navigation channel, grandfathered by the State from MDE permit requirements, exempt from MDE permit requirements or not regulated by MDE's Wetlands and Waterways Program, denials and violations, and those activities that require an individual EFH assessment. In addition, projects that have the potential to affect cultural resources or Federally listed threatened or endangered species or their critical habitat require an application submittal to the Corps for review under the Category B MDSPGP-4 review process or alternate Corps permit review process.

Category B applications will be coordinated with MHT, Maryland Department of Natural Resources (MD DNR), EPA, NMFS, FWS, and U.S. Coast Guard (USCG), if appropriate, to determine eligibility for authorization under the MDSPGP-4. The Corps will provide MDE, MHT, MD DNR, EPA, NMFS, FWS, and USCG, if appropriate, coordination notices for a 15-day review to comment upon whether authorization of the proposed projects under the MDSPGP-4 is appropriate. For each Category B project, the coordination notice will provide the following: project tracking number; description of the project and proposed impacts; location of work; project purpose; and the Corps contact person. EPA, NMFS, FWS, MD DNR, MHT, and USCG will provide their comments and recommendations, if any, to the Corps, with a copy to MDE. The resource agencies may request an extension of the 15-day comment period, provided the extension is requested within the 15-day comment period. MHT, MD DNR, EPA, NMFS, FWS, and USCG may provide project-specific objections to authorizing the proposed work under the MDSPGP-4 due to its impact on the aquatic environment or provide recommendations for special conditions, within their area of expertise and/or authority, to be included in the MDSPGP-4 verification.

Agency notification procedures are not required for the following activities if the project would otherwise meet the impact thresholds and activity-specific requirements of a Category A activity: projects located in or near Federally authorized Civil Works projects; projects located along and/or within 150 feet of the limits of a Federal navigation channel; projects grandfathered by the State of Maryland from MDE permit requirements; projects exempt from MDE permit requirements, or not regulated under MDE's Wetlands and Waterways Program; projects that have the potential to affect cultural resources; or projects that have the potential to affect Federally listed threatened or endangered species or their critical habitat. However, the Corps will consult directly with the appropriate agency to resolve the outstanding resource issue (e.g. the Corps will consult with MHT regarding cultural resource issues).

For those Category B projects that may adversely affect EFH, the Corps will provide NMFS a 30-day coordination notice, including an EFH assessment and project plans. Formal notification to NMFS will occur when NMFS receives the coordination notice from the Corps on the project. NMFS will provide EFH conservation recommendations as comments to this 30-day coordination notice to the Corps, with a copy to MDE. Conservation recommendations made by NMFS will generally be included as a MDSPGP-4 permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-4 process, the applicant will be notified in writing that an alternate Corps permit review process is required for the project.

The Corps will review these proposed projects, including consideration of whether or not compensatory mitigation should be required to replace the functions and/or acreage of aquatic resources lost due to unavoidable permanent impacts to wetlands and/or streams. After considering recommendations by MHT, MD DNR, EPA, NMFS, FWS, USCG, and the public, if applicable, the Corps will make one of the following determinations:

a. Additional information is required to review the proposed project;

b. Project is eligible for authorization under the MDSPGP-4;

c. Project is eligible for authorization under the MDSPGP-4, with special conditions; or

d. Project is ineligible for authorization under the MDSPGP-4 and, therefore, requires an alternate Corps permit review process.

When the Corps has made its determination, it will notify MDE and the applicant. ONE of the following notifications must occur:

- The project applicant may not begin work until the Corps provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP-4 and that work can proceed as a Category B activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-4, including the activity-specific impact limits and requirements identified in the Description of MDSPGP-4 Authorized Activities, and any special conditions imposed by the Corps.

- Alternatively, the Corps may provide written notice to the applicant that the proposed work interferes with a Federally authorized civil works project, which includes Federal navigation projects. The Corps will coordinate with the applicant in order for the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-4. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-4, including activity-specific impact limits and requirements identified in the Description of MDSPGP-4 Authorized Activities, and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternate Corps permit review process is required.

- Alternatively, the Corps or MDE may provide notice to the applicant that the proposed work may adversely affect EFH. The Corps will coordinate with the applicant in order for the applicant to implement EFH conservation recommendations detailing measures for avoiding, mitigating, or offsetting the impact of the activity on EFH. Conservation recommendations made by NMFS will generally be included as a MDSPGP-4 permit requirement by the Corps, and the

applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP-4. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP-4, including the activity-specific impact limits and requirements listed in the Description of MDSPGP-4 Authorized Activities, and any special conditions imposed by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-4 process, the applicant will be notified in writing that an alternate Corps permit review process is required for the project.

- Alternatively, the Corps may provide notice to the applicant that the proposed work may affect Federally listed threatened or endangered species or their critical habitat.

- Alternatively, the Corps may provide notice to the applicant that the proposed work may affect historic properties and/or it appears that further project modifications will be necessary to minimize or avoid impacts to historic resources or mitigate impacts to historic resources.

- Otherwise, the Corps will provide written notice to the applicant and MDE that an alternate Corps permit review process is required.

When a State public notice for a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required (e.g., the project is proposing permanent impacts to nontidal wetlands greater than 5,000 square feet, the project is located in Use III or IV waters or other sensitive habitats identified by State law or regulation), MDE will issue a public notice to EPA, NMFS, FWS, MD DNR, MHT, USCG, Corps, and the public for a 30-day review soliciting comments on the project. The resource agencies and the public will provide two copies of their comments and recommendations, if any; one copy to be sent directly to the Corps, and one copy to be sent directly to MDE. The State public notice will provide the following: project tracking number; description of the project and proposed impacts; location of the project; project purpose; MDE contact person; opportunity to request a hearing; and the opportunity to request additional information, including plans. State public notices to the resource agencies and the Corps will include project plans. The Corps and the resource agencies may request an extension of the 30-day comment period, provided the extension is requested within the 30-day comment period.

3. **Agency Objection:** The Federal resource agencies (FWS, EPA, or NMFS) may object to authorizing a proposed project under the MDSPGP-4 and request that a specific project be evaluated under individual permit procedures within the 15-day agency notification (or 30-day EFH review and comment period for NMFS). The Corps will consider any comments from the Federal agency concerning the proposed activity's compliance with the terms and conditions of the MDSPGP-4 and the need for avoidance and minimization to reduce the project's adverse environmental effects to a minimal level. If the Corps agrees that an individual permit review of the project is appropriate, the Corps will notify MDE and the applicant. If the Corps disagrees with an agency's recommendation that individual permit procedures are appropriate, the Corps will notify the agency of its intent to verify eligibility for authorization of the proposed project under the MDSPGP-4. The Federal agency, at its discretion, may then pursue the agency objection procedures described below.

When the Corps determination is inconsistent with the Federal resource agency's recommendation for an individual permit review, the Federal resource agency will send a written letter to the Corps within 15 calendar days from the close of the Corps' agency notification comment period or from the date of the Corps' notification that it does not concur with the agency's objection (whichever date is later), with the Regional Administrator/ Director's signature. The Federal resource agency's formal objection shall include the request for individual permit review (i.e., "kick out") of the project, the rational supporting the request and recommendations to satisfy those concerns, a description of the resources and habitats at risk from the proposal, and elevation language, if the Federal agency wishes to reserve the right to elevate the project under the individual permit review. The Corps will attempt to resolve the objection through expanded consultation with the Federal agency within 30 days of receipt of the Regional Administrator's/ Director's written objection. If the Corps cannot resolve an agency objection within 30 days, the application will not qualify for verification for authorization under the MDSPGP-4 and individual permit review process will be required. The Corps will notify MDE and the applicant that the project requires an individual permit review. However, should all objections be resolved, the project may be verified for authorization under the MDSPGP-4. This verification may include project specific special conditions to protect the public interest.

IV. **MDSPGP-4 Categories:**

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B. Description of MDSPGP-4 Authorized Activities:

1. **Category A and Category B Activities:** The following activities are authorized under the MDSPGP-4 provided the proposed regulated activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-4 and the following applicable Category A and Category B activity-specific description(s) and requirement(s). Work qualifying for authorization under category A of the MDSPGP-4 does not always require submittal of an application for Corps authorization. The requirement for an application submittal is noted under the requirements of each activity. **NOTE -** Any required application is to be submitted to MDE's Regulatory Services Coordination Office. In the following Authorized Activities, this has been abbreviated as MDE.

a. **Boating and Navigation-Related Projects, Structures, and Activities:** The projects, structures, and activities, listed below, must comply with all activity-specific impact limits and requirements, in addition to all of the general conditions of this general permit.

(1) **Channel and Harbor Navigation Aids**: Authorizes placement of aids to navigation and regulatory markers (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) Channel and harbor navigation aids must be approved by, and installed in accordance with, the requirements of the USCG (see 33 CFR, chapter I, subchapter C, part 66).

(b) **Category B Impact Limits and Requirements:** See Sections II.D and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(2) **State Regulatory Markers:** This activity authorizes placement, by the State of Maryland, of regulatory and informational markers that do not require approval by the USCG (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(3) **Piers:** This activity authorizes private, non-marina commercial aquaculture, non-community, non-publicly owned, non-governmental piers and the addition of boat lifts to an existing authorized boat slip. Compliance with the following design conditions are required for the entire project, including the proposed and existing, previously authorized structures (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) This activity authorizes only 1 pier and 4 boat hoists or lifts (including jet-ski lifts) per property.

(ii) This activity does not authorize individual floating piers.

(iii) This activity does not authorize enclosed buildings or other structures. Enclosed buildings or other structures must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iv) This activity does not authorize piers that exceed 100 feet in length over vegetated wetlands. Piers exceeding 100 feet in length over vegetated wetlands must be evaluated under Category B or alternate Corps permit review procedures, as appropriate.

(v) If the pier is crossing open waters, it must not exceed 6 feet in width. If the pier is crossing areas of vegetated wetlands, it must not exceed 3 feet in width and must be constructed a minimum of 3 feet above the wetland surface elevation.

(vi) Piers with 6-foot-wide decking that cross open waters must have their decking constructed a minimum of 4 feet above mean low water to minimize shading of submerged aquatic vegetation. Alternatively, decking of a pier over open tidal waters must be constructed no lower than 3 feet above mean low water if the deck width does not exceed 5 feet.

(vii) The total area of all fixed and floating auxiliary platforms including "T" heads, "L" heads, and step down platforms must not exceed 200 square feet, including the segment of the main pier section to which the platform is attached, and must not be located over vegetated wetlands.

(viii) Floating auxiliary structures authorized by this activity are limited to floating finger piers, including small floating jet-ski piers and platforms; and floating gangways provided the total square footage of these floating structures does not exceed 200 square feet for any one project, including the segment of the main pier section to which the platform is attached.

(ix) Platforms must not be constructed within the landward 50% of the main pier section.

(x) The project must include no more than 6 mooring piles and/or create no more than 4 boat slips overall.

(xi) The project must not include more than 2 osprey poles per property.

(xii) The project must not include more than 2 three-pile dolphins.

(xiii) The pier must not include more than 2 three-foot-wide finger piers, and the finger piers must not exceed 50% of the proposed slip length. Finger piers must be constructed on the landward side of the "T" head or "L" head.

(xiv) The project must meet the minimum extended property line setback requirements established by the local jurisdiction in which the activity is proposed. In localities where there are no setback requirements, the structure(s) must be constructed in a manner that does not obstruct ingress and egress from adjacent properties.

(xv) Piers must not extend within 100 feet of an MD DNR-approved water ski course.

(xvi) Piers must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high water shoreline and/or vegetated tidal wetlands, provided the pier does not come within 20 feet of any marked or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of the near design edge of a Federal navigation channel.

(b) Category B Impact Limits and Requirements:

(i) This activity authorizes private piers that exceed design criteria of Category A and meet the specific dimensions specified in Category B. Design criteria would include the single and complete project with both existing authorized and proposed aspects of the structure.

(ii) This activity authorizes private floating piers built to access the waterway.

(iii) Only 1 pier per property can be authorized under the MDSPGP-4.

(iv) Piers must not extend more than a distance of 25% of the width of the waterway, channelward of the mean high water shoreline and/or vegetated tidal wetlands.

(v) Piers must not exceed 8 feet wide, a 400-square-foot platform including Ts, Ls, and step down platforms, 8 mooring piles, 4 three-foot-wide finger piers, and/or create more than 10 slips.

(vi) Finger piers must not exceed slip length and shall be constructed on the landward side of the "T" head or "L" head.

(vii) Construction of open-pile walkways across tidal and nontidal emergent marsh can encourage establishment of invasive species such as common reed (*Phragmites australis*). The following measures for walkway construction across emergent marshes shall be considered to the maximum extent practicable to minimize damage to the marsh surface and vegetation, and minimize the risk of introducing invasive species.

(1) Align the walkway for the shortest practicable crossing of a marsh;

(2) Align the walkway away from guts, small creeks, and other wet/soft surface areas of a marsh;

(3) Align the walkway through marsh areas dominated by invasive species, such as common reed;

(4) Use less intrusive construction methods, such as end-on construction, or manual pile driving from small mats;

(5) For walkways across regularly flooded, non-persistent freshwater marshes, limit construction activities to non-growing season months (November - March).

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity does not authorize filling or dredging.

(iii) Authorization of the pier is based upon current water depths; propeller dredging is not authorized.

(iv) It should not be presumed that this pier authorization predetermines, in any way, that future requests to dredge for navigational access would be similarly authorized. Any decision on future dredging proposals adjacent to this property will be based upon existing, historical, physical, and biological characteristics of the waterway, and will include consideration of water depths, submerged aquatic vegetation, consideration of any other aquatic resources present, or other factors that may be relevant.

(v) Whenever possible, construction of the pier/platform shall be conducted from uplands, open water, or from the structure itself. Construction mats shall be used if equipment is placed in vegetated wetlands and must be removed immediately following construction of the pier and the wetland area restored to its preconstruction condition if damaged.

(vi) Construction mats are not authorized by this activity. Impacts associated with construction mats may be authorized under Category A of Section IV.B.1.e.(7), Temporary Construction Access, Stream Diversion, and Dewatering, or if the project is ineligible for Category A, the single and complete project, including the proposed pier structure and temporary construction access, will be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(vii) Auxiliary structures such as gazebos, tool sheds, etc., are not authorized by this MDSPGP-4 and will be reviewed under alternate Corps permit review procedures.

(viii) The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for such damage.

(ix) Alternate Corps permit review procedures are required for structures and floats associated with a new or previously unauthorized public, commercial marina, community, or governmental pier or boating facility. A boating facility is defined as those facilities that provide for a fee, rent, or sell mooring space, such as marinas, yacht clubs, boat clubs, boat yards, town facilities, “dockominiums,” etc.

(x) Alternate Corps permit review procedures are required for structures or floats that are located within the horizontal setback limits of a Corps Federal Navigation Project.

(xi) Alternate Corps permit review procedures are required for private piers that are located within the minimum extended property line setback requirements established by local jurisdiction or that may cause more than a minimal adverse effect on navigation.

(xii) Piers, auxiliary structures, floating docks, osprey poles, and/or mooring piles and boats moored thereto shall not extend into navigable channels marked either by the USCG or the USCG approved State system.

(4) **Marina/Community Piers Reconfiguration:** This activity authorizes reconfiguring an existing, previously authorized marina or community pier, including construction of a boat lift at an existing, previously authorized boat slip (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:** Does not authorize additional slips or dock spaces.

(b) **Category B Impact Limits and Requirements:** Authorizes marina reconfigurations that propose additional slips within the existing marina footprint.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity does not authorize dredging.

(iii) The reconfiguration may not increase the footprint (i.e., outer limits) of waters occupied by the existing community pier or marina structures/slips, etc.

(iv) There must be no increase in channelward encroachment beyond existing piers and associated structures.

(v) This activity does not authorize construction of new buildings on piers.

(vi) Alternate Corps permit review procedures are required for marina/community pier reconfigurations that propose an increase in the existing marina footprint and any new buildings on the pier.

(5) **Boat Ramp Construction, Repair, and Expansion:** This activity authorizes discharges of dredged or fill material associated with construction of new boat ramps and the repair and expansion of existing boat ramps (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) The boat ramp must not exceed 12 feet in width.

(ii) The boat ramp must not extend more than 30 feet channelward of the mean high/ordinary high water shoreline or further than a water depth of -3.0 feet at mean low water, whichever is less.

(iii) Boat ramps and associated discharges must not be placed in special aquatic sites, including wetlands.

(b) **Category B Impact Limits and Requirements:**

(i) The boat ramp must not exceed 24 feet in width.

(ii) The boat ramp must not extend more than 25% of the width of the waterway or further than a water depth of -3.0 feet at mean low water, whichever is less.

(iii) The discharge into waters of the United States must not exceed 50 cubic yards.

(iv) All boat ramps and associated discharges shall be located so as to eliminate or minimize impacts to special aquatic sites, to include wetlands.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity authorizes the discharge of concrete, rock, crushed stone, or gravel into forms, or placement of pre-cast concrete planks or slabs, or other suitable material (e.g., timber) within the limits of the boat ramp only (e.g., for bedding). This material may be placed over base materials which must be crushed stone, gravel, or other suitable material.

(iii) Excavation must be limited to the area necessary for site preparation.

(iv) This activity does not authorize dredging to provide access to the boat ramp.

(v) All excavated material must be removed to upland (non-wetland) areas and stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(vi) This activity does not authorize use of unsuitable material or materials not structurally sound.

(vii) Alternate Corps permit review procedures are required for boat ramps that may cause more than a minimal adverse effect on navigation.

(6) **Mooring Buoys**: This activity authorizes placement of mooring buoys (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements**: No application is required for Corps authorization. However, all mooring buoys must adhere to the MD DNR restrictions on where mooring buoys may be placed.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Only non-commercial, single-boat mooring buoys are authorized by the activity. Commercial mooring buoys are not authorized under this activity and are instead subject to alternative Corps permit review procedures.

(ii) Water depths in the mooring areas shall be sufficient that moored vessels float at all stages of the tide. Boats should not hit bottom during low water conditions.

(iii) The mooring buoy(s) and vessels attached thereto must not be placed in a marked navigation channel, or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation) or within 150 feet of the horizontal limits of a Federal navigation channel, or block ingress to or egress from adjacent properties. An alternate Corps permit review procedure is required for moorings proposed to be located within Federal navigation channel horizontal setback limits. Mooring buoys are not authorized within Federal channel limits.

(7) **Structures in Fleeting and Anchorage Areas:** This activity authorizes structures, buoys, floats, and other devices placed within existing, authorized anchorage areas or fleeting areas to facilitate mooring vessels (Section 10) (Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(b) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) The anchorage or fleeting areas must be established for these purposes by the USCG.

(ii) Anchorages or fleeting areas not established by the USCG require alternate Corps permit review procedures.

(8) **Temporary Recreational Structures:** This activity authorizes temporary recreational buoys, markers, small floating docks, and similar structures placed for seasonal recreational use or for recreational use during special events, such as water skiing competitions and boat races (Section 10)(Navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) The buoys, markers, and structures must be removed from the water within 30 days after the specific event or season has ended.

(ii) The buoys, markers, and structures must be placed so that there is a buffer between them and any Federal navigation channel. The buffer must be at least 50 feet or a distance of three times the authorized depth of the Federal navigation channel, whichever is greater.

(iii) At Corps reservoirs, the reservoir manager must approve each buoy or marker individually.

(iv) Category B or alternate corps permit review procedures (Section 10) are required for temporary recreational structures that will be emplaced for longer than 30 days after the use is discontinued.

(b) **Category B Requirements**: If a project is not eligible for Category A, it must be reviewed under Category B or an alternate Corps permit review procedures, as appropriate.

(c) **Requirements Applicable to Both Category A and Category B Activities:** Application must be submitted to MDE for Corps authorization.

(9) **Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters**: This activity authorizes dredging below the plane of the mean high water mark and removal of accumulated sediment as part of a single and complete project for the maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. The maintenance dredging area must have been authorized by the Corps and the dredging completed in accordance with the terms and conditions of the Corps authorization (Sections 10 and 404; limited to all tidal waters).

(a) **Category A Impact Limits and Requirements:**

(i) The proposed dredge area must not exceed 1/2 acre (21,780 square feet) and involve the removal of no more than 500 cubic yards of material.

(ii) Category A only authorizes mechanical (Section 10) dredging. All hydraulic dredging (Section 10/404) must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Maintenance dredging is prohibited from April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries to protect summer flounder nursery activities.

(b) **Category B Impact Limits and Requirements:**

(i) The proposed dredge area must not exceed 1.0 acre (43,560 square feet) in area.

(ii) Mechanical and hydraulic dredging (Section 10/404) are authorized under Category B or alternate Corps permit review procedures, as appropriate.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Previous dredging within the project area must have been authorized by the Corps and completed <u>no more than 5 years</u> prior to the application date of the current proposal. Additionally, the Corps permit number, a copy of the previous verification, and documentation of completion of the dredging may be required.

(iii) Dredging must not be deeper than the water depths where the proposed dredge area will be connecting.

(iv) All dredged material must be deposited in an upland site and must be properly contained and stabilized to preclude any runoff into adjacent areas. The upland area must be properly designated to contain the material.

(v) Proper siltation controls must be used including, but not limited to, silt fencing and turbidity curtains.

(vi) The disposal of dredged material into wetlands and waters of the United States is not authorized by this activity.

(vii) The proposed dredge area must not exceed the dredging depths and footprint as was previously authorized.

(viii) Dredged depths must not exceed the authorized depths at mean low water, including over dredging.

(10) **New Minor Dredging in Tidal Waters:** This activity authorizes new minor dredging below the plane of the mean high water mark as part of a single and complete project (Sections 10 and 404; limited to all tidal waters).

(a) **Category A Impact Limits and Requirements:**

(i) The dredged area must not exceed 1,500 square feet.

(ii) Dredging volumes must not exceed 100 cubic yards of material.

(iii) The landward edge of the dredge cut must be at least 15 feet channelward of the mean high water shoreline, unless the proposed dredge area is associated with a ramp, marine railway, or commercial travel lift.

(iv) Existing depths within the proposed dredge area must exceed 3 feet below mean low water.

(v) No dredging of or disposal into intertidal mudflats, wetlands, shellfish beds, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas is authorized.

(vi) New minor dredging is prohibited from April 1 through June 30 within all tidal waters of the Maryland coastal bays and their tidal tributaries to protect summer flounder nursery activities.

(vii) Mechanical dredging only (Section 10) is authorized under Category A. Hydraulic dredging must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The dredged area must not exceed 1/2 acre (21,780 square feet).

(ii) Dredging volumes must not exceed 400 cubic yards of material.

(iii) The applicant shall provide documentation regarding the presence, absence, or proximity of submerged aquatic vegetation relative to the proposed new dredging footprint and immediate vicinity. Information submitted with the application shall include all species that may be present at a project site, including such species as horned pondweed (*Zannichellia palustris*) with a brief spring growing season (late April through June). The applicant may refer to the Virginia Institute of Marine Science (VIMS) aerial surveys for obtaining such information.

The applicant should also refer to other reliable sources (e.g., groundtruthing during late April through June 15, VIMS aerial survey citizens observations) to comply with these SAV information needs, particularly for information on presence of horned pondweed since this SAV species does not generally show up in VIMS surveys. Horned pondweed is less prevalent or does not occur upstream of the geographical exclusion lines shown on the Low Salinity Waters in Maryland Chesapeake Bay Map (Appendix B) and tidal waters of the Maryland Atlantic Coastal Bays. Therefore, documentation regarding the presence or proximity of horned pondweed is not required in these areas. However, documentation for the presence/absence of other submerged aquatic vegetation species is required in these areas.

(iv) Hydraulic and mechanical dredging (Section 10/404) are authorized under Category B or alternate Corps permit review procedures, as appropriate.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Dredging must not be deeper than the water depths where the proposed dredge area will be connecting to.

(iii) The dredging project must be a single and complete action and not affiliated with a proposal by local/county government to improve access throughout a tidal tributary.

(iv) No dredging for the connection of canals or other artificial waterways to adjacent water bodies is authorized.

(v) All dredged material must be deposited in an upland site and must be properly contained and stabilized to preclude any runoff into adjacent areas. The upland area must be properly designated to contain the material.

(vi) Dredged depths must not exceed the authorized depths at mean low water, including over dredging.

b. **Repair and Maintenance Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. Maintenance activities generally do not require compensatory mitigation. For all losses of waters of the United States that require a Category B review associated with maintenance activities, the Corps may require compensatory mitigation, such as wetland restoration or stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(1) **General Maintenance:** This activity authorizes discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill. This activity authorizes minor deviations in the configuration of the structure or filled area, including changes in materials, construction techniques, current construction codes, or safety standards that are necessary to make the repair, rehabilitation, or replacement, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modification must be immediately adjacent to the project. Currently serviceable means that the structure or fill is usable in its current condition, or with some maintenance, but not so degraded as to essentially require reconstruction. This activity also authorizes the removal of accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). This activity also authorizes repair, rehabilitation, or replacement in-kind of structures destroyed by storms, floods, fire or other discrete events. This activity authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Section 404(f) exemption for maintenance (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization except for replacement of previously authorized, currently serviceable structures, located along a Federally authorized navigation channel, that are destroyed by an act of nature or other sudden event, or for modification of previously authorized, currently serviceable structures located along Federally authorized navigation channels. In these cases, an application is required to be submitted to the Corps for review under Category B or alternate Corps permit review procedures, as appropriate.

(ii) The total temporary (i.e., construction impacts including stream diversion devices) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers, and other open waters.

(iii) The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend any further than 200 linear feet in any direction from the structure.

(iv) Any impact to waters of the United States, including wetlands, associated with this activity is to be minimized below these impact limits to the greatest extent possible.

(v) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The total temporary (i.e., construction impacts including stream diversion devices, construction mats, etc.) and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(iii) Removal of sediments must not extend any further than 500 linear feet in any direction from the structure.

(iv) Any impact to waters of the United States, including wetlands, associated with this activity is to be minimized below these impact limits to the greatest extent possible.

(v) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition *(1)* above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waive the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with requirement *(1)* above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) An application is required to be submitted to the Corps for review under Category B for authorization of previously authorized, currently serviceable structures located along Federally authorized navigation channels that are destroyed by an act of nature or other sudden event or that are proposed to be modified.

(ii) The repair, rehabilitation, or replacement activity is limited to the original dimensions or configuration, except for minor deviations due to changes in materials, construction techniques, or current construction codes or safety standards. Minor deviations in the configuration of the structure or filled area must not exceed the minimum necessary to make the repair, rehabilitation, or replacement.

(iii) Repair, rehabilitation, or replacement of an existing serviceable structure should not result in the displacement of in-stream habitats or features important to anadromous, estuarine, and resident fish, such as plunge or scour pools. Work under this activity must not impede flow

in the waterway and/or must not block or impede the movements of anadromous and resident fish.

(iv) Culverts must be adequately sized to allow for the passage of ordinary high water with the depression and invert restrictions taken into account.

(v) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(vi) This activity does not authorize access roads. Access roads are authorized under IV.B.1.e.(7) Temporary Construction Access, Stream Diversion, and Dewatering.

(vii) The structure or fill must not be put to uses differing from those uses specified or contemplated for it in the original permit or the most recent authorized modification.

(viii) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills destroyed or damaged by storms, floods, fire, or other discrete events must be started or under contract to start within 2 years of the date that they were damaged or destroyed.

(ix) Maintenance of existing stormwater management facilities must be performed in accordance with any maintenance plan to restore to the design as originally approved and constructed, which includes limiting excavation to the original contours.

(x) This activity does not authorize the discharge of dredged or fill material for the purpose of reclaiming land lost through gradual erosion processes.

(xi) This activity does not authorize any maintenance dredging, beach restoration, stream restoration, stream relocation, or channelization, and/or repair or replacement of bulkheads.

(xii) This activity does not authorize blasting or other forms of uncontained in-water demolition.

(xiii) All excavated materials must be deposited and retained in an upland (non-wetland) area.

(2) **Armoring Bridges, Causeways, and Culverts:** This activity authorizes discharges of dredged or fill material associated with armoring or strengthening of bridges, causeways, and culverts, including excavation to construct a toe for placement of armoring for the purpose of protecting any previously authorized, currently serviceable bridge, causeway, or culvert. Any bank stabilization measures not directly associated with the structure will require a separate Corps authorization (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is limited to the minimum necessary to protect the structure or to ensure the safety of the structure and are not to exceed 10,000 square feet and/or 500 linear feet of streams, rivers, and other open waters.

(ii) Discharge must not extend any further than 200 linear feet in any direction from the structure.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to all waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is limited to the minimum necessary to protect the structure or to ensure the safety of the

structure and are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(ii) Armoring must not extend any further than 500 linear feet in any direction from the structure.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The armoring must be the minimum necessary to protect the structure or to ensure the safety of the structure.

(iii) This activity does not authorize stream channelization or stream relocation projects. This activity does not authorize the construction of any dams or dikes.

(iv) Material used (in order of preference) must be clean stone, broken concrete, or grout bags. If broken concrete is used for armoring, it must be clean and free of rebar or other protruding reinforcement.

(v) This activity does not authorize dredging.

(vi) The armoring material must not extend into a marked, lighted, charted, or Federal navigation channel.

(vii) The following conditions are applicable to Coastal Plain streams (tidal and nontidal), and Piedmont streams in Cecil and Harford Counties:

(1) Armoring and/or scour protection for bridges, arches, and culverts shall provide a low flow channel that will pass anadromous fish during the spring mandatory season (February 15 - June 15). The low flow channels shall provide a flow depth not less than 12 inches, and never less than 8 inches during the spring migratory period. For armoring culverts of diameter equal to or less than 24 inches, flow depth in the low flow channel shall be comparable to depths in adjacent, undisturbed reaches of stream. Flow velocities in the low flow channel should also be comparable to flows in adjacent, undisturbed reaches of stream, as experienced during the spring migratory season. For projects where on-site conditions (e.g., design of the existing culvert or other crossing structure) limit the ability to construct a low flow channel with the latter specifications, the applicant shall submit a narrative, along with their application, documenting site conditions and limitations that prohibit compliance with these low flow channel specifications.

(2) Armoring and/or scour protection for bridges, arches, and culverts that cannot be constructed with low flow channels in accordance with the requirements in *(1)* above, are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(3) **Bulkhead Repair or Replacement:** This activity authorizes discharges of dredged or fill material associated with repair or replacement of deteriorating or damaged bulkheads or other forms of vertical walls which are still functional. This activity also authorizes the placement of broken concrete or riprap along the base of a replacement bulkhead or other forms of vertical walls for the purpose of toe protection (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The bulkhead repair or replacement must not extend more than 18 inches channelward of the existing structure measured from the channelward face of the existing piling to the landward face of the proposed sheeting.

(iii) Discharges must not exceed an average of 1 cubic yard per running foot placed along the bank below the plane of the mean high water mark.

(iv) Concrete or stone placed along the base of a replacement bulkhead must not extend more than 10 feet channelward of the bulkhead/wall.

(v) No discharge of dredged or fill material may be placed into vegetated wetlands or submerged aquatic vegetation.

(b) **Category B Impact Limits and Requirements:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The bulkhead repair or replacement must not extend more than 3 feet channelward of the existing structure, measured from the channelward face of the existing piling to the landward face of the proposed sheeting.

(iii) Concrete or stone placed along the base of a replacement bulkhead must not extend more than 10 feet channelward of the bulkhead/wall.

(iv) Impacts to waters of the United States are not to exceed 10,000 square feet.

(v) The total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the bulkhead repair along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long bulkhead).

(vi) This activity does not authorize the filling of wetlands behind free-standing bulkheads that have never been backfilled.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) No material may be placed in excess of the minimum needed for erosion protection.

(ii) The linear length of the replacement bulkhead/wall may not extend along the shoreline beyond the ends of the existing bulkhead/wall.

(iii) The existing bulkhead/wall must be functional.

(iv) If the bulkhead repair or replacement includes placement of concrete along the base of a replacement bulkhead; the concrete must be clean and free of rebar or other protruding reinforcement.

(4) **Maintenance of Tidal Roadside Ditches:** This activity authorizes maintenance clean-out of tidally influenced roadside drainage ditches and their outlets (Section 10, not subject to Section 404; limited to all tidal wetlands and waters).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 10,000 square feet and/or 500 linear feet of drainage ditch being maintained.

(b) **Category B Impact Limits and Requirements**:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of drainage ditch being maintained.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) This activity authorizes work only in roadside ditches and their outlets that are subject to the ebb and flow of the tide.

(ii) This activity does not authorize stationing equipment in the ditch. Work should be done from the bank or road crossing using the appropriate equipment, such as an excavator arm or boom.

(iii) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch from its original design dimensions and configurations. Maintenance cannot expand the area drained by the ditch beyond original design.

(iv) Excavated material must be placed in an upland disposal site, must be properly contained and stabilized, and placed where the material: (1) will not wash back into the ditch and/or adjacent tidal waters; (2) will not wash into and/or fill adjacent wetlands; (3) will not adversely impact the function of the natural floodplain; and (4) will not create a restriction or impediment to the movement of aquatic species indigenous to the water, or to the passage of normal or expected high flows and tidal exchanges. Excavated material may be placed on existing ditch banks/berms.

(v) Any adjacent wetlands temporarily disturbed during maintenance clean-out operations must be restored to their pre-existing elevations and contours to enhance reestablishment of wetlands. However, placement of the excavated materials in waters of the United States, including wetlands, is not authorized by this activity.

(5) **Maintenance of Mosquito Control Ditches:** This activity authorizes the maintenance clean-out of existing mosquito control tidal ditches and tidal ponds and their radial ditches (Section 10 and Section 404 for placement on marsh, in accordance with the activity-specific requirements; limited to all tidal ditches and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization

(ii) The total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 10,000 square feet and/or 500 linear feet of drainage ditch being maintained.

(b) **Category B Impact Limits and Requirements**:

(i) Application must be submitted to MDE for Corps authorization.

(ii) Total temporary and permanent impacts to tidal ditches and tidal wetlands are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of drainage ditch being maintained.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) The acreage and linear feet of impact to tidal ditches and tidal wetlands includes the excavated area, plus areas filled above wetland elevations with sidecasting.

(ii) This activity authorizes work only in mosquito control tidal ditches, tidal ponds, and their radial ditches that are subject to the ebb and flow of the tide.

(iii) Suitable equipment that is not stationed in the ditch, preferably a rotary ditcher, will be used for the clean-out activities. When a rotary ditcher is not available or cannot be used, other equipment types are acceptable provided that material taken from the ditches is graded to as near wetland level as possible. Material dug with crane or backhoe should be placed on alternate sides of the ditch so as not to form a continuous line of excavated material, which would impede water movement across the wetland surface.

(iv) The excavated material must be placed in a manner to minimize disturbance to adjacent wetlands. Placement methods include spreading the material thinly on the wetland surface and grading the material as low as possible without undue disturbance to the nearby vegetated wetland, or placing the material in unvegetated mosquito-breeding low pockets.

(v) The maintenance must not enlarge or change the length, width, depth, and shape of the ditch from its original design dimensions and configurations. Maintenance cannot expand the area drained by the ditch beyond original design.

(vi) The excavated material must be placed in locations where the material does not: (1) wash back into the ditch; (2) restrict or impede the movement of aquatic species indigenous to waters or the passage of normal or expected high flows; and (3) adversely impact the functions of the natural floodplain.

c. **Underground and Overhead Utility Line Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes activities required for the construction, maintenance, repair, and removal of utility lines, including the associated excavation, backfill, or bedding for the utility lines in waters of the United States, provided there is no change in pre-construction contours. This activity also authorizes mechanized land clearing; construction of temporary and permanent access roads for construction and maintenance of the utility line; and construction of foundations for overhead utility towers, poles, and anchors in waters of the United States (Sections 10 and 404; all waters of the United States).

(1) **Utility Lines:** This activity authorizes the construction, maintenance, or repair of utility lines and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A utility line is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance. Utility lines also include any cable, line, or wire for the transmission of electricity, telephone and telegraph messages, radio, television, or other communication. The term “utility line” does not include activities which drain a water of the United States, such as drainage tile, or French drains. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose (refer to definitions section).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize discharges into tidal wetlands or tidal waters.

(iii) Limit-of-disturbance easements for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) The utility line must make a direct or perpendicular crossing of any stream channel.

(v) Open-cut pipeline installation within adjacent jurisdictional wetlands must not parallel a stream channel for more than 100 feet along the ordinary high water mark.

(vi) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed and generally does not require any riprap protection in-stream. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(vii) All utility line activities, including access roads constructed or installed in tidal wetlands and waters, require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other tidal and nontidal open waters.

(ii) Where the proposed utility line is constructed or installed in, under, or over navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

(iii) For all submerged utility lines across navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of the Federal navigation channel shall be shown in relation to the proposed utility line.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Impacts shall be minimized by selection of a utility alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable. Directional drilling, jack and bore, missile, or similar methods are the preferred method of installation.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside forested tracts or on the edges of forested tracts.

(iv) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States

(e.g., backfilling with extensive gravel layers, creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(v) Utility lines installed below the plane of the ordinary high water mark of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams.

(vi) In wetlands, the top 6 to 12 inches of the trench must be backfilled with the top 6 to 12 inches of topsoil removed from the trench.

(vii) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(viii) Immediately after completion of construction of the utility line through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(ix) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species.

(x) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(xi) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to reduce the adverse effects of the project to the minimal level. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of dredged or fill material.

(xii) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e.(1), Minor Nontidal Fills or alternate Corps permit review procedures, as appropriate.

(xiii) For aerial electric power transmission lines crossing navigable waters of the United States, the minimum clearances listed under General Conditions (VII.A.10.) must be followed.

(2) **Foundations for Overhead Utility Line Towers, Poles, and Anchors:** This activity authorizes mechanized land clearing, the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose (refer to definitions section).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize discharges into tidal wetlands or tidal waters.

(iii) Overhead utility line towers, poles, and anchors must not be located within channels of nontidal streams (below the ordinary high water line) to avoid adverse effects on the morphometry of the stream channel.

(iv) All utility line activities, including access roads constructed or installed in tidal wetlands and waters, require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other tidal and nontidal open waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Impacts shall be minimized by selection of a location that avoids and minimizes wetland and waterway impacts to the maximum extent practicable.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing the utility project outside forested tracts or on the edges of forested tracts.

(iv) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(v) Immediately after completion of construction of the utility project through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(vi) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species.

(vii) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(viii) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to reduce the adverse effects of the project to the minimal level. This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.

(ix) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e(1), Minor Nontidal Fills, or alternate Corps permit review procedures, as appropriate.

(x) For aerial electric power transmission lines crossing navigable waters of the United States, the minimum clearances listed under General Conditions (VII.A.10.) must be followed.

(3) **Utility Access Roads:** This activity authorizes the mechanized land clearing and construction of access roads for the construction and maintenance of utility lines, including overhead power lines. Individual impacts for a utility project will be added cumulatively for review of the overall project. An acceptable utility line project must have independent utility (i.e., a defined starting and ending point) and a defensible purpose (refer to definitions section).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States due to construction of all access roads associated with construction of the utility line are not to exceed 5,000 square feet and/or 200 linear feet of nontidal streams, rivers, and other nontidal open waters.

(ii) This Category A activity does not authorize discharges into tidal wetlands or tidal waters.

(iii) This Category A activity does not authorize discharges into nontidal wetlands adjacent to tidal waters for access roads.

(iv) All utility line activities, including access roads constructed or installed in tidal wetlands and waters or in nontidal wetlands adjacent to tidal waters, require review under Category B or alternate Corps permit review procedures, as appropriate.

(v) Limit-of-disturbance easements for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(vi) Any temporary crossing that must remain in place for over 1year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(vii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to tidal and nontidal waters of the United States due to construction of all access roads associated with construction of the utility line are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(ii) Where the proposed access road is constructed or installed in or over navigable waters of the United States (i.e., Section 10 waters), copies of the application and permit verification will be sent by the Corps, when appropriate, to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the access road to protect navigation.

(iii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition *(1)* above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waive the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with requirement *(1)* above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Impacts shall be minimized by selection of an alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable.

(iii) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines and access roads outside forested tracts or on the edges of forested tracts.

(iv) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(v) Immediately after completion of construction of the utility line and access road through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(vi) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species.

(vii) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(viii) All temporary and permanent road crossings must be the minimum width necessary for the crossing. Access roads must be constructed as near as possible to preconstruction contours and elevations (e.g., at grade contour roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

(ix) Access roads used solely for construction of the utility line must be removed upon completion of the work. Any temporary crossing must be removed in its entirety within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions date. The areas affected by temporary fills must be returned to pre-construction elevations and revegetated with native species.

(x) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(xi) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to reduce the adverse effects of the project to the minimal level. This is in addition to the requirement to mitigate for permanent wetland impacts resulting from the discharge of dredged or fill material.

(xii) This activity does not authorize utility substations. Utility substations must be reviewed under Section IV.B.1.e(1), Minor Nontidal Fills, or alternate Corps permit review procedures, as appropriate.

d. **Linear Transportation Activities:** All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes discharges of dredged or fill material associated with new construction, expansion, modification, or improvement of temporary and permanent linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways), which cross waters of the United States, including streams and wetlands. This activity cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers (Sections 10 and 404; all waters of the United States).

New crossings of all waters of the United States will be reviewed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation may be required to support the preferred crossing method.

(1) **Category A Impact Limits and Requirements:**

(a) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(b) This activity can authorize multiple road crossings provided that the total temporary and permanent impact of all of the crossings meets the 5,000 square feet and 200 linear feet impact limit.

(c) All linear transportation activities with discharges in tidal waters and wetlands or in nontidal wetlands adjacent to tidal waters are not authorized under Category A and require review under Category B or alternate Corps permit review procedures, as appropriate.

(d) Category B or alternate Corps permit review procedures are required for stream relocation projects that do not propose natural stream design to relocate impacted streams.

(e) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(f) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(i) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(ii) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(iii) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition (i) above are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(2) **Category B Impact Limits and Requirements:**

(a) Total temporary and permanent impacts to tidal and nontidal waters of the United States are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(b) Category B or alternate Corps permit review procedures are required for any impacts to tidal waters and wetlands, and nontidal wetlands adjacent to tidal waters of the United States.

(c) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(i) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(ii) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(iii) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition (i) above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waives the

countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(iv) If countersinking of the culvert or footer is not practicable in accordance with requirement (i) above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

(3) **Requirements Applicable to Both Category A and Category B Activities:**

(a) Application must be submitted to MDE for Corps authorization.

(b) The width of the fill must be limited to the minimum necessary for the crossing.

(c) The crossing must not be used as a berm for a permanent impoundment.

(d) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the road crossing is completed.

(e) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(f) Any temporary crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time-of-year restrictions.

(g) Any streams or wetlands impacted for temporary roads, or other temporary activities or structures, such as stream diversion devices, must be returned to pre-construction conditions, which includes contours, elevations, stream substrate, and revegetation with native, wetland species.

(h) Stream relocation using natural stream design is considered to be self-mitigating.

e. **Fill Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit.

(1) **Minor Nontidal Fills:** This activity authorizes discharges of dredged or fill material in nontidal wetlands and nontidal streams (Sections 10 and 404; limited to nontidal wetlands and streams, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements**: The total temporary and permanent impacts to waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(b) **Category B Impact Limits and Requirements**: The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) This activity authorizes work only in nontidal wetlands, streams, rivers, and other nontidal open waters.

(iii) If there is a specific activity for the proposed work type, this activity does not authorize types of work for which there are specific Category A/B activities, such as Linear Transportation Activities, Utility Lines, etc.

(iv) This activity does not authorize stream restoration projects or construction associated with mitigation banks or in-lieu fee mitigation projects.

(v) This activity does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, dams, water withdrawals, or water diversions. This activity also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. It does authorize impacts for the purpose of enhancing farmed wetlands located in agriculture fields or restoring or enhancing hydrology to a prior-converted wetland.

(2) **Agricultural Activities:** This activity authorizes discharges of dredged or fill material into waters of the United States for the purpose of improving agricultural production, including construction of building pads for farm buildings, and construction of tide gates designed to prevent the encroachment of salt water into agricultural drainage ditches. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized landclearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities. This activity does not authorize construction of farm ponds or aquaculture ponds in nontidal streams (Section 404; nontidal waters only).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes wetlands, streams, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity does not authorize discharges into nontidal wetlands adjacent to tidal waters. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes wetlands, streams, and other open waters, are not to exceed 1/2 acre (21,780 square feet and/or 2,000 linear feet of streams, rivers, and other nontidal open waters.

(ii) This activity does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in nontidal streams.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The term "farm tract" refers to a parcel of contiguous land under one ownership, which is operated as a farm or part of a farm and has been identified by the Farm Service Agency as such. (See General Condition VII.A.6. concerning "single and complete projects.")

(iii) For discharges into waters of the United States to improve agricultural production, if the permittee is a United States Department of Agriculture (USDA) program participant, they must: (a) obtain a categorical minimal effects exemption, minimal effect exemption, or mitigation exemption from Natural Resources Conservation Service (NRCS) in accordance with the provisions of the Food Security Act of 1985, as amended, (b) have a NRCS-certified wetland delineation, and (c) implement an NRCS-approved compensatory mitigation plan that fully offsets losses of waters of the United States, if required.

(iv) For discharges into waters of the United States to improve agricultural production, if the permittee is not a USDA program participant, a compensatory mitigation proposal must be included to offset losses of waters of the United States.

(v) This activity does not authorize any work in perennial streams.

(vi) This activity does not regulate discharges associated with agricultural activities when the discharge qualifies for an exemption under Section 404(f) of the CWA, as described in DA regulations at 33 CFR 323.4.

(vii) For the construction of building pads for farm buildings, only wetlands that were in agricultural production prior to December 23, 1985, (i.e., farmed wetlands) may be impacted.

(viii) Tide gates must be placed as close as possible to the affected agricultural field.

(ix) The activity must not block or impede the movements of anadromous or resident fish species.

(3) **Soil Investigations, Scientific Measurement Devices, and Survey Activities:** This activity authorizes discharges of dredged or fill material for soil investigations and survey activities. Authorized activities include core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil survey and sampling, percolation tests for sewage disposal fields, survey markers or survey monuments, piezometers and groundwater monitoring devices, and historic resources surveys. For purposes of this activity, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material. In addition, this activity authorizes discharges of dredged or fill material associated with devices whose purpose is to measure and record scientific data, such as staff gauges, tide and current gauges, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. This activity does not authorize permanent structures or the drilling and the discharge of excavated material from test wells for oil and gas exploration. Fill placed for roads and other similar activities is not authorized by this activity. Temporary road crossings shall be reviewed under Section IV.B.1.e(7), Temporary Construction Access, Stream Diversion, and Dewatering. The discharge of drilling mud and cuttings may require a permit under Section 402 of the CWA (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 10 cubic yards.

(iv) This activity does not authorize seismic activities. These projects must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, is not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(iii) Small weirs and flumes constructed to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards.

(iv) Seismic activities must not produce noise levels above 160dB re 1μPa within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries for the protection of listed species.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) This activity does not authorize discharges and structures associated with the recovery of historic resources.

(ii) This activity does not authorize drilling and the discharge of excavated material from test wells for oil and gas exploration. This activity does authorize plugging these wells.

(iii) This activity does not authorize discharges of dredged or fill material placed for roads, pads, and other similar structures and activities.

(iv) This activity does not authorize any permanent structures, except survey markers or monuments.

(v) The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain waters of the United States. The top 6 to 12 inches of the trench should be backfilled with topsoil from the trench.

(vi) Upon completion of the study, the measuring device and any other associated features supporting the device (i.e., anchors, buoys, lines, etc.), must be removed, and to the maximum extent practicable, the site must be restored to the pre-construction elevations and revegetated with native species.

(4) **Dry Fire Hydrants:** This activity authorizes discharges of dredged or fill material associated with installation and maintenance of dry hydrants. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet.

(ii) Up to 25 cubic yards of sediment may be removed from the hydrant intake.

(b) **Category B Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The dry hydrants must be installed for the purpose of providing water for fire fighting.

(iii) Sediment removed from hydrant intakes must be deposited and retained in an upland (non-wetland) area and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(iv) This activity does not authorize sediment removal from wetlands or submerged aquatic vegetation beds.

(v) Stream relocation using natural stream design is considered to be self-mitigating.

(5) **Clearing Debris and Windfalls:** This activity authorizes discharges of dredged or fill material associated with removal of debris and windfalls from shorelines and banks. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) No application is required for Corps authorization.

(ii) The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(b) **Category B Impact Limits and Requirements:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The total temporary and permanent impact to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) This activity does not authorize stationing equipment in-stream. Work should be done from the bank or road crossing using the appropriate equipment, such as an excavator arm or boom.

(ii) This activity does not authorize dredging, shoal removal, or river bank snagging.

(iii) This activity does not authorize the construction of access roads. Access roads are authorized under IV.B.1.e.(7) Temporary Construction Access, Stream Diversion, and Dewatering.

(6) **Special Area Management Plan (SAMP) Study Area Projects:** This activity authorizes discharges of dredged or fill material in all nontidal wetlands and streams and all tidal wetlands and waters within a designated SAMP Study Area that have been determined to be eligible for impact, provided it meets the terms and conditions specified in the subject SAMP. The affected local government must have officially adopted the SAMP, and the Corps Regulatory Branch must be a collaborative member of the interagency team that developed the subject SAMP and a signatory to the SAMP. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit. Work, including discharges, that does not meet these impact limits and/or requirements, or are proposed in areas designated for protection by the subject SAMP, does not qualify for authorization under this activity (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States is limited to those areas determined to be eligible for impacts under a SAMP document are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters.

(ii) Impacts to tidal wetlands and waters are not authorized under Category A. Impacts to tidal wetlands and waters must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements**:

(i) The total temporary and permanent impacts to tidal and nontidal waters of the United States is limited to those areas determined to be eligible for impacts under a SAMP document are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(ii) This activity does not authorize any discharges of dredged or fill material in tidal wetlands for non-water dependent purposes.

(iii) This activity does not authorize water withdrawals; channelization; pipe installation; and the construction of berms, dams, or any impoundments, including stormwater management facilities, in tidal wetlands or tidal waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Property on which the activity is proposed must have an approved jurisdictional determination of waters of the United States, including jurisdictional wetlands, as shown in the final SAMP document for the subject Study Area.

(iii) Best Management Practices (BMPs) developed/identified by the interagency team will be implemented as indicated in the subject SAMP document.

(iv) Compensatory mitigation for authorized impacts will be performed at the mitigation site(s) designated for the SAMP Study Area.

(7) **Temporary Construction, Access, Stream Diversions, and Dewatering for Construction:** This activity authorizes temporary structures, work, and discharges of dredged or fill material, including stream diversion devices necessary for construction activities or repair, or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps or the USCG, or for other construction activities not subject to the Corps or USCG regulations (Sections 10 and 404; all waters of the United States)

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet of waters of the United States and/or 200 linear feet of streams, rivers, and other open waters. The entire length of diverted stream is considered impacted.

(ii) Discharges into tidal wetlands and waters associated with causeways, approach fills (except for construction mats), and cofferdams are not eligible for Category A and must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(iii) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:** The total temporary impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1.0 acre (43,560 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters. The entire length of diverted stream is considered impacted.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

(iii) Fill must be of materials and placed in a manner that will not be eroded by expected high flows.

(iv) Work should be accomplished by using stream diversion devices, other than earthen or stone cofferdams or causeways.

(v) Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

(vi) A restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources must be included with the application.

(vii) The width of the fill must be limited to the minimum necessary for the temporary road crossing.

(viii) The temporary road crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions.

(ix) Any streams or wetlands impacted for the temporary road crossing must be returned to pre-construction conditions which include contours, elevations, stream substrate, and revegetation with native species.

(8) **Outfall Structures and Associated Intake Structures:** This activity authorizes structures, work, and discharges of dredged or fill material associated with the construction or modification of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or is otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System (NPDES) program (Section 402 of the CWA). The construction of intake structures is not authorized by this activity unless they are directly associated with an authorized outfall structure. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; all waters of the United States).

(a) **Category A Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 10,000 square feet and/or 200 linear feet of streams, rivers, and other open waters.

(b) **Category B Impact Limits and Requirements:** The total temporary and permanent impacts to waters of the United States, which includes tidal and nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of streams, rivers, and other open waters.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) In order to minimize the effects of intakes on anadromous fish eggs and larvae, and oyster larvae, intake structures should be equipped with screening (with mesh size no larger than 2 mm) of wedge wire or another material of equal or better performance. Where feasible, intakes should be located away from spawning or nursery grounds, or to minimize the impingement on, or entrainment of, eggs or larvae. In addition, intake velocities should not exceed 0.5 ft./sec.

(iii) Stream relocation using natural stream design is considered to be self-mitigating.

(9) **Residential, Commercial, and Institutional Development Activities:** This activity authorizes the discharges of dredged or fill material into nontidal waters of the United States associated with residential, commercial, and institutional development activities, including the construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, sidewalks, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, trails, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include a single residence, multiple and single unit developments, and/or a residential subdivision. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, libraries, hospitals, and places of worship. The construction of new golf courses (unless an integral part of a residential development), new ski areas, or oil and gas wells are not authorized by this activity (Sections 10 and 404, limited to nontidal waters of the United States, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.).

New crossings of all waters of the United States will be reviewed based on the following order of preference: (a) bridge, (b) bottomless arch culvert, and (c) pipe or box culvert. Written documentation may be required to support the preferred crossing method.

(a) **Category A Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 5,000 square feet of waters of the United States and/or 200 linear feet of nontidal streams, rivers, or other open waters.

(ii) Category A does not authorize the discharge of fill into streams for the construction of berms for in-line (i.e., in-stream) stormwater management facilities, permanent dikes, dams, water withdrawals, or water diversions. It also does not authorize the construction of any kind of pond that would impound water into a stream or wetland. Category B or alternate Corps permit review procedures are required for construction of these ponds or stormwater management facilities.

(iii) Limit-of-disturbance easements for the construction of utility lines within nontidal waters of the United States, including wetlands, must be limited to the minimum width necessary and not to exceed 30 feet in width.

(iv) The utility line must make a direct or perpendicular crossing of any stream channel.

(v) Open-cut pipeline installation within adjacent jurisdictional wetlands must not parallel a stream channel for more than 100 feet along the ordinary high water mark.

(vi) The top of the cable, encasement, or pipeline shall be located a minimum of 3 feet below the existing bottom elevation of the streambed and generally does not require any riprap protection in-stream. When the utility is placed in bedrock, a minimum depth of 1 foot from the lowest point in the natural contour of the streambed shall be maintained.

(vii) This Category A activity does not authorize discharges into nontidal wetlands adjacent to tidal waters. It must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(viii) Any temporary crossing that must remain in place for over one year after the installation date requires review under Category B or alternate Corps permit review procedures, as appropriate.

(ix) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations. Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are eligible for Category A review with specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipes/culvert.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers (except those placed in streams on bedrock or over buried utility lines) that cannot be countersunk in accordance with condition *(1)* above are not eligible for Category A and

must be reviewed under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, navigable waters, and other open waters, are not to exceed 1/2 acre (21,780 square feet) of waters of the United States and/or 2,000 linear feet of nontidal streams, rivers, or other open waters.

(ii) For all submerged utility lines across navigable waters of the United States, the cross-sectional view drawing submitted with the application shall show the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of the Federal navigation channel shall be shown in relation to the proposed utility line.

(iii) The following conditions are applicable to Coastal Plain streams, and Harford and Cecil County Piedmont streams:

(1) Permanent culvert pipes that are greater than 24 inches in diameter and bridge/arch footers must be countersunk a minimum of 12 inches below the natural stream invert.

(2) Permanent culvert pipes and bridge/arch footers placed in streams on bedrock or over buried utility lines are exempt from these countersinking (i.e., depressing) requirements and must be constructed in accordance with the State of Maryland regulations.

(3) All permanent culvert pipes greater than 24 inches in diameter and bridge/arch footers placed in streams must be countersunk in accordance with condition *(1)* above (except those placed in streams on bedrock or over buried utility lines), unless the Corps and MDE waives the countersinking (i.e., depressing) requirement by making a written determination concluding that countersinking is not practicable and will result in minimal adverse effects.

(4) If countersinking of the culvert or footer is not practicable in accordance with requirement *(1)* above (except those placed in streams on bedrock or over buried utility lines), the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert/footer, cost, and engineering factors that prohibit depressing the culvert/footer. Preferred alternative options that must be considered include the use of a bridge or bottomless pipe. Other alternative options may include partial depression or other measures to provide for the movement of aquatic organisms. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) The construction of new golf courses (unless an integral part of a residential development), new ski areas, or oil and gas wells are not authorized by this activity.

(iii) Impacts shall be minimized by selection of a utility alignment that avoids and minimizes wetland and waterway impacts to the maximum extent practicable. Directional drilling, jack and bore, missile, or similar methods are the preferred method of installation.

(iv) Clearing of wetlands and fragmentation of large tracts of forested wetlands shall be minimized by routing utility lines outside forested tracts or on the edges of forested tracts.

(v) When underground utility lines are installed in streams and wetlands, the trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers; creating a French drain effect). Clay plugs, impervious membranes, or other materials may be placed in the trenches to ensure that the trench does not drain the waters of the United States through which the utility line is installed.

(vi) Utility lines installed below the plane of the ordinary high water mark of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams.

(vii) In wetlands, the top 6 to 12 inches of the trench must be backfilled with the top 6 to 12 inches of topsoil removed from the trench.

(viii) Excavated material must not be stockpiled in wetlands for longer than 14 days. Excavated material must be stabilized with straw bales, silt fence, or other erosion and sediment control measures to prevent reentry of soil into waters of the United States.

(ix) Immediately after completion of construction of the utility line through the wetlands area, excess excavated material must be disposed of in an upland area and stabilized with straw bales, silt fence or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands.

(x) Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species.

(xi) Extensions of existing pipes or culverts that are not depressed below the stream invert are exempt from the requirement to depress the culvert.

(xii) Any temporary road crossing must be removed within 14 calendar days after the structure is no longer needed, subject to any time of year restrictions.

(xiii) Exposed slopes and stream banks must be stabilized and revegetated, preferably with native, woody species, immediately after construction of the utility line is completed.

(xiv) When mechanized landclearing results in the permanent removal or conversion of a forested or scrub-shrub wetland to an herbaceous wetland in the permanently maintained utility right-of-way, compensatory mitigation is required to reduce the adverse effects of the project to the minimal level. This is in addition to the requirement to mitigate for other permanent wetland and nontidal stream impacts resulting from the discharge of dredged or fill material. Stream relocation using natural stream design is considered to be self-mitigating.

f. **Shoreline and Stream Bank Stabilization Activities:** The following activities must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. In general, nonstructural shoreline and bank stabilization practices are preferred over structural types of stabilization.

Tidal shoreline stabilization activities will be reviewed based on the following order of preference: (a) nonstructural shoreline stabilization, including beach nourishment, marsh creation, root wads, and other similar measures; and (b) structural shoreline stabilization projects such as shoreline revetments, breakwaters, groins, and bulkheads. Written documentation may be required to support the preferred stabilization method.

Nontidal stream bank stabilization activities include in order of preference: (a) non-structural/bioengineering bank stabilization measures such as root wads, brush layering, live stakes; (b) structural measures such as rock cross vanes, j-hooks, vortex rock weirs, imbricated riprap, conventional riprap, revetments, vegetated cribwalls; and (c) gabions. Written documentation may be required to support the preferred stabilization method.

(1) **New Tidal Revetments and Tidal Shoreline Erosion Control Structures other than Revetments, and Toe Protection for New or Existing Bulkheads:** This activity authorizes discharges of dredged or fill material associated with construction of tidal shoreline erosion control structures and construction of new tidal revetments. Examples of shoreline erosion control structures include, but are not limited to, low profile sills, breakwaters, and groins. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to all tidal waters and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) For new tidal revetments and tidal shoreline erosion control structures (e.g., low profile stone sills, groins, breakwaters, etc.), and toe protection for new or existing bulkheads, the structure is limited to 500 linear feet in length along the shoreline and must not extend more than 10 feet channelward of the mean high water shoreline.

(ii) Total impacts to waters of the United States must not exceed 5,000 square feet.

(iii) Toe protection for new or existing bulkheads may not extend more than 10 feet channelward of the bulkhead structure.

(iv) This Category A activity does not authorize discharges of dredged or fill material into special aquatic sites, including intertidal mudflats, wetlands, shellfish beds, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas.

(b) **Category B Impact Limits and Requirements:**

(i) Total temporary and permanent impacts to tidal waters of the United States are not to exceed 1/2 acre (21,780 square feet), including no more than 2,000 linear feet in length along the shoreline.

(ii) The structures may not extend more than 25 feet channelward of the mean high water shoreline.

(iii) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long revetment).

(iv) The applicant shall submit documentation of shoreline condition at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source.

(v) Clearing and/or pruning of riparian trees and shrubs within the defined project area shall be minimized to the maximum extent practicable.

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) This activity does not authorize tidal marsh creation or beach nourishment projects. Tidal marsh creation and beach nourishment projects must be reviewed under Section IV.B.1.f.(2), Tidal Marsh Creation/Beach Nourishment or alternate Corps permit review procedures, as appropriate.

(iv) This activity does not authorize the construction of new bulkheads. New bulkhead projects must be reviewed under Section IV.B.1.f.(3), New Bulkheads, or alternate Corps permit review procedures, as appropriate.

(v) If stone is used, the material used must be clean stone or broken concrete. Broken concrete must be clean and free of rebar or other protruding reinforcement.

(vi) The activity must be constructed as close to the uplands and/or bank as structurally feasible.

(vii) This activity does not authorize reclaiming eroded land.

(viii) No material must be of the size or type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area.

(ix) Filter cloth must be used, or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(x) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(xi) Toe protection for new or existing bulkheads is also authorized.

(xii) Any new revetment or tidal shoreline erosion control structure must be constructed parallel to the uplands, other than groins and returns on stone sills.

(2) **Tidal Marsh Creation/Beach Nourishment:** This activity authorizes discharges of fill material and the construction of stone containment structures, such as groins or low profile stone sills, in unvegetated (i.e., no adjacent marsh, wetland, or submerged aquatic vegetation) shallow water along shorelines to facilitate tidal marsh creation and/or beach nourishment for the purpose of shoreline erosion control only. Low profile stone sills are not authorized for use with beach nourishment projects. Breakwaters are not authorized by this activity. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to all tidal waters and wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) Total impact is limited to 17,500 square feet to unvegetated (i.e., no adjacent marsh, wetland, or submerged aquatic vegetation) shallow waters.

(ii) The fill and containment structures must not extend more than 500 linear feet in length and/or 35 feet channelward of the mean high water shoreline.

(iii) This Category A activity does not authorize any discharge of dredged or fill materials for the purpose of constructing any type of compensatory mitigation, including mitigation banks, in-lieu fee mitigation, and permittee-responsible mitigation.

(iv) Stone sills placed at the toe of constructed marsh shall be designed to facilitate ingress/egress of estuarine fauna during regular tidal cycles. The following example sill design parameters are acceptable measures to meet this condition:

(1) Low profile sills (with top elevation set below mean high water), particularly for low to moderate erosion energy shorelines

(2) Sill windows/vents of sufficient width (at least 10-15 feet across the bottom), placed in sufficient number along the sill length, or at sill termini (e.g., one window for every 100 feet of sill)

(3) Window/vent designs, including (a) staggered; (b) off-set; (c) with window bottom constructed at mean low water elevation.

(v) Native, non-structural shorelines must be experiencing documented erosion to qualify for Category A review under the MDSPGP-4. Projects that do not meet this requirement require review under Category B or alternate Corps permit review procedures, as appropriate.

(b) **Category B Impact Limits and Requirements:**

(i) Total impact to tidal waters of the United States is limited to 1/2 acre (21,780 square feet).

(ii) The fill and containment structures must not extend more than 50 feet channelward of the mean high water shoreline.

(iii) No compensatory mitigation shall be required if the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the new tidal marsh creation/beach nourishment project along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long project).

(iv) The applicant must submit documentation of shoreline condition at the project site, along with their application, using recent photographs and/or supplemental shoreline retreat or change information obtained from the Maryland Geological Survey, or other expert substantial source.

(v) The following requirements are applicable to tidal marsh creation/beach restoration projects that are proposed for the purpose of providing compensatory mitigation and that are potentially eligible for Category B review:

(1) Conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of subtidal waters into tidal wetlands to provide compensatory mitigation, will be reviewed with additional scrutiny under the MDSPGP-4. Compensatory mitigation to offset unavoidable, authorized impacts to tidal waters/marshes shall be based on a no-net-loss of acreage and, to the extent practicable, sufficient to replace lost aquatic resource functions. A minimum one-to-one acreage (overall acreage lost to acreage replaced) compensation ratio shall be used. Conversion of one tidal habitat to another (e.g., fill of subtidal habitat to create tidal marsh) to provide compensatory mitigation, resulting in a trade-off of functional values, should be avoided under most

circumstances to ensure no net loss of acreage and functions. Under no circumstances may the same credits be used to provide mitigation for more than one permitted activity. Greater flexibility is appropriate for tidal marsh creation from subtidal waters as compensatory mitigation in waterways which have been historically affected by heavy industrial activities (e.g., with predominantly hardened shorelines, contaminated sediments, depressed benthic and nektonic communities, and limited availability of riparian fastland for conversion to tidal marsh/waters; e.g., Baltimore Harbor, Back River). Establishment of tidal marsh from fastland, enhancement of existing tidal marsh systems (e.g., re-vegetating denuded areas; control of invasive species), and planting of tidal mud-flat (at or above mean low water) with native marsh vegetation are examples of potentially acceptable compensatory mitigation methods for impacts to tidal resources. Out-of-kind compensatory mitigation may also be considered if the Corps determines, using the watershed approach, that out-of-kind compensatory mitigation will serve the aquatic resource needs of the watershed.

(2) The application shall include a list of all permits for which the tidal marsh creation project is proposed for the purpose of offsetting unavoidable adverse impacts to waters of the United States. This list shall include: The Corps and MDE permit numbers, the location where the authorized impacts were located, the amount (square feet, linear feet) of the authorized impacts, the amount of each resource type(s) (e.g., tidal/nontidal/ emergent/scrub-shrub/open water, etc.) impacted, and the amount of required compensatory mitigation.

(3) The proposed compensatory mitigation project must meet all requirements of the 2008 Mitigation Rule, 33 CFR Part 332. The final tidal marsh creation/compensatory mitigation plan must address the mitigation plan elements as required by the 2008 Mitigation Rule, 33 CFR 332.4(c).

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) The fill must be placed parallel to the uplands, other than groins and returns on stone sills.

(iv) The fill material used must be clean substrate, no more than 10% of which shall pass through a standard number 100 sieve.

(v) The tidal marsh establishment area must be planted within 6 months following completion of the filling operation.

(vi) The marsh establishment area must be maintained as a wetland, with areal coverage by non-nuisance species of at least 85% for 3 consecutive years. If 85% coverage by non-nuisance species is not attained, the reasons for failure must be determined, corrective measures must be taken, and the area must be replanted.

(vii) If an erosion and sediment control plan is required for clearing or grading of the existing bank, it must be obtained from the applicable erosion and sediment control agency before beginning the clearing or grading.

(viii) Clearing and/or pruning of riparian trees and shrubs within the defined project area shall be minimized to the maximum extent practicable.

(3) **New Bulkheads:** This activity authorizes the construction of new bulkheads and associated backfill for the purpose of erosion protection. This activity also authorizes replacement of currently non-serviceable bulkheads and associated backfill. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to tidal waters and tidal wetlands).

(a) **Category A Impact Limits and Requirements:**

(i) New bulkheads or replacement of currently non-serviceable bulkheads or associated backfill must not exceed 500 linear feet in length and shall be placed at the mean high water shoreline.

(ii) No impacts to special aquatic sites, including intertidal mudflats, vegetated marsh, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), or anadromous fish spawning areas are authorized by this activity.

(b) **Category B Impact Limits and Requirements:**

(i) This activity authorizes new bulkheads and replacement of currently non-serviceable bulkheads up to three feet channelward of the mean high water shoreline.

(ii) Total impacts to tidal waters of the United States, including tidal wetlands, may not exceed 1/2 acre (21,780 square feet) and/or 2,000 linear feet of shoreline.

(iii) Compensatory mitigation will not be required when the total amount of vegetated wetlands which is filled, in square feet, does not exceed the length of the activity along the shoreline in linear feet (e.g., 100 square feet maximum for a 100-foot-long bulkhead).

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) No material may be placed in excess of the minimum needed for erosion protection.

(iii) The erosion control structure and backfill must be constructed as close to the uplands and/or bank as structurally feasible.

(iv) This activity does not authorize reclaiming eroded land.

(v) No material must be of the size or type or placed in any location or in any manner, so as to impair surface water flow into or out of any wetland area.

(vi) Filter cloth must be used or the project must otherwise be designed and constructed to prevent soil from washing into the waterway.

(vii) Only clean, non-metallic, non-organic, non-floatable fill material obtained from an upland source may be used as backfill material.

(viii) The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this activity and will require alternate Corps permit review procedures.

(4) **Nontidal Bank Stabilization Activities:** This activity authorizes discharges of dredged or fill material associated with installation of nontidal stream bank stabilization structures for the purpose of erosion protection. All work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below, in addition to the general conditions of this permit (Sections 10 and 404; limited to nontidal waters of the United States, including navigable nontidal Section 10 waters, e.g., Potomac and Susquehanna Rivers, etc.).

(a) **Category A Impact Limits and Requirements:**

(i) The nontidal bank stabilization itself is limited to 500 feet in total length, with total impacts to nontidal waters of the United States not to exceed 10,000 square feet.

(ii) This activity does not authorize discharges into vegetated wetlands or submerged aquatic vegetation.

(b) **Category B Impact Limits and Requirements:** Limited to 2,000 feet in total length with total impacts to nontidal waters of the United States not to exceed 1/2 acre (21,780 square feet).

(c) **Requirements Applicable to Both Category A and Category B Activities:**

(i) Application must be submitted to MDE for Corps authorization.

(ii) Discharges associated with nontidal bank stabilization projects must not exceed an average of 1 cubic yard per running foot placed along the bank below the plane of the ordinary high water mark, unless the permittee utilizes bioengineering techniques to accomplish the bank stabilization.

(iii) No material may be placed in excess of the minimum needed for erosion protection.

(iv) If stone is used, the material used must be clean stone or broken concrete. Broken concrete must be clean and free of rebar or other protruding reinforcement.

(v) The activity must be constructed as close to the bank as structurally feasible.

(vi) This activity does not authorize reclaiming eroded land.

(vii) No material must be of the size, or type, or is placed in any location, or in any manner, so as to impair surface water flow into or out of any wetland area.

(viii) Filter cloth must be used, or the project must otherwise by designed and constructed to prevent soil from washing into the waterway.

(ix) The activity must be constructed with material of appropriate size or class to prevent it from being washed into the waterway.

(x) This activity does not authorize stream channelization projects or stream relocation projects. These activities may be reviewed under alternative Corps permit review procedures.

(xi) Nontidal bank stabilization material must cover only the minimum necessary for bank stabilization, must have no more than minimal effect on the stream bottom, and should not adversely modify stream hydrology and/or channel morphology. In addition, in-stream structures shall not block the passage of aquatic species.

(xii) Structural types of nontidal bank stabilization, such as revetments, conventional riprap, and gabions, must have voids/joints and they must be planted with live stakes, to provide additional bank stabilization and stream shading.

(xiii) Impacts to woody vegetation resulting from soil compaction around the root zone by heavy equipment should be minimized.

g. **Return Water from Upland Contained Disposal Areas:** This activity authorizes the discharge of return water from upland, contained dredged material disposal areas into waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a Section 404 permit. This activity satisfies the technical requirement for a Section 404 permit for the return water where the quality of the return water is controlled by the State through the Section 401 certification procedures. The dredged activity may require a Section 404 permit (33 CFR 323.2(d)), and will require a Section 10 permit if located in navigable waters of the United States (Section 404 only; all waters of the United States).

(1) **Category A Requirements:** No application is required for Corps authorization.

(2) **Category B Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

h. **Private Landowner Oyster Aquaculture:** All work authorized by this activity must comply with all activity-specific impact limits and requirements, in addition to the general conditions of this permit. This activity authorizes the placement of floats in the water by riparian landowners for purposes of conducting oyster aquaculture activities, subject to the activity-specific impact limits and requirements, and the general conditions of this general permit (Section 10; limited to tidal waters of the United States).

(1) **Category A Impact Limits and Requirements:** No application is required for Corps authorization.

(2) **Category B Impact Limits and Requirements:** See Sections II.D. and II.E. or Section IV.B.2. for when an application is required to be submitted for Corps review.

(3) **Requirements Applicable to Both Category A and Category B Activities:**

(a) The surface area of the floats must not exceed 60 square feet of total coverage of the water column.

(b) The native eastern oyster (*Crassostrea virginica*) shall be the species used in the oyster aquaculture activity in the floats.

(c) The floats must be attached to existing structures (e.g., piers, pilings, bulkheads, etc.) that are connected to the riparian owner's fastland.

(d) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with navigation by the general public.

(e) The riparian owner shall avoid alignment and placement of the structures in such a manner that they would interfere with ingress and egress from adjacent properties and must be situated to comply with locally established property setback requirements, if any.

(f) The riparian owner shall clearly mark the floats with his or her name and address.

(g) The riparian owner shall mark all in-water floats with high visibility colors and lighted or otherwise marked in accordance with the USCG requirements. The riparian owner shall ensure that the location of the structures is published in the USCG's "Local Notice to Mariners." The riparian owner shall contact: Commander (AOWW), USCG Atlantic Area, 431 Crawford Street, Portsmouth, Virginia 23704, to ensure that all USCG requirements are met regarding this activity.

(h) The riparian owner shall recover all storm-damaged, accident damaged, or dislodged equipment within 48 hours after it is dislodged and shall dispose of such equipment in accordance with State and local ordinances.

(i) The riparian owner shall not cover, dredge, or otherwise alter or destroy any submerged aquatic vegetation or tidal wetlands, as a result of the deployment and/or storage of the floats and other equipment associated with the aquaculture operation.

(j) The riparian owner shall not commercially harvest, sell, or market any of the shellfish for human consumption.

(k) The riparian owner shall not use chemical therapeutics to treat shellfish held or raised under this authorization for diseases, parasites, or to enhance the physical condition of the shellfish.

(l) The riparian owner shall not possess a total number of shellfish that exceed 3,000 per site.

(m) The riparian owner shall obtain oyster seed from a Maryland vendor or obtain an approved Shellfish Import Permit from the MD DNR.

(n) The riparian owner must not collect or release oysters without having obtained beforehand a valid Collection or Stocking permit from MD DNR.

(o) This activity does not authorize artificial reefs.

(p) This activity does not authorize impoundments and semi-impoundments of waters of the United States.

(q) All work shall be performed in accordance with the WQC issued by MDE for this general permit.

(r) The riparian owner shall maintain accurate records on the amount of shellfish placed in structures or floats and record the disposition of the shellfish. Reports shall be submitted annually and include name and address of riparian owner, location of floats, amount of shellfish raised, and final use (resource enhancement, restoration, or consumption by the riparian owner or others), including the location shellfish were moved to for enhancement or restoration activities. Reports shall be submitted to the State Aquaculture Coordinator by December 31 annually.

2. **Category B Activities Requiring Application Submittal:** The following activities may be authorized under the MDSPGP-4 after Category B review by the Corps provided the proposed regulated activities comply with all terms, conditions, best management practices, and processing procedures identified and required by the MDSPGP-4.

a. **Activities In or Near Federally Authorized Civil Works Projects:**

(1) **Activities In or Near Federal Navigation Projects:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that extend closer than 150 feet of the horizontal limits of any Federal navigation project, which is considered to be a Federally authorized civil works project. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-4. Application must be submitted to MDE for Corps authorization.

(2) **Activities In or Near Other Federally Authorized Civil Works Projects:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are proposed in or adjacent to any proposed or existing Federally authorized civil works project other than a Federal navigation project. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-4. Application must be submitted to MDE for Corps authorization.

b. **Activities Grandfathered by MDE:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are grandfathered from MDE's permit requirements. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-4. Application must be submitted to MDE for Corps authorization.

c. **Activities Exempt from MDE's Permit Requirements or Not Regulated by MDE's Wetlands and Waterways Program:** Category B review by the Corps is required for projects that would otherwise meet the requirements for Category A review, but that are exempt from or not regulated under applicable State law. This includes those Category A activities that specifically state that no application is required for Corps authorization. Additionally, there may be circumstances relative to a specific project which would require that it be reviewed under alternate Corps permit review procedures rather than as a MDSPGP-4. Application must be submitted to MDE for Corps authorization.

d. **Denials and Violations:**

(1) **Denials:** This activity applies to Category A projects that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act, the Tidal Wetlands Act, or the Waterway Construction Act, or that have been denied WQC or a CZC Certification. This activity also applies to Category A projects that have been previously denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA. This activity also applies to projects that have not themselves been denied one of these authorizations, but that are part of a project that has been denied. Projects that exceed the Category A individual activities' impact limits and requirements and that have been denied one of these authorizations, or that are part of a project that has been denied, will be reviewed under Category B, or alternate Corps permit review procedures, as appropriate. Application must be submitted to MDE for Corps authorization.

(2) **Violations:** This activity applies to Category A projects that are proposed for authorization for the purpose of resolving violations of Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA, i.e., after-the-fact applications or completed or partially-completed work that is discovered in the review of a Category A application. This activity also applies to Category A projects that are not themselves violations, but that are part of a project that is a violation, or that occur on the same property as a violation. Projects that exceed the Category A individual activities' impact limits and requirements and that are violations, are part of a project that is a violation, or that occur on the same property as a violation will be reviewed under Category B, or alternate Corps permit review procedures, as appropriate. Application must be submitted to MDE for Corps authorization for any of these violation instances.

e. **Activities Requiring an EFH Consultation:** This activity applies to Category A projects that require an individual EFH consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act. Application must be submitted to MDE for Corps authorization.

f. **Activities With Potential to Impact Historic Properties and/or Federally Threatened or Endangered Species**: This activity applies to Category A projects that require additional consultation under Section 106 of the National Historic Preservation Act due to potential impacts to historic properties and/or Category A projects that require additional consultation under Section 7 of the ESA due to the presence of Federally threatened or endangered species or their critical habitat. Application must be submitted to MDE for Corps authorization.

Section III.B.2. of this document describes the review procedures for Category B activities. The acreage of impact to waters of the United States includes temporary and permanent impacts, as well as direct and indirect impacts associated with the activity. In most cases, work proposed under this Category will require a 15-day notification to the following agencies: EPA, FWS, NMFS, MHT, MD DNR, MDE, and USGS, when appropriate. A 30-day review and comment period to NMFS is required for Category B projects that may adversely affect EFH. Work proposed under this activity may also require a 30-day State public notice and generally either a Tidal Wetlands license or permit or a Nontidal Wetlands and Waterways permit from MDE. Application must be submitted to MDE for Corps authorization.

V. **Definitions:** Terms are referenced in the Category A and Category B activities. Several definitions are excerpted from one of the following and are so noted:

- Final Rule for Regulatory Programs of the Corps of Engineers, 33 CFR Parts 320 through 330, as published in the November 13, 1986 Federal Register, Vol. 51, No. 219. (51 FR 219)

- Final Rule for Clarification When the Placement of Pilings is a Discharge of Fill Material, as published in the August 25, 1993 Federal Register, Vol. 58, No. 163. (58 FR 163)

- Final Rule for Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material," as published in the May 10, 1999 Federal Register, Vol. 64, No. 89. (64 FR 89)

- "Final Rule for Further Revisions to the Clean Water Act Regulatory Definition of Discharge of Dredged Material," as published in the January 12, 2001 Federal Register, Vol. 66, No. 11. (66 FR 11)

- Final Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material," as published in the May 9, 2002 Federal Register, Vol. 67, No. 90. (67 FR 90)

- Final Notice of Issuance and Modification of Nationwide Permits, as published in the March 12, 2007 Federal Register, Vol. 72, No. 47. (72 FR 47)

- Final Rule for "Compensatory Mitigation for Losses of Aquatic Resources," as published in the April 10, 2008 Federal Register, Vol. 73, No. 70. (73 FR 70)

Anadromous Fish: Anadromous fish are born in freshwater, spend most of their lives in saltwater (ocean), and return to freshwater to spawn. Common Chesapeake Bay area species include alewife and blueback herring, American and hickory shad, American sturgeon, and striped bass.

Best Management Practices: Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. A BMP policy may affect the limits on a development (72 FR 47, p. 11196).

Breakwater: A structure aligned parallel to shore, designed to protect any landform or water area behind them from the direct assault of waves.

Catadromous Fish: Catadromous fish, such as American eel, are opposite from anadromous fish in that they live in freshwater and enter saltwater to spawn.

Compensatory Mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (73 FR 70, p. 19671).

Construction Mats: Construction, swamp and timber mats (herein referred to as "construction mats") are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they're installed temporarily or permanently.

Currently Serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge of Dredged Material: The term is defined, in part, as: (1) Except as provided below in section (2), the term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following: (i) The addition of dredged material to a specified discharge site located in waters of the United States; (ii) The runoff or overflow from a contained land or water disposal area; and (iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation. (2) The term discharge of dredged material does not include the following: (i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State Section 404 program; (ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chain sawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; and (iii) Incidental fallback (33 CFR 323.2(d)).

Discharge of Fill Material: The addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products (33 CFR § 323.2(f)). Placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. Examples of such activities that have the effect of a discharge of fill material include, but are not limited to, the following: projects where the pilings are so closely spaced that sedimentation rates would be increased; projects in which the pilings themselves effectively would replace the bottom of a waterbody; projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States; and projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions. Placement of pilings in waters of the United States that does not have or would not have the effect of a discharge of fill material shall not require a Section 404 permit. Placement of pilings for linear projects, such as bridges, elevated walkways, and powerline structures, generally does not have the effect of a discharge of fill material. Furthermore, placement of pilings in waters of the United States for piers, wharves, and an individual house on stilts generally does not have the effect of a discharge of fill material (33 CFR 323.3(c)).

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an existing aquatic resource (disturbed or degraded) to heighten, intensify, or improve one or more specific aquatic resource function(s) or to change the growth stage or composition of the vegetation present. Enhancement results in a gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement is undertaken for a specified purpose(s) such as water quality improvement, flood water retention, or wildlife habitat and does not result in a gain in aquatic resource.

Ephemeral Stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow (72 FR 47, p.11196).

Establishment (Creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site (e.g., wetlands on an upland site). Establishment results in a gain in aquatic resource area (73 FR 70, p. 19671).

Fill Material: The term "fill material" means any material placed in waters of the United States where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. This term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Clean Water Act (67 FR 90, p. 31129). See this reference for definition of "discharge of fill material."

High Tide Line: A high tide line is the line of intersection of the land with the water's surface at the maximum height reached by a rising tide as determined by actual data, other physical characteristics, or by other suitable means to delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges (33 CFR 328.3(d)).

Historic Property: Any prehistoric or historic district site (including archeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

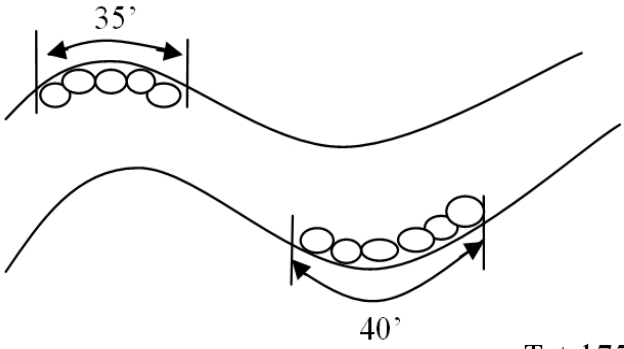
Independent Utility: A test to determine what constitutes a single and complete project for the MDSPGP-4. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a

project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility (72 FR 47, p.11196). A clear purpose and level of functionality is required for a project to have independent utility. For example, the construction of a single-family home with a driveway that connects to an existing road has independent utility and is considered a valid project. Conversely, construction of an access road with no beginning or end point in the middle of a jurisdictional wetland does not have independent utility because it does not have a clear purpose and is dependent on future development.

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow (72 FR 47, p.11196).

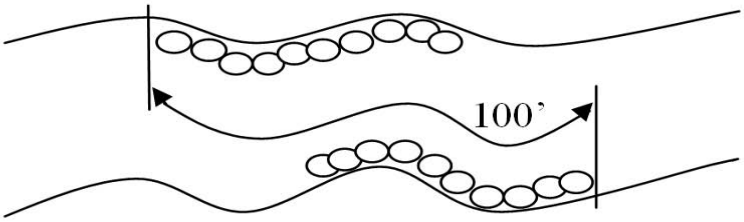
Linear Footage of Stream Impact: For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts, the linear footage of stream impact should be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

a. For regulated work on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both streams banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.



Total 75 Linear Feet

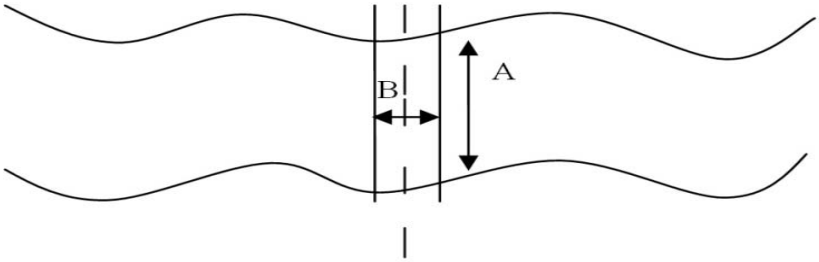
b. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.



Total 100 Linear Feet

c. For transverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

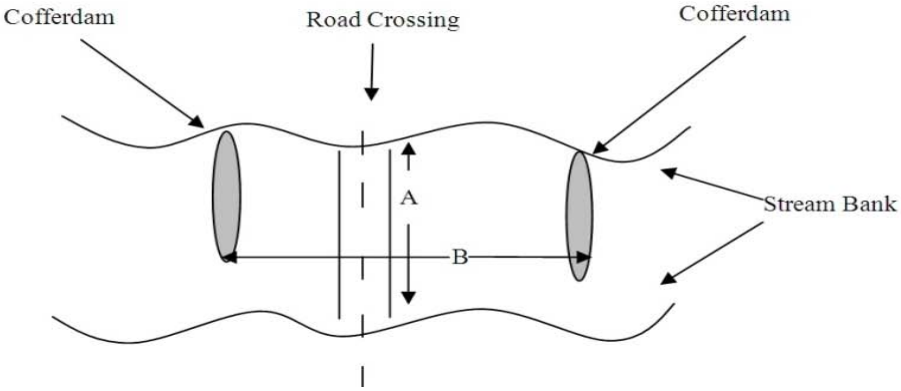
Road Crossing



A (width) or B (length) whichever is greater.

d. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

A (width) or B (length) whichever is greater.



Linear Projects: Activities required for the construction, expansion, modification or improvement of projects that have multiple crossings of jurisdictional waters (e.g., highways, gas pipelines, fiber optic lines, railways, waste water pipelines, utility lines, etc). Linear projects must have independent utility to be considered a viable project with a valid purpose. Moreover, a single linear project may have multiple stream crossings as part of an overall project. The National Environmental Policy Act requires a cumulative review of all impacts associated with an overall project. Accordingly, a cumulative review will be conducted for all impacts associated with a linear project.

Loss of Waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for the MDSPGP-4; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Low Profile Sill: A low profile offshore structure whose crest is at or slightly above the elevation of mean high water, designed to retain sand and marsh on its landward side.

Mean High Water: In coastal areas, the line on the shore reached by the plane of the mean (average) high water. For precise determination, it must be established by survey with reference to the available tidal datum, preferably over a period of 18.6 years. Less precise methods, such as observation of the "apparent shoreline" which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used for estimate purposes (51 FR 219, p. 41253).

Natural Stream Design: The channel should mimic the dimensions, pattern, and profile of a representative reference stream reach.

Navigable Waters of the United States: Those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity (51 FR 219, p. 41251).

Nontidal Wetland: A nontidal wetland is a wetland (i.e., a water of the United States) that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., the spring high tide line) (72 FR 47, p. 11196).

Open Water: An area that, during a year with normal patterns of precipitation, has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds (72 FR 47, p. 11196).

Ordinary High Water Mark: The line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas (51 FR 219, p. 41251).

Overall Project: The overall project for purposes of MDSPGP-4 is defined as the total project proposed or accomplished by one owner/developer, partnership, or other association of owners/developer and includes all regulated activities that are reasonably related and consistent with the project purpose. An overall project must have independent utility. Linear projects may be composed of more than one "single and complete project" and require a defined beginning and end point to be considered a valid project with independent utility (see definitions of Single and Complete Project and Linear Project).

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow (72 FR 47, p. 11196).

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions (73 FR 70, p. 19672).

Re-establishment: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions (73 FR 70, p. 19672).

Rehabilitation: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of repairing natural/historic functions to a former or degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does <u>not</u> result in a gain in aquatic resource area (73 FR 70, p. 19672).

Restoration: The manipulation of the physical, chemical, and biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation (73 FR 70, p. 19672).

Single and Complete Project: For purposes of the MDSPGP-4, the term "single and complete" project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). To ensure consistency with the requirements of the CWA 404(b)(1) Guidelines and the National Environmental Policy Act, clear purpose and function is required for all projects. The overall project, for purposes of the MDSPGP-4, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. The cumulative impacts to waters of the United States for all activities must be known in order to assess the cumulative impacts of the project and determining the Category of activity (e.g., for many activities greater than 200 linear feet of stream impact is a Category B activity) and eligibility under the MDSPGP-4. For example, a linear project consisting of three stream crossings that total less than a combined 10,000 square feet of impacts to waters of the United States and/or 200 linear feet of stream will potentially qualify for a Category A activity under the MDSPGP-4. Conversely, the project will be considered a Category B activity if the combined jurisdictional impacts for all three crossings are greater than 10,000 square feet of waters of the United States and/or 200 linear feet of stream. One verification under the MDSPGP-4 would be issued for all three crossings. Refer to Section VII.A.6. for additional information on single and complete projects under MDSPGP-4.

Special Aquatic Sites: Wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, sanctuaries, and refuges under the 404(b)(1) Guidelines, as defined at 40 CFR 230.40 through 230.45.

Stream Channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Tidal Wetland: A tidal wetland is a wetland (i.e., a water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line (i.e., spring high tide line) and are inundated by tidal waters two times per lunar month, during spring high tides (72 FR 47, p. 11196).

Waters of the United States: The term waters of the United States means (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (2) All interstate waters including interstate wetlands; (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) Which are or could be used by interstate or foreign travelers for recreation or other purposes; or (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or (iii) Which are used or could be used for industrial purpose by industries in interstate commerce; (4) All impoundments of waters otherwise defined as waters of the United States under the definition; (5) Tributaries of waters identified in paragraphs (1)-(4) of this section; (6) The territorial seas; (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1)-(6) of this section; (8) Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. Projects proposing a "change in use" to agricultural areas having a National Resource Conservation Service approved prior converted cropland designation that would remove this site from agricultural use or the project is a non-agricultural activity must have a jurisdictional determination in accordance with the 1987 Federal manual and subsequent amendments. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States (51 FR 219, p. 41250).

VI. **Alternate Corps Permit Review:** Activities that require DA authorization, but that do not meet the terms and/or conditions of the MDSPGP-4 are ineligible for authorization/verification under the MDSPGP-4 and will be reviewed under alternate Corps permit procedures. However, during the alternate Corps permit review, the Corps may determine that the proposed adverse environmental effects have been reduced to minimal and the proposed project meets the terms and conditions of the MDSPGP-4. At that time, the Corps may verify MDSPGP-4 eligibility for the project.

If a project is ineligible under the terms and conditions of the MDSPGP-4, the Corps will notify MDE and the applicant that the project will require further evaluation under alternate Corps permit procedures, including a public interest review. All information submitted by the applicant for MDSPGP-4 review will also be used by the Corps for the alternate Corps permit review. Individual WQC and CZC determination may be required for projects alternatively reviewed. Water Quality Certification and CZC may be included as part of MDE's tidal wetlands or nontidal wetlands and waterways authorizations.

VII. **General Conditions:** To qualify for MDSPGP-4 authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any activity-specific impact limits and requirements identified in the Description of MDSPGP-4 Authorized Activities, and any case-specific special conditions imposed by the Corps.

A. **General Requirements:**

1. **Other Permits:** Authorization under the MDSPGP-4 does not obviate the need to obtain other Federal, State, or local authorizations required by law.

2. **Geographic Jurisdiction:** This MDSPGP-4 will authorize work undertaken within the geographic limits of the State of Maryland under the regulatory jurisdiction of the Baltimore District.

3. **Applicability:** Applicability of the MDSPGP-4 shall be reviewed with reference to the Corps definition of waters of the United States, including wetlands, and navigable waters of the United States. Applicants are responsible for delineating boundaries of all waters of the United States, including wetland boundaries. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal manual for identifying jurisdictional wetlands and appropriate guidance issued by the Corps of Engineers.

4. **Minimal Effects:** Projects authorized by the MDSPGP-4 shall have no more than minimal individual and cumulative adverse environmental effects.

5. **Discretionary Authority:** Notwithstanding compliance with the terms and conditions of the MDSPGP-4, the Corps retains discretionary authority to require an alternate Corps permit review for any project under all categories of the MDSPGP-4 based on concerns for the aquatic environment or for any other factor of the public interest. This authority may be invoked on a case-by-case basis during the review process for Category B activities whenever the Corps determines that, based on the concerns stated above, the potential consequences of the proposed project warrant individual review. In some rare instances, the Corps may have concerns for the aquatic environment or for any other public interest factor pertaining to a specific proposed project, which has already received a case-specific verification as a Category A activity. In order to evaluate this project under an alternate Corps permit review, the verification must be suspended in accordance with Section VIII.E of the MDSPGP-4.

Whenever the Corps notifies an applicant that an alternate Corps permit may be required, authorization under the MDSPGP-4 is voided. No work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under the MDSPGP-4.

6. **Single and Complete Projects:** The MDSPGP-4 shall not be used for piecemeal work and shall be applied to single and complete projects, including maintenance activities. For purposes of this MDSPGP-4, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project. All planned phases of multi-phased projects (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be applied for and reviewed together as constituting one single and complete project. The MDSPGP-4 shall not be used for any activity or portion of a project (e.g., a pier or boat ramp), that is part of, or dependent on, an overall project (e.g., the dredging of a main navigation channel or a spur channel), for which an individual permit or some other alternate Corps permit is required.

7. **Use of Multiple MDSPGP-4 Activities:** More than one MDSPGP-4 activity may be used to authorize a single and complete project. However, the specific requirements, including all activity-specific requirements and impact thresholds, must be met for each MDSPGP-4 activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the MDSPGP-4 activity with the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category A of Section IV.B.1.(d)(1) with an associated nontidal bank stabilization authorized under Section IV.B.1.f.(4)(a), the maximum total impact limits to nontidal waters of the United States for the single and complete project may not exceed 10,000 square feet in total area and/or 500 linear feet in total length. The road crossing and nontidal bank stabilization activities must still meet all Category A activity-specific requirements and impact thresholds.

A single and complete project with multiple impacts, that may be eligible for authorization under a Category A and a Category B activity, requires an application submittal to the Corps and review under the MDSPGP-4 Category B verification procedures. All specific requirements, including the activity-specific requirements and impact thresholds of the Category A activity and the Category B activity must be met and the total extent of project impacts must not exceed to total acreage and/or linear foot limit of the MDSPGP-4 activity with the highest specified acreage and/or linear foot limit. For example, if a road crossing is authorized under Category A of Section IV.B.1.(d)(1) with an associated nontidal bank stabilization authorized under Section IV.B.f.(4)(b), the maximum total impact limits to waters of the United States for the single and complete project may not exceed 1/2 acre (21,780 square feet) in total area and/or 2,000 linear feet in total length. The road crossing activity must meet the Category A activity-specific requirements and impact thresholds, and the nontidal bank stabilization activity must meet the Category B activity-specific requirements and impact thresholds.

8. **Permit On-Site:** The permittee shall ensure that a copy of the MDSPGP-4 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

9. **Authorized Activities in Navigable Waters Subject to Section 10 of the Rivers and Harbors Act of 1899:**

a. If future operations by the United States require removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable water, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

b. The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for such damage.

c. The permittee must install and maintain, at his/her expense any safety lights, markers, and/or signals prescribed by the USCG, through regulations or otherwise, on the authorized facilities and/or structures. The permittee must contact the Commander (AOWW), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23704, to ascertain the need for obstruction lights. Prior to commencing the construction or installation of an authorized structure in navigable waters of the United States, the permittee must submit a “Private Aids to Navigation Application” to the Commander of the USCG.

d. The permittee must provide location coordinates of the authorized structures, including minimum depth and other pertinent information to the USCG and request that a Local Notice to Mariners is issued regarding the authorized work.

10. For Aerial Transmission Lines Across Navigable Waters: The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the USCG for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

NOMINAL SYSTEM VOLTAGE (kV)	Minimum additional clearance (ft.) above clearance required for bridges.
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

a. Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

b. Corps Regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both the National Electrical Safety Code requirements and ER 1110-2-4401 apply, the greater minimum clearance is required.

B. **National Concern:**

1. **Historic Properties:** Any activity authorized by the MDSPGP-4 shall comply with Section 106 of the National Historic Preservation Act. Maryland Department of the Environment, in cooperation with the Maryland Historic Preservation Office, shall conduct an initial review and notify the Corps if any archaeological or other cultural resources are in the vicinity of the project. The Corps may require applicants to perform a survey of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required. The applicant must notify the Corps if they have knowledge that the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places. If the permittee discovers any previously unknown archaeological or other cultural resource while accomplishing the work authorized by the MDSPGP-4, the permittee shall immediately notify the Corps of what has been found and stop work in the permit area until the required coordination has been completed. The permittee shall not begin or continue work until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed. Information on the location and existence of historical resources can be obtained from the MHT, Office of Preservation Services, and the National Register of Historic Places.

2. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including but not limited to, reserved water rights and treaty fishing and hunting rights.

3. **National Lands:** Activities authorized by the MDSPGP-4 shall not impinge upon the value of any Federal land, including but not limited to, National Wildlife Refuges, National Forests, National Parks, National Marine Sanctuaries, or any area administered by the FWS, U.S. Forest Service, or National Park Service (e.g., Assateague Island National Seashore).

4. **Endangered Species:** The MDSPGP-4 does not authorize any activity that may directly or indirectly affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal ESA; or which may directly or indirectly destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and procedures. MDE, in cooperation with MD DNR, shall conduct an initial review and notify the Corps and FWS or NMFS if any Federally listed species or critical habitat is likely to be in the vicinity of the project. The

Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Information on the location of threatened and endangered species and their critical habitat can be obtained from FWS and NMFS. The Corps will be initiating consultation under the Endangered Species Act on this MDSPGP-4 and any conditions from that consultation will be inserted into the MDSPGP-4.

National Marine Fisheries Service – Endangered Species Act Requirements:

a. **Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species:** Any interaction between a sea turtle or any species listed now or in the future under Federal law as a threatened or endangered species ("listed species") (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the vessels associated with the project must be reported to the NMFS as follows: If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the NMFS Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery. If the animal requires assistance, the call to the hotline must be made immediately. If the animal appears to be injured (i.e. bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify the Corps of all correspondence and interaction with the NMFS within two calendar days. Additional information about any Federally threatened or endangered species may be obtained from the attached fact sheet or online at: http://www.nero.noaa.gov/prot_res/stranding/SpeciesOverview.html and at: http://www.nero.noaa.gov/prot_res/esp/. An interaction is defined as an entanglement or capture of a listed species or a strike/direct contact between vessels or equipment used for the project and a listed species.

b. **Vessel Buffer:** When listed species are sighted, vessels must attempt to maintain a distance of 50 yards (150 feet) or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500 yard (1,500 foot) buffer zone. Any vessel finding itself within the 500 yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100 yards (300 feet) of the animal must be avoided. Vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the NMFS.

c. **Best Management Practices Applicable to Category A Activities Within Tidal Waters Having Salinity Levels Less Than 6 Parts Per Thousand (ppt) (See Appendix B):**

(i) Pile Driving: For the protection of listed species within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt, pile driving methods must maintain noise level thresholds not to exceed 187dB SEL re 1µPa or 206dB peak re 1µPa at a distance of >10m from the pile being installed; and for levels >155dB peak re 1µPa must not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise levels below 155dB peak re 1µPa) must be provided between work days. Pile driving construction must adhere to one of the following methods: (a) piles must be installed in-the-dry during low water; or (b) piles must be drilled and pinned to ledge; or (c) vibratory hammers must be used to install any size and quantity of wood, concrete, or steel pilings; or (d) impact hammers must be limited to one hammer and <50 piles installed per day with the following: wood piles of any size; concrete piles <18-inches diameter; steel piles <12-inch diameter if the hammer is <3,000 pounds and a wood cushion is used between the hammer and steel pile; or (e) approved pile driving methods that will allow noise level thresholds to be met.

(ii) Sediment Disturbing Activities Time-of-Year Restriction: Sediment disturbing activities, which includes pile driving activities, are prohibited during the period April 1 through June 30 within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt for the protection of shortnose sturgeon and early life stages in these waters.

5. **Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act:** Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act requires an EFH consultation with the NMFS for any action or proposed action authorized, funded, or undertaken by a Federal agency that may adversely affect EFH. Essential Fish Habitat has been defined by Congress as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." The designation and conservation of EFH seeks to minimize adverse effects on habitat caused by fishing and non-fishing activities. NMFS has determined that many of the MDSPGP-4 Category A activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. National Marine Fisheries Service, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category A of the MDSPGP-4 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category B review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. If the EFH coordination and consultation requirements cannot be resolved under the MDSPGP-4 process, an alternate Corps permit review process is required for the project. The Corps will be initiating consultation under these authorities on this MDSPGP-4, and any conditions from that consultation to protect NOAA trust resources will be inserted into this MDSPGP-4.

6. **Wild and Scenic Rivers:** No activity is authorized under the MDSPGP-4 that occurs in a component of the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such rivers are in an official study status, unless the appropriate Federal agency, with direct management responsibility for the river, has determined in writing that the proposed activity will not adversely affect any National Wild and Scenic River, including study rivers. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U. S. Forest Service, Bureau of Land Management, or FWS).

7. **Federally Authorized Civil Works Projects:**

a. **Federal Navigation Projects:** The MDSPGP-4 does not authorize interference with any existing or proposed Federal navigation projects. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (See VII.A.9.a.)

b. **Federal Navigation Channel Setbacks:** All activities must comply with the Baltimore District Minimum Setback Guidance for Structures Along Federally Authorized Channels. Please see the Baltimore District's Regulatory webpage to view this guidance: http://www.nab.usace.army.mil/Wetlands%20Permits/publications.htm.

c. **Other Federally Authorized Civil Work Projects (e.g., flood control, dams, and reservoirs):** The MDSPGP-4 does not authorize interference with any proposed or existing Federally authorized civil works project.

8. **Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes;

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;

d. Design or construction deficiencies associated with the permitted work; and

e. Damage claims associated with any future modification, suspension or revocation of the MDSPGP-4 or any specific MDSPGP-4 verification.

9. **Navigation:** Projects authorized under the MDSPGP-4 shall not cause interference with navigation, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to projects authorized under the MDSPGP-4. Nothing in the MDSPGP-4 shall in any way restrict the District Engineer, U.S. Army Engineer District, Baltimore, from exercising his legal authority to protect the public interest in navigation or from exercising his authority under the Navigation Servitude of the United States. (See VII.B.8.)

10. **Fills Within 100-Year Floodplain:** The activity must comply with applicable Federal Emergency Management Agency approved State or local floodplain management requirements.

11. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require non-Federal applicants to demonstrate that the structures comply with established State dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

C. **Minimization of Environmental Impacts:**

1. **Avoidance and Minimization:** Discharges of dredged or fill material into waters of the United States and adverse impacts of such discharges on the aquatic ecosystem shall be avoided and minimized to the maximum extent practicable at the project site (i.e., on-site).

2. **Mitigation Standards:** A proposed compensatory mitigation proposal may be submitted with the application to expedite the process. The Corps will determine if the project is eligible for authorization under the MDSPGP-4 subject to the applicant's submittal of a compensatory mitigation proposal for stream and wetland impacts. Compensatory mitigation plans will generally include a requirement for the establishment, performance, maintenance, legal protection (e.g., conservation easements), and long-term management of the mitigation area. Applicants may propose the use of mitigation banks, in-lieu-fee programs, or separate permittee-responsible mitigation. In general, maintenance of previously authorized activities typically does not require mitigation. All mitigation must be in compliance with the 2008 Mitigation Rule (73 FR 70).

a. Wetland mitigation will generally be required for all permanent tidal or nontidal wetland losses either through the use of the State's tidal or nontidal programmatic wetland compensation, mitigation banks, in-lieu-fee programs, and/or by the permittee as required by special condition of the MDSPGP-4 or the State authorization. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested and scrub-shrub wetlands; 1:1 for herbaceous emergent wetlands, and 1:1 for permanent conversion of forested wetlands to herbaceous emergent wetlands. Wetland mitigation can include wetland restoration, establishment, enhancement (including restoration or enhancement of upland forested buffers), and/or wetland preservation, unless the Corps determines in writing that some other form of mitigation would be more appropriate and provides a project-specific waiver of this requirement. Since the likelihood of success is greater and the impacts are reduced, wetland restoration should be the first compensatory mitigation option considered.

b. Stream mitigation, focusing on functional replacement, will generally be required for any project that involves losses of more than 200 linear feet to stream channels and rivers through the use of mitigation banks, in-lieu-fee programs, or by the permittee as required by special condition of the MDSPGP-4 and/or the State authorization. Stream mitigation can include stream restoration, establishment, enhancement (including enhancement of riparian buffers), and stream preservation. Riparian buffer areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns. The need to require mitigation for impacts to open waters will be determined on a case-by-case basis.

c. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu-fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee.

d. For permittee-responsible mitigation, the special conditions of the MDSPGP-4 verification must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.

3. **Work in Wetlands:** Heavy equipment working in wetlands shall be avoided if possible and, if required, soil and vegetation disturbance shall be minimized by using techniques such as timber mats, geotextile fabric, and vehicles with low-pressure tires. Disturbed areas in wetlands shall be restored to preconstruction contours and elevations upon completion of the work.

4. **Temporary Fill and Mat**s: Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP-4. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP-4 shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade. Upon completion of the work, all temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original, pre-construction contours and revegetated with native wetland species.

5**. Erosion and Sediment Control:** Adequate erosion and sediment control measures, practices, and devices, such as turbidity curtains in tidal waters, vegetated filter strips, geotextile silt fences, phased construction, or other devices or methods, shall be used to reduce erosion and retain sediment on-site during and after construction. These devices and methods shall be capable of (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has been successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted "in the dry" whenever practicable. This should be accomplished using stream diversion devices, other than earthen or stone cofferdams. In addition, work in waters of the United States should be performed during periods of low-flow or no-flow, whenever practicable.

6. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through, or spawn/nursery within the area (e.g., anadromous/catadromous fish); unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions. A low flow channel must be maintained through any discharges placed for armoring across the channel so as to not impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine, and resident fish. Permanent culvert or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for fish passage

7. **Water Crossings:**

a. All temporary and permanent crossings of waterbodies shall be suitably bridged, culverted, or otherwise constructed to withstand and to prevent the restriction of high flows and tidal flows; to maintain existing low flows; and to prevent the obstruction of movement by aquatic life indigenous to the water body, including anadromous, estuarine, and resident fish species.

b. All water crossings (e.g., utility lines and road crossings) must be constructed roughly perpendicular to waters of the United States, including streams and wetlands. Where a utility line or access road is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line/access road and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance.

c. Water crossings must be constructed "in the dry" whenever practicable. This should be accomplished by using stream diversion devices other than earthen or stone cofferdams.

d. Equipment shall cross streams only at suitably constructed permanent or temporary crossings.

e. Temporary structures and fills shall be removed and the area restored to its original contours and elevations, or to the conditions specified in the approved plans. The temporary structures and the areas of fill associated with these structures must be included in the total waterway/wetlands impacts.

8. **Discharge of Pollutants:** All activities that are authorized under the MDSPGP-4 and that involve any discharge or relocation of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. 1251 et. Seq.), and applicable State and local laws and regulations. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

9. **Spawning Areas:** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill materials in fish and shellfish spawning or nursery areas during spawning seasons, shall be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year. Activities that result in the physical destruction (e.g., through excavation, dredging, mining, fill, or significant downstream sedimentation by substantial turbidity) of an important spawning/nursery area are not authorized by this MDSPGP-4.

10. **Waterfowl Breeding and Wintering Areas:** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable.

11. **Environmental Values:** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP-4 in a manner that maintains as many environmental values as practicable, and that avoids or minimizes any adverse impacts on existing fish, wildlife, and natural environmental values.

12. **Management of Water Flows:** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities,. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

13. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.

D. **Procedural Conditions:**

1. **Inspections:** The permittee shall permit the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of the MDSPGP-4. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work, and post-dredging survey drawings for any dredging work.

2. **Compliance Certification:** Every permittee who receives a written MDSPGP-4 verification shall submit a signed Compliance Certification Form within 60 days following completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals). Failure to submit the Compliance Certification Form by the permittee could result in the Corps taking appropriate non-compliance enforcement action against the permit holder. The Corps will provide a blank copy of the Compliance Certification Form to the permittee with the MDSPGP-4 verification. The completed form will include the following:

a. A statement that the authorized work either was or was not done in accordance with the MDSPGP-4 verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP-4 verification, including any general and/or specific conditions and requirements, the permittee shall describe the specifics of the deviation from the authorized activity.

b. A statement that any required mitigation was or was not completed in accordance with the permit conditions. If the mitigation was not completed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions.

c. The signature of the permittee, certifying the completion of the work and compensatory mitigation.

After the project is completed, the certification shall be sent to the Baltimore District at the following address:

U. S. Army Corps of Engineers
Baltimore District
Attn: CENAB-OP-R
P. O. Box 1715
Baltimore, Maryland 21203-1715

3. **Transfer of MDSPGP-4 Verifications:** If the permittee sells the property associated with a MDSPGP-4 verification, the permittee may transfer the MDSPGP-4 verification to the new owner by submitting a letter to the Baltimore District Corps of Engineers office to validate the transfer. A copy of the MDSPGP-4 verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this MDSPGP-4 are still in existence at the time the property is transferred, the terms and conditions of this MDSPGP-4, including special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this MDSPGP-4 permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ _____
(Transferee) (Date)

4. **Maintenance:** The permittee shall properly maintain the work or structure authorized by the MDSPGP-4 in good condition and in compliance with the terms and conditions of the MDSPGP-4, including maintenance to ensure public safety.

5. **Property Rights:** The MDSPGP-4 does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

6. **Modification, Suspension and Revocation:** The MDSPGP-4, or any verification under it, may be either modified, suspended, or revoked, in whole or in part, pursuant to DA policies and procedures and any such action shall not be the basis for any claim for damages against the United States.

7. **Restoration:** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP-4, shall restore the wetland or waterway to its former condition, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.

8. **Special Conditions:** The Corps may impose special conditions on any project authorized under the MDSPGP-4, in cases where the Corps determines that special conditions are necessary to avoid or minimize adverse effects on the environment or on any other factor of the public interest. Failure to comply with all conditions of the authorization/ verification, including special conditions, will constitute a permit violation/unauthorized work and may subject the permittee to criminal, civil, or administrative penalties, and/or restoration.

9. **False or Incomplete Information:** In granting authorization pursuant to this permit, the Baltimore District will rely upon information and data provided by the permittee. If the project is verified by the Corps or MDE under the MDSPGP-4 and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee, the MDSPGP-4 verification may be revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.

10. **Compliance:** Any activity performed in waters of the United States, including wetlands and navigable waters, that is not in compliance with all the terms and conditions of the MDSPGP-4, which includes the MDSPGP-4 authorized activity activity-specific requirements, constitutes unauthorized work and is subject to an enforcement action by the Corps or the EPA. Furthermore, the MDSPGP-4 does not delegate any Section 404 enforcement or regulatory authority. Unauthorized work in waters of the United States, including wetlands and navigable waters, is subject to one or more of the following responses by EPA and/or the Corps:

a. A Cease and Desist order and/or an administrative compliance order requiring remedial action.

b. Initiation and assessment of a Class I administrative penalty order pursuant to Section 309(g) of the CWA.

c. Initiation and assessment of a Class II administrative penalty for continuing violation pursuant to Section 309(g) of the CWA.

d. Referral of the case to the U. S. Attorney with a recommendation for a civil or criminal action.

e. If the Corps determines that an after-the-fact application is appropriate, it will be reviewed following the appropriate procedures.

f. Any other appropriate response.

VIII. **Duration of Authorization:**

A. **Duration of Authorization:**

1. The MDSPGP-4 is authorized for a period of five years from the effective date listed at the top of page 2. The construction period expires for individual projects verified/authorized by the MDSPGP-4 when the MDSPGP-4 expires, is suspended, or revoked, whichever date occurs sooner.

2. If the MDSPGP-4 is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest.

3. Activities authorized under the MDSPGP-4 that have commenced construction or that are under contract to commence construction, prior to the expiration, modification, or revocation date of the MDSPGP-4 itself, will remain authorized, provided the activity is completed within 12 months of the date of the MDSPGP-4's expiration, modification, or revocation. This provision does not apply if a specific MDSPGP-4 verification has been modified, suspended, or revoked.

B. **Previously Authorized Activities:**

1. Activities that were completed based on a previous written authorization from the Corps for applications made prior to the effective date of the MDSPGP-4, shall remain authorized, as specified in their original project-specific verification, and need no further reverification.

2. All activities that have received written project specific verification under the MDSPGP-3, based on applications made prior to the effective date of the MDSPGP-4, but that have not been completed, have until December 31, 2013 to complete the work under the terms and conditions of the MDSPGP-3. The project must receive written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures if the authorized work cannot be completed by December 31, 2013. Requests for modifications of previously authorized work under the MDSPGP-3 and/or special conditions are not grandfathered, and must be submitted in writing for written reauthorization under the MDSPGP-4 or alternate Corps permit review procedures.

3. Activities authorized pursuant to 33 CFR part 330.3 (activities occurring before certain dates) are not affected by the MDSPGP-4.

C. **Changes to State Statutes, Regulations, or General Permits:** The Corps will review proposed changes to the State program statutes and regulations, including development of State general permits, to determine whether, and to what extent, the proposed changes will affect the MDSPGP-4. The Corps will determine whether or not to continue use of the MDSPGP-4 under the modified State statutes, regulations, or general permits based on the considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of the MDSPGP-4, in accordance with DA Regulations.

D. **Reporting and Evaluation:**

1. Maryland Department of the Environment will provide annual data and statistics to the Baltimore District Engineer describing its implementation of the MDSPGP-4. These reports shall include information on the types and numbers of activities authorized under the MDSPGP-4, including specific types and numbers of activities authorized under Categories A and B; the impacts authorized; evaluation times; mitigation required and completed; the results of compliance, monitoring, and enforcement activities; and other data, as required. These reports will be available to the public.

2. The Corps, in consultation with MDE and the resource agencies, shall review operational issues related to successful implementation of the MDSPGP-4 and shall coordinate and provide modifications to the operational procedures, the Standard Operating Procedures document, and/or the MDSPGP-4, as appropriate.

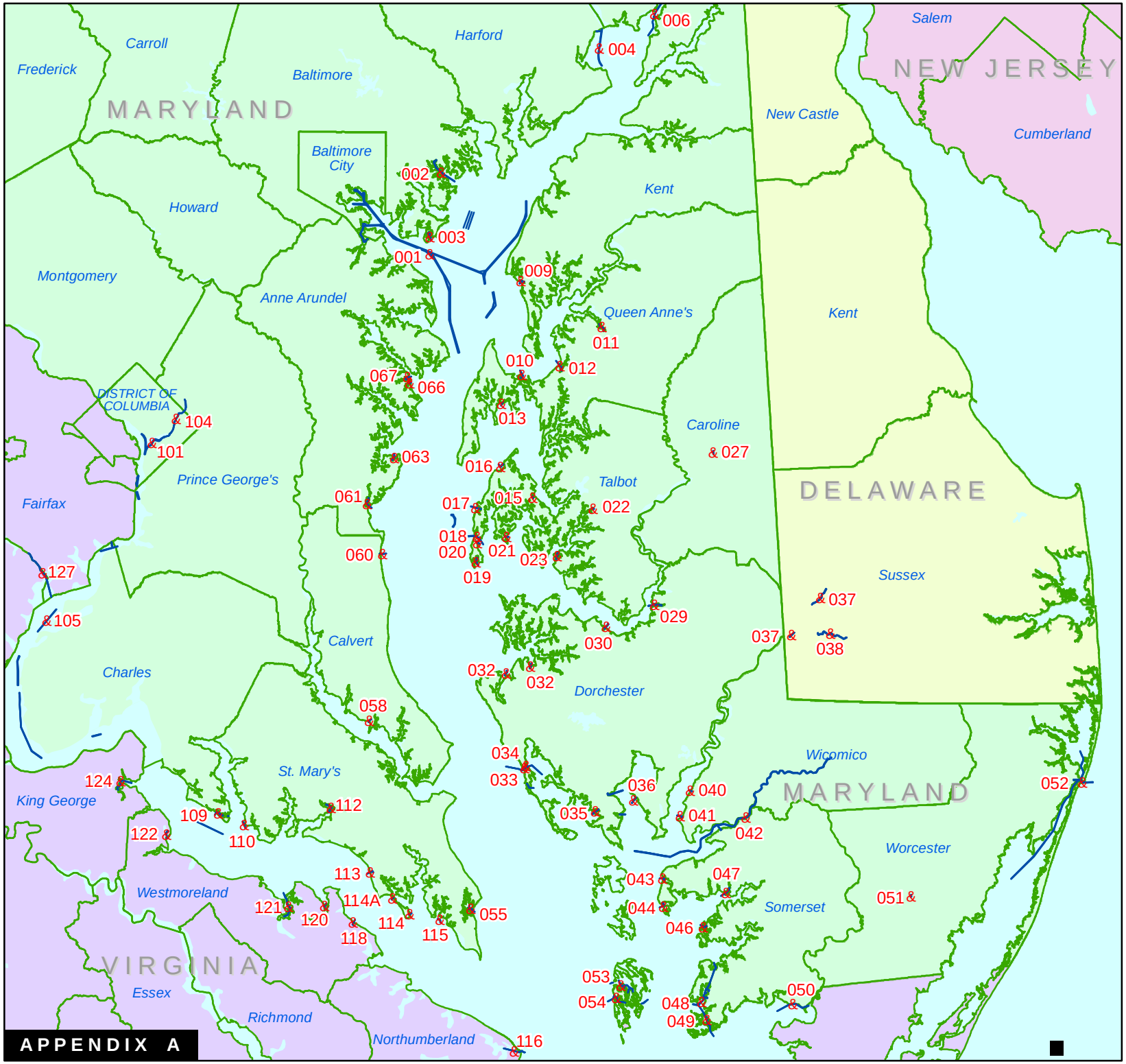
3. Prior to the expiration of the MDSPGP-4, the Corps, with recommendations from the resource agencies will evaluate the MDSPGP-4, including its terms and conditions, and will determine if: (1) the MDSPGP-4 has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified. Based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the MDSPGP-4 is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

E. **Modification, Suspension, or Revocation:**

The Corps District may suspend, modify, or revoke MDSPGP-4 authorization for any specific geographic area, class of activities, class of waters, or any case-specific verification under the MDSPGP-4, within the State of Maryland, by issuing a public notice or notifying the MDE and the permittee involved. The MDSPGP-4 will expire on September 30, 2016.

By Authority of the Secretary of Army:

David E. Anderson
Colonel, Corps of Engineers
District Engineer



APPENDIX A

Federal Navigation Channel Map

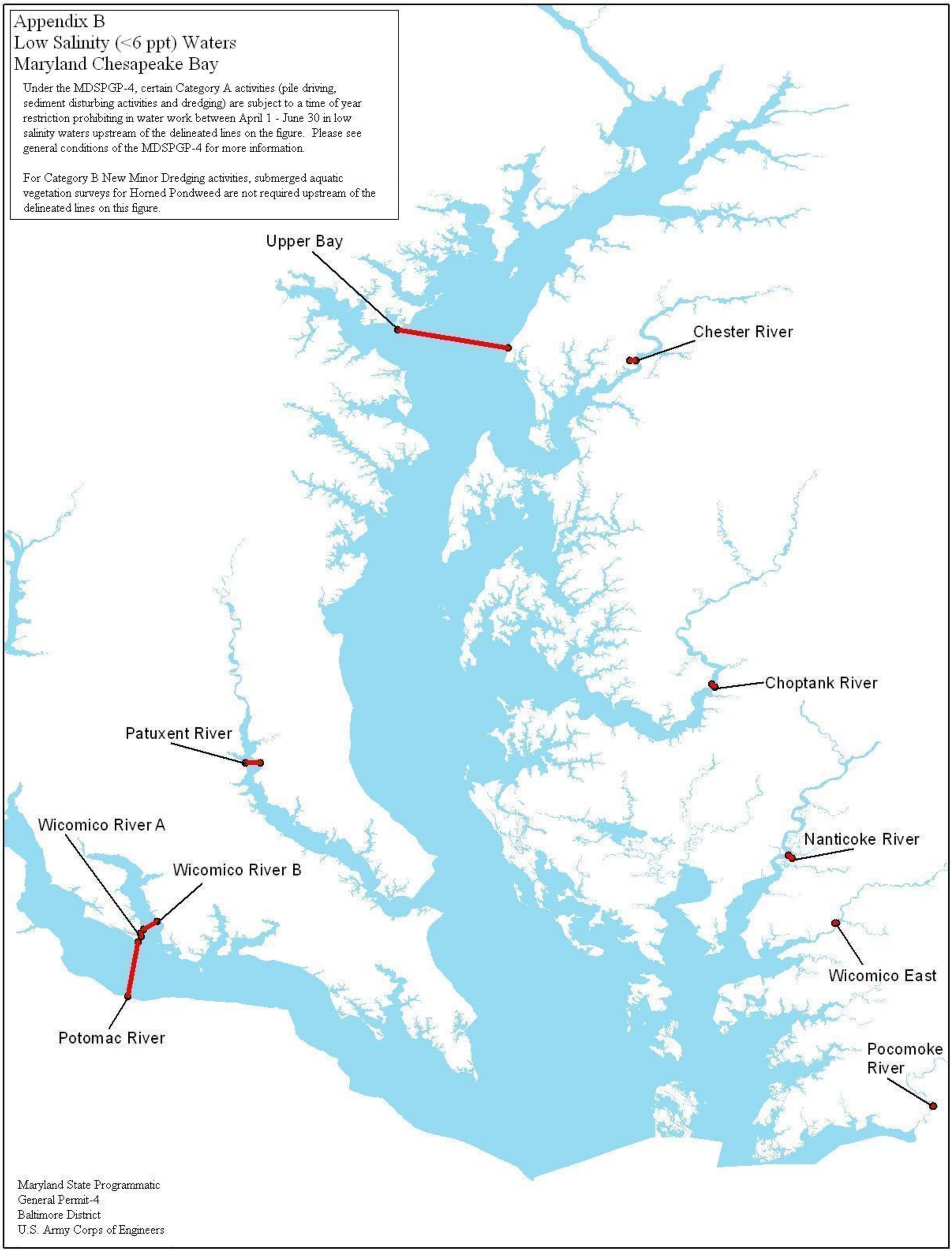
001 -- Baltimore Harbor
002 -- Middle River
003 -- Shallow Creek
004 -- Susquehanna River Above and Below Havre DeGrace
006 -- Northeast River
009 -- Rock Hall Harbor
010 -- Chester River
011 -- Corsica River
012 -- Queenstown Harbor
013 -- Little Creek
015 -- St Michaels Harbor
016 -- Claiborne Harbor
017 -- Lowes Wharf
018 -- Knapps Narrows
019 -- Black Walnut Harbor
020 -- Tilghman Island
021 -- Neavitt Harbor
022 -- Tred Avon River
023 -- Town Creek
027 -- Choptank River
029 -- Warwick River
030 -- Cambridge Harbor
032 -- Madison Bay
032 -- Slaughter Creek
033 -- Honga River
034 -- Muddy Hook Tyler Cove
035 -- Duck Point Cove
036 -- Fishing Bay
037 -- Nanticoke River at Seaford
037 -- Nanticoke at Hawks Nest Shoal
038 -- Broad Creek
040 -- Nanticoke River at Bivalve
041 -- Nanticoke River at Nanticoke
042 -- Wicomico River
043 -- Upper Thorofare
044 -- Lower Thorofare
046 -- Goose Creek
047 -- St Peters Creek
048 -- Crisfield Harbor
049 -- Broad Creek
050 -- Pocomoke River
051 -- Shad Landing
052 -- Ocean City
053 -- Smith Island
054 -- Rhodes Point to Tylerton
055 -- St Jerome Creek
058 -- Nan Cove
060 -- Fishing Creek
061 -- Herring Bay Rockhold Creek
063 -- Parish Creek
066 -- Back Creek
067 -- Annapolis Harbor and Spa Creek
101 -- Washington Harbor
104 -- Anacostia River
105 -- Potomac River
109 -- Neale Sound
110 -- St Catherine Sound
112 -- Breton Bay
113 -- Herring Creek
114 -- Island Creek
114A -- St George Creek
115 -- Smith Creek
116 -- Little Wicomico River
118 -- Bonum Creek
120 -- Lower Machodoc Creek
121 -- Nomini Bay and Creek
122 -- Monroe Bay and Creek
124 -- Upper Machodoc Creek
127 -- Occoquan Creek

0 5 10 15 20 Miles

Appendix B
Low Salinity (<6 ppt) Waters
Maryland Chesapeake Bay

Under the MDSPGP-4, certain Category A activities (pile driving, sediment disturbing activities and dredging) are subject to a time of year restriction prohibiting in water work between April 1 - June 30 in low salinity waters upstream of the delineated lines on the figure. Please see general conditions of the MDSPGP-4 for more information.

For Category B New Minor Dredging activities, submerged aquatic vegetation surveys for Horned Pondweed are not required upstream of the delineated lines on this figure.



Maryland State Programmatic
General Permit-4
Baltimore District
U.S. Army Corps of Engineers

U.S. ARMY CORPS OF ENGINEERS RE-ISSUANCE OF NATIONWIDE PERMITS

Public Notice

U.S. Army Corps of Engineers
Baltimore District

Date: March 19, 2012

Special Public Notice #12-32

Subject: Final Regional Conditions and Suspension for the 2012 Nationwide Permits

The purpose of this special public notice is to inform the general public of the issuance of final regional conditions applicable for Nationwide Permit (NWP) activities in the State of Maryland, the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries, the District of Columbia, and certain military installations of northern Virginia (i.e., Cameron Station, Fort Belvoir, Fort Myer, and the Pentagon). Furthermore, this special public notice announces the suspension of various NWPs in the State of Maryland and the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries.

On February 21, 2012, the U.S. Army Corps of Engineers announced in the *Federal Register*, the national reissuance of 48 of the 49 existing NWPs and the issuance of two new NWPs. In this *Federal Register* notice, the Corps also announced the reissuance of 28 existing general conditions, three new general conditions, and three new definitions. The NWPs and the general conditions go into effect on March 19, 2012.

After the publication of this *Federal register* notice, Corps districts began finalizing their regional conditions for the reissued NWPs. Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will also help ensure protection of high value waters within the District. The regional conditions and suspension of some of the NWPs have been approved by the Division Engineer, North Atlantic Division, for the State of Maryland, the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries, the District of Columbia, and military installations of northern Virginia and are effective as of the date of this public notice. The Baltimore District initiated the development of these regional conditions in special public notice #11-33 dated April 26, 2011. The regional conditions reflect a finalization of that effort in conjunction with the NWPs published in the *Federal Register* on February 21, 2012. An enclosure for this special public notice (Enclosure A) lists the final regional conditions for the Baltimore District. These final regional conditions are also posted on the Baltimore District Internet home page. The URL address for these regional conditions is:

http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx

Unless otherwise noted, these regional conditions are applicable for NWP activities in the State of Maryland, the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries, the District of Columbia and certain military installations of northern Virginia (i.e., Cameron Station, Fort Belvoir, Fort Myer, and the Pentagon).

The 2012 Nationwide Permits, the February 21, 2012 *Federal Register* notice and the notice of corrections are available on the Corps home page at:

http://www.usace.army.mil/missions/civilworks/regulatoryprogramandpermits/nationwidepermits.aspx

Publication of the *Federal Register* notice also began a 60-day Clean Water Act Section 401 water quality certification (WQC) and the 90-day Coastal Zone Management Act (CZMA) consistency determination processes. After the 60-day period, the latest version of any written position taken by a state, Indian tribe, or EPA on its WQC for any of the NWPs will be accepted as the state's, Indian tribe's, or EPA's final position on those NWPs. If the state, Indian tribe, or EPA takes no action by April 20, 2012, WQC will be considered waived for those NWPs. After the 90-day period, the latest version of any written position taken by a state on its CZMA consistency determination for any of the NWPs will be accepted as the state's final position on these NWPs. If the state takes no action by May 21, 2012, CZMA concurrence will be presumed for those NWPs.

While the states, Indian tribes, and EPA complete their WQC processes and the states complete their CZMA consistency determination processes, the use of the NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, the use of an NWP to authorize any activity within a state's coastal zone, or outside a state's coastal zone that will affect land or water used or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

There are two types of regional conditions: Corps regional conditions and 401/CZM regional conditions. The 401/CZM regional conditions are developed by the State under Section 401 of the CWA and Section 307 of the Coastal Zone Management Act and become regional conditions to the NWPs. That is, the 401/CZM regional conditions are conditions of issued NWPs authorizations.

The District of Columbia Department of the Environment has issued Water Quality Certification (WQC) under Section 401 of the Clean Water Act for all NWPs, subject to the condition that the applicant obtains an individual, project-specific WQC from the District Department of the Environment. There are no Coastal Zone Management Program (CZMP) requirements in the District of Columbia. Therefore, the use of a NWP to authorize any activity within the District of Columbia is contingent upon obtaining an individual WQC or a project-specific WQC waiver. For work in Washington, D.C., a WQC can be obtained by submitting a joint permit application form (see the Baltimore District regulatory webpage at: http://www.nab.usace.army.mil/Wetlands%20Permits/Permit/applications.htm) and all supporting documents to:

The Associate Director
Water Quality Division
District Department of the Environment
1200 First Street, N.E., 5th Floor
Washington, DC 20002

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The Baltimore District has implemented State Programmatic General Permits (SPGPs) in the State of Maryland and in the Commonwealth of Pennsylvania, known as the MDSPGP-4 and the PASPGP-4, respectively. These SPGPs are designed to continue to authorize certain activities previously covered by the NWP program and institute a streamlined Corps regulatory process that has been integrated with state processes. Suspension of various NWPs will avoid confusion over SPGP use and eliminate redundancy since State and Federal regulatory programs are administered jointly in these states. If the SPGPs become void, enjoined, suspended, revoked, or removed from effect for any reason, the Corps will consider reissuance of some or all of the suspended NWPs for the purpose of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

I. Commonwealth of Pennsylvania

A. The following NWPs **are not** suspended anywhere in the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries:

NWP 2: Structures in Artificial Canals
NWP 3: Maintenance
NWP 6: Survey Activities
NWP 8: Oil and Gas Structures
NWP 9: Structures in Fleeting and Anchorage Areas
NWP 16: Return Water from Upland Contained Disposal Areas
NWP 17: Hydropower Projects
NWP 21: Surface Coal Mining Activities
NWP 22: Removal of Vessels
NWP 23: Approved Categorical Exclusions
NWP 24: Indian Tribe or State Administered Section 404 Programs
NWP 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 28: Modifications of Existing Marinas
NWP 30: Moist Soil Management for Wildlife
NWP 31: Maintenance of Existing Flood Control Facilities
NWP 32: Completed Enforcement Activities
NWP 34: Cranberry Production Activities
NWP 35: Maintenance Dredging of Existing Basins
NWP 38: Cleanup of Hazardous and Toxic Waste

NWP 44: Mining Activities
NWP 48: Commercial Shellfish Aquaculture Activities
NWP 49: Coal Remining Activities
NWP 50: Underground Coal Mining Activities
NWP 51: Land-Based Renewable Energy Generation Facilities
NWP 52: Water-Based Renewable Energy Generation Pilot Projects

B. This suspension of the NWPs listed in Part I.C of this Special Public Notice is **not applicable** within the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries for the following:

1. Part III.A.4 of the PASPGP-4 lists certain ineligible waterways for which SPGP authorization is not available. Therefore, consistent with the processes outlined in Part V.D of the PASPGP-4 (or its successor) and the NWPs, NWP authorization may be available for activities that include activities located channelward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following water bodies in Pennsylvania):

a. The Delaware River, downstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania; and
b. The Schuylkill River downstream of the Fairmount Dam in Philadelphia, Pennsylvania.

2. Activities whereby the regulated activity or area of indirect impact (secondary impact) is not wholly located within the Commonwealth of Pennsylvania, i.e. the regulated activity extends across state boundaries.

3. Activities within federally regulated waters and wetlands that are not regulated as waters of the Commonwealth of Pennsylvania may be eligible for verification under NWPs.

4. Activities performed by federal agencies that do not require authorization by the Commonwealth of Pennsylvania pursuant to 25 PA 105 et seq. may be eligible for verification under NWPs.

C. The following NWPs **are** suspended in the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries, except in those areas and activities enumerated in Section I.B. of this Special Public Notice:

NWP 1: Aids to Navigation
NWP 4: Fish and Wildlife Harvesting, Enhancement, & Attraction Devices and Activities
NWP 5: Scientific Measurement Devices
NWP 7: Outfall Structures and Associated Intake Structures
NWP 10: Mooring Buoys
NWP 11: Temporary Recreational Structures
NWP 12: Utility Line Activities
NWP 13: Bank Stabilization
NWP 14: Linear Transportation Projects
NWP 15: U.S. Coast Guard Approved Bridges
NWP 18: Minor Discharges
NWP 19: Minor Dredging
NWP 20: Response Operations for Oil and Hazardous Substances
NWP 25: Structural Discharges
NWP 26: [Reserved]
NWP 29: Residential Developments
NWP 33: Temporary Construction, Access, and Dewatering
NWP 36: Boat Ramps
NWP 37: Emergency Watershed Protection and Rehabilitation
NWP 39: Commercial and Institutional Developments
NWP 40: Agricultural Activities
NWP 41: Reshaping Existing Drainage Ditches
NWP 42: Recreational Facilities
NWP 43: Stormwater Management Facilities
NWP 45: Repair of Uplands Damaged by Discrete Events
NWP 46: Discharges in Ditches

NWP 47: [Reserved]

II. State of Maryland

A. The following NWPs **are not** suspended anywhere in the State of Maryland: Some do have additional Regional Conditions applicable in Maryland.

NWP 3: Maintenance (That portion of NWP 3 that authorizes the repair, rehabilitation, or replacement in-kind of any previously authorized, currently serviceable structure or fill destroyed or damaged by storms, floods, fires, or other discrete events)
NWP 4: Fish & Wildlife Harvesting, Enhancement and Attraction Devices and Activities
NWP 8: Oil and Gas Structures on the Outer Continental Shelf
NWP 17: Hydropower Projects
NWP 20: Response Operations for Oil and Hazardous Substances
NWP 22: Removal of Vessels
NWP 23: Approved Categorical Exclusions
NWP 25: Structural Discharges
NWP 27: Aquatic Habitat Restoration, Establishment, and Enhancement Activities
NWP 30: Moist Soil Management for Wildlife
NWP 31: Maintenance of Existing Flood Control Facilities
NWP 32: Completed Enforcement Actions
NWP 37: Emergency Watershed Protection and Rehabilitation
NWP 38: Cleanup of Hazardous and Toxic Waste
NWP 48: Commercial Shellfish Aquaculture Activities (That portion of NWP 48 that authorizes existing commercial shellfish aquaculture activities having a valid lease from the State)
NWP 52: Water-Based Renewable Energy Generation Pilot Projects (That portion of NWP 52 that authorizes activities in tidal navigable waters of the United States)

B. The suspension of the NWPs listed in section II.C of this notice is **not applicable** within the State of Maryland in certain wetlands and other waters of the United States near the Chesapeake and Delaware Canal. These areas include Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These exempted areas fall within the U.S. Army Corps of Engineers (Corps) Philadelphia District's regulatory geographic boundaries. The Philadelphia District has restricted the use of NWP 12, NWP 35, and NWP 36 within these areas near the Chesapeake and Delaware Canal.

C. The following NWPs **are** suspended in the State of Maryland:

NWP 1: Aids to Navigation
NWP 2: Structures in Artificial Canals
NWP 3: Maintenance (except for repair, rehabilitation, or replacement in-kind of any previously authorized, currently serviceable structure or fill destroyed or damaged by storms, floods, fires, or other discrete events)
NWP 5: Scientific Measurement Devices
NWP 6: Survey Activities
NWP 7: Outfall Structures and Associated Intake Structures
NWP 9: Structures in Fleeting and Anchorage Areas
NWP 10: Mooring Buoys
NWP 11: Temporary Recreational Structures
NWP 12: Utility Line Activities
NWP 13: Bank Stabilization
NWP 14: Linear Transportation Projects
NWP 15: U.S. Coast Guard Approved Bridges
NWP 16: Return Water from Upland Contained Disposal Areas
NWP 18: Minor Discharges
NWP 19: Minor Dredging
NWP 21: Surface Coal Mining Activities
NWP 24: Indian Tribe or State Administered Section 404 Programs

NWP 26: [Reserved]
NWP 28: Modifications of Existing Marinas
NWP 29: Residential Developments
NWP 33: Temporary Construction, Access and Dewatering
NWP 34: Cranberry Production Activities
NWP 35: Maintenance Dredging of Existing Basins
NWP 36: Boat Ramps
NPW 39: Commercial and Institutional Developments
NWP 40: Agricultural Activities
NWP 41: Reshaping Existing Drainage Ditches
NWP 42: Recreational Facilities
NWP 43: Stormwater Management Facilities
NWP 44: Mining Activities
NWP 45: Repair of Uplands Damaged by Discrete Events
NWP 46: Discharges in Ditches
NWP 47: [Reserved]
NWP 48: Commercial Shellfish Aquaculture Activities (that portion of NWP 48 that authorizes commercial shellfish aquaculture activities in new project areas)
NWP 49: Coal Remining Activities
NWP 50: Underground Coal Mining Activities
NWP 51: Land-Based Renewable Energy Generation Facilities
NWP 52: Water-Based Renewable Energy Generation Pilot Projects (except for activities in tidal navigable waters of the United States)

III. The NWPs **are not** suspended in the District of Columbia and certain military installations of northern Virginia (i.e., Cameron Station, Fort Belvoir, Fort Myer, and the Pentagon).

IV. This suspension terminates the Corps' ability to verify any new projects under one of the suspended NWPs unless and until the Chief of Engineers or the appropriate District or Division Engineer makes a determination to the contrary pursuant to 33 C.F.R. § 330.4 or § 330.5. Activities that have commenced or been under contract to commence construction between March 19, 2012, and the date of this public notice and that meet the terms and conditions of the NWP activities are authorized provided the activity has received an individual water quality certification (WQC) or a case-specific WQC waiver and/or an individual Coastal Zone Management Act (CZMA) consistency determination or a case-specific presumption of CZMA concurrence. This authorized work must be completed within twelve months of the date of the public notice announcing the NWP suspensions under the terms and conditions of the appropriate NWP(s). Activities completed under the authorization of a NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

For more information regarding the final regional conditions and the suspension of Nationwide Permits, contact Ms. Beth E. Bachur, CENAB-OP-R, at (410) 962-4336, or email at Beth.Bachur@usace.army.mil.

FOR THE DISTRICT ENGINEER:

Beth E. Bachur
Acting Chief, Regulatory Branch

ENCLOSURE A

2012 Nationwide Permit Regional Conditions for Maryland, Pennsylvania, the District of Columbia, and certain military installations in Northern Virginia

I. Nationwide Permit Specific Regional Conditions:

Note: see "II. Nationwide Permit General Conditions" for additional regional conditions that may apply. Unless otherwise noted, all regional conditions listed in this enclosure are applicable for activities in Maryland, Pennsylvania, the District of Columbia, and certain military installations in Northern Virginia.

Nationwide Permit #1 *Aids to Navigation*

Permit Specific Regional Conditions - none

Nationwide Permit #2 *Structures in Artificial Canals*

Permit Specific Regional Conditions - none

Nationwide Permit #3 *Maintenance*

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a) for this Nationwide Permit (NWP), as specified below. The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office. A PCN to the District Engineer is required for:

    a. For NWP 3(a), any regulated discharge of dredged and/or fill material which involves the proposed use of equipment to remove material from or move material across a stream channel as part of the proposed activity for repair, rehabilitation, or replacement. The PCN must clearly describe any activity proposing the use of equipment to move material from or across a stream channel;

    b. For NWP 3(a), proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundaryhttp://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017;

    c. For work associated with NWP 3(a), regarding the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, that occurs along federally authorized channels. All proposed work shall comply with the most current version of the Baltimore

District's setback guidance on the Baltimore District Regulatory website at: http://www.nab.usace.army.mil/Wetlands%20Permits/ ; or

d. Any proposed activity, which would result in impacts, temporary or permanent, to Section 10 waters as defined in 33 CFR 329 in the District of Columbia.

2. The following terms of this authorization apply under NWP 3(b):

   a. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 50 feet in any direction from the structure, unless specifically authorized by the District Engineer.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

4. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. **NWP 3(a)-Repair, Rehabilitation, or Replacement Activities:**

      i. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer (See general condition 31 and regional general conditions 31a) for any proposed activity, where the project affects more than 10,000 square feet of tidal wetlands and/or tidal waters.

      ii. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer (See general condition 31 and regional general conditions 31a) for any proposed activity, where:

         a. The work involves the repair, rehabilitation, or replacement of a permanent culvert within a perennial and/or intermittent coastal plain streams in the above referenced areas; or a perennial and/or intermittent piedmont stream in Harford and/or Cecil Counties, Maryland, and the work does not result in:

            1. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

2. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.
3. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN under this Regional Condition.

iii. A PCN required under 4. a. ii, above shall:

a. include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, or engineering factors that prohibit depressing the culvert. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage; and

b. be forwarded by the Corps (a copy of the PCN, including any provided supporting documentation) to National Marine Fisheries Service (NMFS) for review and comment pursuant to the Magnuson Stevens Act;

iv. For culvert replacement and repair activities, work in tidal and nontidal coastal plain streams and nontidal piedmont streams in Harford and Cecil Counties, Maryland, shall be prohibited during the period February 15 through June 15, each year to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS.

b. **NWP 3(b)-Removal of Accumulated Sediments and Debris in the Vicinity of and Within Existing Structures and the Placement of New or Additional Riprap to Protect the Structure:**

i. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer for any proposed activity affecting more than 10,000 square feet of tidal wetlands and/or tidal waters or more than 500 linear feet of tidal tributary stream or nontidal stream in the coastal plain region (See general condition 31 and regional general conditions 31a). The Corps shall provide this PCN to NMFS for individual EFH consultation and coordination;

ii. Work in tidal tributary streams and nontidal coastal plain streams shall be prohibited during the period of February 15 through June 15, each year, to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS; and

iii. A low flow channel that permits passage of migratory fish species shall be incorporated into all activities involving the placement of new or additional riprap in tidal tributary streams and nontidal coastal plain streams.

Nationwide Permit #4 *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*

Permit Specific Regional Condition –

This nationwide permit does not authorize activities that cause interference with navigation. No structure can extend into anchorage areas; customary boating channels; navigation fairways; marked, lighted, or charted channels; or State or Federal Navigation Channels.

Nationwide Permit #5 *Scientific Measurement Devices*

Permit Specific Regional Condition –

1. The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

2. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer for any activity, proposing the discharge of greater than 10 cubic yards of dredged and/or fill material for the construction of small weirs and flumes, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #6 *Survey Activities*

Permit Specific Regional Condition –

1. Use of in-water explosives is not authorized under this NWP.

2. The permittee shall ensure that all in-stream exploratory trenching is conducted under dry conditions.

3. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a) for any activity proposing the discharge of greater than 25 cubic yards of dredge and/or fill material. The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #7 *Outfall Structures and Associated Intake Structures*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Conditions (Applicable to tidal and nontidal waters of the Potomac River mainstem from the Governor Harry W. Nice Memorial Bridge (U.S. 301 over the Potomac River) upstream to Great Falls, tidal streams and nontidal coastal plain streams that are tributary to the Potomac River, and the Delaware River in Pennsylvania):**

   a. Screening over the mouth of associated intake structures shall have a mesh size no larger than 2 mm;

   b. Intake structure velocities shall not exceed 0.5 feet per second; and

   c. The intake structure shall be positioned to minimize impingement/entrainment of sensitive life stages of aquatic species (e.g., recessed away from the waterway, positioned perpendicular to the predominant direction of flow).

Nationwide Permit #8 *Oil and Gas Structures on the Outer Continental Shelf*

Permit Specific Regional Conditions - none

Nationwide Permit #9 *Structures in Fleeting and Anchorage Areas*

Permit Specific Regional Conditions - none

Nationwide Permit #10 *Mooring Buoys*

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.
2. Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat. In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information. http://web.vims.edu/bio/sav/index.html The applicant should also refer to other reliable sources to comply with this condition.

Nationwide Permit #11 *Temporary Recreational Structures*

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.

2. For the **Delaware River in Pennsylvania**, this NWP is applicable only to structures associated with discrete or specific events.

3. This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV). In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information. http://web.vims.edu/bio/sav/index.html The applicant should also refer to other reliable sources to comply with this condition.

4. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a). The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #12 *Utility Line Activities*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize the following activities:

   a. Any work on the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania;

   b. The stockpiling or side-casting of excavated material in wetlands in excess of 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer. Further, all excess or suitable dredged and/or excavated material not used as backfill over any cable or pipeline shall be disposed of in an upland area and shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland;

   c. The permanent loss of more than 300 linear feet of stream bed at a single crossing, unless for intermittent and ephemeral stream beds the District Engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects;

   d. The placement of manholes in wetlands unless demonstrated to the satisfaction of the Corps that the placement is unavoidable; and

   e. The permanent discharge of any drilling muds that may be generated through such methods as directional boring or drilling.

2. For the installation of utility lines, the following applies:

    a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable;

    b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters;

    c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to Waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer;

    d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of ten feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained; and

    e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to ensure that the trench does not drain the water and/or wetland through which the utility line was installed. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submitted “self-certification form.”

3. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a). The Corps’ review period shall commence with the receipt of a complete permit application at the Corps District Office.

The PCN shall include the following additional information:

    a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view drawing showing the utility line crossing from bank to bank in relationship to the waterway bottom. In

addition, the location and depth of any Federal navigation channel shall be shown in relation to the proposed utility line;

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area;

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable;

d. Where water or sewer line installation is proposed in an existing subdivision and the purpose is to extend service to new or expanded commercial, institutional, and residential lots containing waterways and wetlands which would be filled for construction, the PCN shall include information regarding the waterways/wetlands within those lots and potential impacts to those aquatic resources;

e. Any PCN to the District Engineer that proposes construction of a permanent access road must also justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable;

f. When any directional drilling or boring activities are proposed under a Section 10 waterway, the PCN must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.

4. For Aerial Transmission Lines Across Navigable Waters:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical

Safety Code:

Nominal System Voltage (kV)	Minimum additional clearance (ft.) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

b. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and

d. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

5. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

6. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable; and

b. If a proposed activity would involve impacts to submerged aquatic vegetation (SAV) in the Delaware River, the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas.

7. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

a. For open-cut installation of a pipeline and/or hydrostatic testing of a pipeline which involves water withdrawal and the activity will affect tidal and/or nontidal coastal plain streams referenced above, or nontidal piedmont streams in Harford and Cecil Counties, Maryland, the work shall be prohibited during the period February 15 through June 15, each year, to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS.

b. Proposed permanent culverts in perennial and intermittent coastal plain streams in the above referenced areas, or piedmont streams in Harford and Cecil Counties, Maryland, should be depressed as defined below. If not depressed as defined below, the PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit:

i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom are exempt from the requirement of submitting this documentation as part of the PCN.

This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

The Corps shall provide a copy of the PCN to National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act where:

i. The culvert is not depressed, as indicated in this regional condition;

ii. Foundations for overhead utility line towers, poles, and anchors are located below the mean high water line in tidal waters, or the ordinary high water line of nontidal coastal plain streams within the above referenced areas; or piedmont nontidal streams in Harford and Cecil Counties, Maryland; or

iii. Any proposed open-cut pipeline (i.e., pipes carrying gaseous, liquid, liquescent, or slurry substance) affecting a tidal tributary stream and/or nontidal coastal plain stream that:

a) Impacts more than 500 linear feet of a tidal tributary stream and/or nontidal coastal plain stream; or

b) Does not make a direct or perpendicular stream channel crossing; or

iv. An open-cut pipe constructed in waters of the Unites States, which runs parallel to a stream and the pipeline is within 100 feet of the mean high water mark of a tidal stream; or 100 feet of the ordinary high water mark of a nontidal coastal plain stream.

Nationwide Permit #13 *Bank Stabilization*

Permit Specific Regional Condition –

1. To the maximum extent practicable, bank stabilization activities shall be accomplished using natural stabilization techniques and/or natural channel design. Riparian plantings shall be included in project designs to the extent practicable.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

3. **Essential Fish Habitat Regional Condition (Applicable in the District of Columbia, Maryland, and the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within all tidal and nontidal coastal plain streams within the areas referenced

above; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

<u>Nationwide Permit #14 *Linear Transportation Projects*</u>

Permit specific Regional Conditions –

1. The activity must not be used as a berm for a permanent impoundment or in-stream management of storm water.

2. Any activity proposing a crossing of a stream or open water shall be designed to sufficiently maintain: a continuous waterway substrate; continuity of existing benthic habitats; and existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. An on-site inspection by the potential permittee and/or engineer designing the crossing of the particular stream or waterbody is required to determine if the waterway is experiencing erosion, sedimentation, or accretion rates that would alter the bottom elevation for purposes of engineering a design that would address the requirements of this regional condition. Where a series of culverts are used, only those cells or culverts which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

3. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a) if any of the following criteria is met.

    a. A Section 10 permit is required;

    b. Impacts to waters of the United States exceeds 200 linear feet of stream channel (perennial, intermittent, and ephemeral); or

    c. Low flow or multi-culvert crossings is proposed.

4. The PCN shall include the following additional information:

    a. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable; and

    b. For public linear transportation projects where the prospective permittee is proposing a new crossing, proposing the replacement of an existing bridge structure with a culvert, or proposing the expansion of an existing facility, the permittee shall include as part of any required PCN an on-site alternatives

analysis that considers the impact of various size and type structures (i.e. bridges, culverts, pipes, and bottomless culverts) on the following:

i. Wetland services and functions, values, acreage;

ii. Wildlife corridor;

iii. Floodplain functions, including, but not limited to, flood storage and nutrient uptake;

iv. Existing or proposed hiker/biker trails and equestrian trails;

v. Recreational water activities (e.g. boating, fishing);

vi. Fish passage;

vii. Fisheries habitat and food chain support;

viii. Threatened and Endangered Species;

ix. Stream morphology;

x. Hydraulic analysis;

xi. Cost;

xii. Consistency with Master Plans; and

xiii. Movement of debris.

5. Compensatory mitigation, focusing on functional replacement, will be determined on a case-by-case basis, but is required, at a minimum, for discharges causing the loss of greater than 1/10 acre of wetlands and/or greater than 200 linear feet of stream channel, unless the applicant demonstrates to the satisfaction of the District Engineer, that the adverse effects are minimal without mitigation. In such cases, the applicant must submit justification explaining why compensatory mitigation should not be required by the Corps. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace the loss of aquatic resource services and functions. A watershed approach to compensatory mitigation should be used that considers the importance of landscape position and resource type for the sustainability of aquatic resource services and functions within the watershed. In addition, the PCN shall include the rationale for the proposed compensatory mitigation. Where appropriate functional or conditional assessment methods are available and practicable, these methods may be used to determine how much compensatory mitigation is required.

6. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity in the Delaware River, a complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act; and

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

7. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the areas referenced above; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

   b. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a), where:

      i. A proposed activity affects more than 5,000 square feet of tidal wetlands or tidal waters; and/or 200 linear feet or more of nontidal coastal plain streams within the areas referenced above; and/or 200 linear feet or more of Piedmont streams in Harford and Cecil Counties, Maryland; or

      ii. A proposed activity is within a perennial and/or intermittent coastal plain stream within the areas referenced above; or piedmont streams in Harford and Cecil Counties, Maryland, and the work does not result in:

         a) A culvert measuring greater than 24 inches in diameter being be depressed 12 inches below the stream bottom; or

         b) A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

c) Note: Extensions of existing pipes or culverts that are not depressed below the stream bottom do not require a PCN under this Regional Condition.

The PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit meeting culvert depression requirements. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

The Corps shall provide a copy of the PCN, including any provided supporting documentation, to National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act.

Nationwide Permit #15 *U.S. Coast Guard Approved Bridges*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Prior to doing the work, the prospective permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a), for any proposed activity affecting more than 10,000 square feet of tidal waters, including tidal wetlands and/or more than 500 linear feet of non-tidal coastal plain streams. The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office. The Corps shall provide this PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #16 *Return Water From Upland Contained Disposal Areas*

Permit Specific Regional Condition – none

Nationwide Permit #17 *Hydropower Projects*

Permit Specific Regional Condition – none

Nationwide Permit #18 *Minor Discharges*

Permit Specific Regional Conditions –

1. The discharges of dredged and/or fill material into waters of the United States cannot be placed for the purpose of impounding water.

2. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity in the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

   b. For any activity in the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

4. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. For any activity associated with a proposed discharge into tidal waters, including tidal wetlands that does not require access or proximity to or siting within tidal waters and wetlands to fulfill its basic purpose (i.e., is not "water-dependent"), the Corps shall provide the PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #19 *Minor Dredging*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application

procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

    b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #20 *Response Operations for Oil and Hazardous Substances*

Permit Specific Regional Condition – none

Nationwide Permit #21 *Surface Coal Mining Operations*

Permit Specific Regional Condition –

1. **NWP 21 (b)-Other Surface Coal Mining Activities:**

    a. This nationwide permit does not authorize activities that would result in the loss of more than of 1000 linear feet of stream bed.

Nationwide Permit #22 *Removal of Vessels*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #23 *Approved Categorical Exclusions*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #24 *Indian Tribe or State Administered Section 404 Programs*

Permit Specific Regional Condition – none

Nationwide Permit #25 *Structural Discharges*

1. For any activity which includes the pouring of concrete, the sealed forms shall remain in place until the concrete is set.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #26 *[Reserved]*

Permit Specific Regional Condition – none

Nationwide Permit #27 *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*

Permit Specific Regional Condition –

1. Any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.

2. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania)**:

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

4. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. For activities in all tidal and nontidal coastal plain streams within the areas referenced above, or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, the Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. For activities involving the restoration and/or establishment of tidal marsh in mesohaline waters (i.e., salinity of 5-18 ppt) of the mid and upper Chesapeake Bay, the PCN should include information concerning the distribution of horned pondweed (*Zannichellia palustris)* within the project site. Distribution information of horned pondweed may require recent ground-truth survey of the area by the applicant (i.e., employing a survey crew with relevant experience) during the period of May 1 through June 15, of any year.

Nationwide Permit #28 *Modifications of Existing Marinas*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office. The application must also include plans showing the configuration of existing structures. For projects located on a waterway containing an authorized Federal Navigation Channel, the permittee must also include the distance of the project from the edge of the authorized channel. The District Engineer will add special conditions, where necessary, to ensure those adverse navigation impacts are minimal.

2. **Applicable to the Delaware River in Pennsylvania:** This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the Individual Permit process.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

    b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #29 *Residential Developments*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream impoundments.

2. Under the terms of this NWP, wetlands, which are located within the platted lot lines of any residential subdivision, will be considered adversely affected, unless the wetlands are protected by a protective covenant, (e.g., conservation easement or deed restriction), or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity. Those wetlands considered adversely

affected may require additional project-specific compensatory mitigation or review under other Federal permitting procedures.

3. Individual Lots (Applicable in Pennsylvania)

a. The total area of non-tidal waters of the United States, including wetlands, lost as a result of the discharge shall not exceed 40% of the total lot area, except for those lots which are less than 0.25 acres in size, in which case the loss of non-tidal waters of the United States, including wetlands, shall not exceed 0.10 acres. In no circumstances may the loss of non-tidal waters of the United States, including wetlands, resulting from a discharge authorized by this NWP or a combination of this and other NWPs exceed 0.25 acres. For purposes of this regional condition, loss is defined to include any filled area previously permitted, the fill area currently being authorized, and any other waters of the United States, including wetlands, that are adversely affected by flooding, excavation, or drainage as a result of the project. The following table provides examples of the permit authorization acreage limitations in effect where the lot size is equal to or greater than 0.25 acres.

Total Acreage Of Lot	40% of Lot	Maximum Loss Area Authorized
0.25 acre	X 0.40	= 0.10 acre
0.33 acre	X 0.40	= 0.13 acre
0.50 acre	X 0.40	= 0.20 acre
>0.50 acre	X 0.40	= 0.25acre

b. This NWP may be used only once by an individual.

c. This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.

d. This NWP may only be used on residential lots with access to a central sewage system which is in place and operational at the time of notification, except in cases where the discharge is for the expansion of an existing residence.

e. This NWP does not authorize the discharge of dredged and/or fill in waters of the United States, including wetlands, for the installation or expansion of on-lot septic systems.

f. This NWP does not authorize the loss of waters of the United States, including wetlands, located within a 100-year floodplain. Absent any established maps or other information to the contrary, the 100-year floodplain is assumed to extend fifty (50) feet landward from the top of the stream bank.

g. The PCN to the District Engineer shall include a sketch plan depicting the proposed footprint of fill. The sketch plan shall also include the property dimensions; building setbacks; wetland boundaries; acreage of the proposed wetland loss; location and acreage of any previously permitted wetland fills; location(s) of any streams, drainage courses, and floodplain limits; location of proposed house, driveway, and utilities; and a compensatory mitigation proposal. The wetland boundary will be determined by a trained wetland delineator.

h. Individuals who wish to use this NWP must compensate for the loss of waters of the United States, including wetlands, where the loss would be greater than 0.05 acre, unless the applicant demonstrates, to the satisfaction of the District Engineer, that the adverse effects are minimal without mitigation. In such cases, the applicant must submit justification explaining why compensatory mitigation should not be required by the Corps. A functional or condition assessment on the aquatic resources should be incorporated as a component of this document.

4. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, the State of Maryland, and Potomac River watershed within appropriate military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore):**

a. Instream work within tidal and nontidal coastal plain streams within the areas referenced above, or nontidal piedmont streams in Harford and Cecil Counties, Maryland is prohibited during the period February 15 through June 15 for the protection of anadromous fish spawning.

b. Applicable to all perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the Corps shall provide a copy of the PCN, including any supporting documentation, to the National Marine Fisheries Service in accordance with the Magnuson Stevens Act where the work does not result in:

i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

The PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit meeting culvert depression requirements. This

documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

Nationwide Permit #30 *Moist Soil Management for Wildlife*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a). The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #31 *Maintenance of Existing Flood Control Facilities*

Permit Specific Regional Condition – none

Nationwide Permit #32 *Completed Enforcement Actions*

Permit Specific Regional Condition – none

Nationwide Permit #33 *Temporary Construction, Access and Dewatering*

Permit specific Regional Conditions –

1. For causeways and cofferdams constructed under this NWP, the following applies:

    a. Earthen cofferdams and cofferdams of dredged and/or fill material shall not be used due to problems with sedimentation of the waterway during installation and removal of the earthen (fine material) component. Causeways shall consist of only clean rock; and

    b. Causeways and cofferdams shall extend no more than 1/2 the width of the waterway, and sufficient conveyance of the waterways shall be provided to preclude damage to property or the environment resulting from increased water surface elevations.

2. Temporary crossings of wetlands shall be avoided if an alternate location is possible. Where wetland impacts cannot be avoided, timber mats, construction pads, geotextiles or other similar devices shall be used to avoid consolidation of temporary road materials into the wetland substrate.

3. The restoration plan for disturbed wetlands and stream banks shall include a planting plan identifying specific species to be planted. Re-vegetation with species similar to those that

pre-existed should be used, unless site specific conditions justify a change, e.g. replacing reed canary grass with a more varied seed mix of palustrine emergent species. The type of re-vegetation should be in-kind, e.g., herbaceous species replaced with same, shrub species replaced with same, and tree species replaced with same.

4. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

5. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

    a. The Corps shall provide the required PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination when:

        i. The activity affects more than 0.5 acre of tidal waters, including jurisdictional tidal wetlands; or

        ii. The activity affects more than 500 linear feet of a nontidal coastal plain stream.

    b. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the above referenced areas; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

Nationwide Permit #34 *Cranberry Production Activities*

Permit Specific Regional Condition – none

Nationwide Permit #35 *Maintenance Dredging of Existing Basins*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize activities on the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

2. The maintenance dredging area must have been previously authorized by the Corps and prior maintenance dredging had to be completed no more than five years prior to the current proposal.

3. Maintenance dredging authorized by this nationwide permit shall be limited to the dimensions (width and depth) of previously authorized dredging.

4. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office. The application must also include a drawing indicating existing depths for the project site and nearby channel, and a survey of submerged aquatic vegetation in the vicinity of the dredge site, and plans indicating the dimensions (width and depth) and the approximate date of previous dredging, and identifying the location of the upland disposal site(s).

5. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District and the Delaware River in Pennsylvania):**

    a. The Corps shall provide the required PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #36 *Boat Ramps*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize activities on the Delaware River south of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

2. Construction material must be clean rock or stone free of fine materials such as silt, clay or sand to preclude more than minimal detrimental impacts to the waterway from turbidity and sedimentation effects.

3. For any activity which includes the pouring of concrete, the sealed forms shall remain in place until the concrete is set.

4. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and

Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

5. **Applicable in Maryland and the District of Columbia:**

   a. The length of boat ramps authorized by this nationwide permit shall not exceed 30 feet channelward of the mean high water line, nor 25% of the width of the waterway.

   b. Where the water depth at the proposed ramp is less than two feet at mean low water line, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

Nationwide Permit #37 *Emergency Watershed Protection and Rehabilitation*

Permit Specific Regional Condition – none

Nationwide Permit #38 *Cleanup of Hazardous and Toxic Waste*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #39 *Commercial and Institutional Developments*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream impoundments.

2. Under the terms of this NWP, wetlands, which are located within the platted lot lines of any commercial or institutional subdivision, will be considered adversely affected, unless

the wetlands are protected by a protective covenant, (e.g., conservation easement or deed restriction), or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity. Those wetlands considered adversely affected may require additional project-specific compensatory mitigation or review under other Federal permitting procedures.

3. **Essential Fish Habitat Regional Condition (Applicable in the District of Columbia, Maryland, and the Potomac River watershed within military installation of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the above referenced areas; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

   b. Applicable to all perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland; the Corps shall provide a copy of the PCN, including any supporting documentation, to the NMFS in accordance with the Magnuson Stevens Act, where the work does not result in:

      i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

      ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

      iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

<u>Nationwide Permit #40 *Agricultural Activities*</u>

Permit Specific Regional Conditions –

1. Pond construction must be of the minimum size required for the farming use.

2. In-stream ponds should be avoided to the maximum extent practicable.

<u>Nationwide Permit #41 *Reshaping Existing Drainage Ditches*</u>

1. Prior to doing the work, the permittee must submit a PCN to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

Nationwide Permit #42 *Recreational Facilities*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Condition (Applicable the District of Columbia, Maryland, and the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

    a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the areas referenced above, and nontidal piedmont streams in Harford and Cecil Counties, Maryland, for the protection of anadromous fish spawning.

    b. For culverted road crossings of perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the Corps shall provide a copy of the PCN, including any provided supporting information, to the National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act, if the work does not result in:

        i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

        ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

        iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

The PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, and engineering factors that prohibit depressing the culvert. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

Nationwide Permit #43 *Stormwater Management Facilities*

Permit Specific Regional Condition –

1. This NWP does not authorize the construction of recreational ponds, or the construction of any new stormwater management facilities in aquatic resources, including waterways or wetlands.

Nationwide Permit #44 *Mining Activities*

Permit Specific Regional Condition – none

Nationwide Permit #45 *Repair of Uplands Damaged by Discrete Events*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

    a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #46 *Discharges in Ditches*

Permit Specific Regional Condition – none

Nationwide Permit #47 *[Reserved]*

Nationwide Permit #48 *Commercial Shellfish Aquaculture Activities*

Permit Specific Regional Conditions –

1. This NWP does not authorize the following activities:

    a. Activities located in any areas mapped as submerged aquatic vegetation. In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information.
    http://web.vims.edu/bio/sav/index.html
    The applicant should also refer to other reliable sources to comply with this condition;

    b. Activities associated with the cultivation and/or introduction into tidal waters of shellfish species that are not indigenous to the Chesapeake Bay and its tributaries, the Maryland coastal bays, and the Delaware River; or

    c. Activities associated with the mining of subtidal fossil shell deposits in waters of the Chesapeake Bay and its tributaries for use as cultch for a shellfish cultivation operation.

2. **Essential Fish Habitat Regional Conditions (Applicable in Maryland):**

This NWP does not authorize the following activities:

a. Commercial shellfish aquaculture activities in new project areas in waters within the Chesapeake Bay and its tidal tributaries upstream of the geographic exclusion lines defined in Enclosure 1.

b. Commercial shellfish aquaculture activities in new project areas authorized under individual on-bottom, submerged land leases administered by the Maryland Department of Natural Resources (DNR) (including bags on bottom, shellfish seed, and other suitable substrate (e.g., shell, shell fragments, concrete no larger than 3-inches in diameter on bottom) that are more than 50 acres in total coverage.

c. Commercial shellfish aquaculture activities in new project areas authorized under individual water column leases administered by DNR utilizing on-bottom cages that are more than five acres in total coverage.

d. Commercial shellfish aquaculture activities in new project areas authorized under individual water column leases administered by DNR utilizing off-bottom suspended culture (e.g., floats/mesh cages) of no more than three acres in total coverage.

e. Oyster gardening activities.

f. The establishment of Aquaculture Enterprise Zones or preapproved areas of the Atlantic Coastal Bays.

g. Activities that impound water.

h. Predator control devices (i.e., mesh fences, mesh nets, mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear.

i. Existing or proposed activities associated with an ongoing Corps or Environmental Protection Agency enforcement action until such time as the enforcement action is resolved, or the Corps determines that the activity may proceed independently without compromising the enforcement action.

j. Activities that have more than minimal individual and/or cumulative adverse impact on navigation.

k. Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete, slag, tires, wallboard, plastic, wood, metal, crushed glass, trash, and garbage).

l. Activities that will have more than minimal adverse effects on existing or naturally occurring beds or populations of shellfish, marine worms, or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.

3. All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

4. Shellfish introduced into tidal waters of the Chesapeake Bay and its tributaries, or in the Maryland coastal bays, must be certified (under Maryland standards) as being disease and parasite free. Any introduced shellfish introduced to the Delaware River and its tributaries must be certified under Delaware standards as being disease and parasite free.

5. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

   a. A PCN must be submitted to the Corps for all activities in waters of the United States.

   b. A complete copy of any PCN to the Corps shall be forwarded directly to NMFS, Habitat Conservation District, 74 Magruder Road, Sandy Hook, Highlands, New Jersey, 07732. The applicant must provide evidence that this has been accomplished. The Corps will coordinate review of the PCN with the NMFS pursuant to MSA.

6. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. The prospective permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a), prior to doing the work, if the project includes the initial development of a commercial shellfish aquaculture site or the permittee does not have a valid lease from the State. The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

   b. In addition to the information required by NWP 48 and regional condition 31a, the PCN must include:

      i. A copy of the lease or permit issued by the appropriate state government agency;

ii. Legible project vicinity map (black line on white background), to scale, and depicting the footprint of project area relative to prominent land/water geographic features;

iii. Legible overview plans (black line on white background), to scale (100':1", or 50':1"), depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of submerged aquatic vegetation (SAV) data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys), and showing local bathymetry of the project area, and other important ecological features of the site (e.g., native tidal marsh) that may be affected by project activities.

iv. Detailed project description, with the following information:

1. Description of proposed activities, including site preparation and harvest activities (e.g., dredging, harrowing and dragging of bottom substrate, tonging);

2. Types of aquaculture gear to be used, including anchoring devices;

3. Acreage of project footprint affecting bottom and water column;

4. Impacts (temporary and/or permanent) required for access to the aquaculture facility/gear, and remedial measures proposed to restore temporarily affected aquatic areas;

5. Substrate type of bottom affected by proposed activities (particularly for on-bottom activities).

v. Cross-sectional view of proposed aquaculture structures and all associated apparatus that represents the proposed operations of the activity (on-bottom, suspended, or floating).

c. The Corps shall provide the PCN to National Marines Fisheries for all activities proposing to relocate existing operations into portions of the project area not previously used for aquaculture activities.

<u>Nationwide Permit 49 *Coal Remining Activities*</u>

Permit Specific Regional Condition –

1. The pre-construction notification to the District Engineer shall include detailed site development, mining, and reclamation plans (as required by other regulatory agencies) for any proposed activity.

Nationwide Permit 50 *Underground Coal Mining Activities*

Permit Specific Regional Condition –

1. The pre-construction notification to the District Engineer shall include detailed site development, mining, and reclamation plans (as required by other regulatory agencies) for any proposed activity.

Nationwide Permit 51 *Land-Based Renewable Energy Generation Facilities*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream ponds or stormwater management facilities.

2. For the installation of utility lines, the following applies:

    a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

    b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

    c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

    d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot, from the lowest point in the natural contour of the streambed, shall be maintained. A minimum vertical clearance of ten feet shall be maintained from the top of any cable, encasement, utility, or pipeline below the authorized depth of an authorized Federal navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.

e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to reduce drainage through the backfill material. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submission of the "self-certification form."

3. For Aerial Transmission Lines Across Navigable Waters:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

Nominal System Voltage (kV)	**Minimum additional clearance (ft.) above clearance required for bridges**
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 - 765	45

b. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless otherwise specifically authorized by the District Engineer.

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required.

4. The PCN shall include the following:

a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of any Federal Project Channel shall be shown in relation to the proposed utility line.

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area.

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

d. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.

5. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

Nationwide Permit 52 *Water-Based Renewable Energy Generation Pilot Projects*

Permit Specific Regional Conditions –

1. This NWP does not authorize work or discharges associated with wind generation projects within Lake Erie.

2. This NWP does not authorize the construction of in-stream ponds or stormwater management facilities.

3. For the installation of utility lines, the following applies:

   a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

   b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. A minimum vertical clearance of ten feet shall be maintained from the top of any cable, encasement, utility, or pipeline below the authorized depth of a Federal navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.

e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to reduce drainage through the backfill material. Photo-documentation of clay plugs or impervious material at each crossing must be included with the "self-certification form."

4. For Aerial Transmission Lines Across Navigable Waters:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical

Safety Code:

Nominal System Voltage (kV)	Minimum additional clearance (ft.) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 - 765	45

b. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless otherwise specifically authorized by the District Engineer.

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required.

5. The PCN shall include the following:

a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of the Federal Project Channel shall be shown in relation to the proposed utility line.

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area.

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

d. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.

6. The Corps shall provide a copy of the required PCN to NMFS for individual EFH consultation and coordination pursuant to the Magnuson Stevens Act.

7. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7350, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

II. Nationwide Permit General Regional Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any nationwide permit specific regional conditions identified above in Section I, the general conditions found in the 2012 NWPs published in the *Federal Register* on February 21, 2012 (77 FR 10282), and any case-specific conditions imposed by the Corps.

Nationwide Permit General Condition #2 *Aquatic Life Movement*

Regional General Condition 2a - The permittee shall apply any appropriate time-of -year restrictions to protect the aquatic resources present within the project area and downstream of the project site. See attached addresses of agencies for information on state imposed time-of-year restrictions (see "List of Agencies", numbers 7, 8 & 9 for contact information in Pennsylvania; numbers 10, 12, & 13 for contact information in Maryland; number 15 & 21 for contact information in Washington, DC; and number 17, 18, 19, and 20 for Virginia).

Nationwide Permit General Condition #18 *Endangered Species*

Regional Condition 18a – For all work in Pennsylvania associated with any of the NWPs, the applicant is required to complete a Pennsylvania Natural Diversity Inventory (PNDI) project screening for federally listed threatened and endangered species. The PNDI Environmental Review Tool is located at: http://www.naturalheritage.state.pa.us. The prospective permittee must submit a PCN to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a), prior to doing the work, if the PNDI receipt identifies a "Potential Impact", or "Avoidance Measures", in association with the U.S. Fish and Wildlife Service.

Regional Condition 18b - Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species (Applicable to the District of Columbia, Maryland, and certain military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District): Any interaction between a sea turtle or any species listed now or in the future under Federal law as a threatened or endangered species ("listed species") (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the vessels associated with the project must be reported to the National Marine Fisheries Service as follows: (1) If the animal

appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the National Marine Fisheries Service Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery; (2) If the animal requires assistance, the call to the hotline must be made immediately; (3) If the animal appears to be injured (i.e. bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify the Corps of all correspondence and coordination with the National Marine Fisheries Service within two calendar days. Additional information about any Federally threatened or endangered species may be obtained from the attached fact sheet or online at: http://www.nero.noaa.gov/prot_res/stranding/SpeciesOverview.html and at: http://www.nero.noaa.gov/prot_res/esp/. An interaction is defined as an entanglement or capture of a listed species or a strike/direct contact between vessels or equipment used for the project and a listed species.

Regional Condition 18c - Vessel Buffer (Applicable to the District of Columbia, Maryland, and certain military installation of Northern Virginia in the regulatory geographic boundaries of the Baltimore District): When listed species are sighted, vessels must attempt to maintain a distance of 50 yards (150 feet) or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500 yard (1,500 foot) buffer zone. Any vessel finding itself within the 500 yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100 yards (300 feet) of the animal must be avoided. Vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the National Marine Fisheries Service.

Regional Condition 18d - Best Management Practices Applicable Within Tidal Waters of the Chesapeake Bay in Maryland, District of Columbia, and certain military installations of northern Virginia having Salinity Levels Less Than 6 Parts Per Thousand (ppt) (See Enclosure 1):

1. **Pile Driving:** For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 187dB sound exposure level (SEL) re 1μPa or 206dB peak re 1μPa at a distance of >10m from the pile being installed; and levels >155dB peak re 1μPa must not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise levels below 155dB peak re 1μPa) must be provided between work days. Pile driving construction must adhere to one of the following methods: (a) piles must be installed in-the-dry during low water; (b) piles must be drilled and pinned to ledge; (c) vibratory hammers must be used to install any size and quantity of wood, concrete, or steel pilings; (d) impact hammers must be limited to one hammer and <50 piles installed per day with the following: (1) wood piles of any size; (2) concrete piles <18-inches diameter; (3) steel piles <12-inch diameter if the hammer is <3,000 pounds

and a wood cushion is used between the hammer and steel pile; or (e) approved pile driving methods that will allow noise level thresholds to be met.

2. **Sediment Disturbing Activities Time-of-Year Restriction:** Within all tidal waters of the Chesapeake Bay and its tidal tributaries in Maryland, sediment disturbing activities with salinity levels <6 ppt, which includes pile driving activities, are prohibited during the period April 1 through June 30 for the protection of shortnose sturgeon and early life stages in these waters.

Nationwide Permit General Condition #31 *Pre-Construction Notification*

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 31, *Pre-Construction Notification.* These regional general conditions are applicable to all NWPs where a PCN is submitted to the district engineer. This includes the following: (a) those NWPs requiring notification to the district engineer pursuant to the NWP general conditions 18, 22 and 31, (b) those NWPs requiring notification to the district engineer pursuant to a regional condition, and (c) any other pre-constriction notifications to the district engineer where an applicant has requested verification of an NWP authorization. Those NWPs that require a PCN include NWPs 1*, 2*, 3*, 4*, 5*, 6*, 7, 8, 9*, l0*, 11, 12, 13*, 14*, 15*, 16*, 17, 18, 19, 20*, 21*, 22*, 23, 24*, 25*, 27, 28, 29, 30, 31, 32*, 33, 34, 35, 36*, 37*, 38, 39, 40, 41, 42, 43*, 44, 45, 46, 48*, 49, 50, 51, and 52.

**These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions 18, 22 & 31, and the regional conditions to identify these circumstances.*

Regional General Conditions 31a

1. A PCN shall be submitted to the District Engineer for any proposed activity, which would result in impacts, temporary or permanent, to jurisdictional wetlands in the following Counties in Pennsylvania: Adams, Berks, Bucks, Carbon (Aquashicola Creek Watershed), Chester, Cumberland, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (Swatara Creek Watershed), and York.

2. For a PCN required in Pennsylvania under Regional Nationwide Permit General Condition 18a, a copy of the PCN must also be concurrently forwarded to the U.S. Fish and Wildlife Service if the PNDI receipt identifies a "Potential Impact" related to the U.S. Fish and Wildlife Service, or if the applicant cannot implement, or does not agree to implement one or more U. S. Fish and Wildlife Service issued "Avoidance Measures" detailed on the PNDI receipt.

3. A PCN shall be submitted the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary http://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017. In addition, a PCN is

required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: http://www.nab.usace.army.mil/Wetlands%20Permits/

4. All pre-construction notifications (PCNs) to the District Engineer shall be completed using the established Corps of Engineers permit application procedures for that locality (see http://www.nab.usace.army.mil/Wetlands%20Permits/permits.htm). The PCN shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions, including General Condition 31:

   a) Plan(s) of the proposed work on 8-1/2 by 11 inch paper which includes a location map; longitude and latitude; and plan view drawings clearly depicting the location, size, and dimensions of the proposed activity as well as the location of the delineated waters and wetlands, for the entire project area. The drawings shall contain the amount (in cubic yards) and the area (square feet) of dredged and/or fill material to be discharged in Corps jurisdiction, including both permanent and temporary structures. Plans should depict all proposed work, including areas proposed for filling, grading, excavation, drainage, and/or inundation. All drawings shall include the ordinary high water mark, or if in tidal waters, the mean high water mark and high tide line; existing water depths; cross-sectional plan; depth of any structure(s) below mean low water; height of any structure(s) above mean high water; the maximum distance that the structure(s) or fill will extend channelward of the existing shoreline; the width of the waterway at the project site; the location of any dredged material disposal area; the distance from the edge of any federal navigation channel and the location of any temporary work; structures, vessels, or fills required for construction; a copy of any previous Federal or State approvals; and the location and nature of any submerged aquatic vegetation (e.g., eel grass, *Zostera marina*). In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information. http://web.vims.edu/bio/sav/index.html The applicant should also refer to other reliable sources to comply with this condition.

   b) The PCN shall include a wetland and stream delineation for the entire project area, including latitude and longitude, identified on a scaled plan of the project site. All existing or proposed work in aquatic resources shall be identified on the same-scaled plan. Further, at the discretion of the District Engineer, the Corps may determine that a PCN is incomplete if it is determined that field verification of the wetland and/or stream delineation is required.

   c) Numbered and dated pre-project color photographs showing all aquatic resources proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan view drawing.

d) Evidence that the prospective permittee has already contacted and received a response from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service concerning any Federally listed Threatened and Endangered Species that may be affected by the proposed activity. (see "List of Agencies", numbers 2 & 4 for contact information in Pennsylvania; numbers 3, & 5 for contact information in Maryland and Washington, DC; and Numbers 5, 19 & 20 for contact information in Virginia).

   In Pennsylvania, a PNDI receipt or U.S. Fish and Wildlife Service letter (issued pursuant to the ESA) serves as evidence that the prospective permittee has contacted and received a response from the U.S. Fish and Wildlife Service.

e) Evidence that the prospective permittee has already contacted and received a response from the State Historic Preservation Office concerning historic properties that may be affected by the proposed activity. (see "List of Agencies", number 6 for contact information in Pennsylvania; number 11 for contact information in Maryland; number 14 for contact information in Washington, DC; and number 16 for contact information in Virginia).

f) Documentation from the appropriate State agency indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. For further information, reference NWP general condition 22. (see "List of Agencies", numbers 2, 4, & 7 for contact information in Pennsylvania; numbers 3, 5, 10, 12, & 13 for contact information in Maryland; numbers 3, 5, 15, & 21 for contact information in Washington, DC; and numbers 17, 18, 19, & 20 for contact information in Virginia).

g) A written statement describing the following:

   i. what measures have been taken to avoid impacts to aquatic resources;

   ii. what measures have been taken to minimize unavoidable impacts to aquatic resources;

   iii. what measures have been developed to compensate for the loss of aquatic resources. Where compensatory mitigation is required, approval of a mitigation plan (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)) is required prior to initiating any authorized work.

5. When a PCN is required, the Corps review period shall commence with the receipt of a complete permit application at the Corps District Office. The prospective permittee shall not begin the activity until notified in writing by the District Engineer (normally within

60 days) that the activity may proceed under the nationwide permit with any special conditions imposed, if applicable.

6. Where required by the regional conditions of the NWP, the prospective permittee must submit a PCN to the District Engineer for any activity that may adversely affect Essential Fish Habitat within the District of Columbia, Maryland, and certain military installations of Northern Virginia within the Potomac River watershed in the regulatory geographic boundaries of the Baltimore District. The District Engineer will immediately provide (e.g., via email, facsimile transmission, or other expeditious manner) a copy of the PCN, including project description, site location map, project plans, and any ancillary information relevant to the National Marine Fisheries Service's jurisdiction for an Essential Fish Habitat assessment, or where appropriate, an individual Essential Fish Habitat consultation and coordination. The National Marine Fisheries Service-Chesapeake Bay Office shall then have a 30 day review and comment period from the date of their receipt of the EFH assessment, as provided by the Magnuson-Stevens Act.

7. Any requests to waive the 300 linear foot limitation for the intermittent and ephemeral streams for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, or to waive the 20 foot width limitation for NWP 36, must include:

   a) A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with the Ordinary High Water Mark (e.g., bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community, including a statement as to if the area is upland or wetland; surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.

   b) An analysis of the proposed impacts to the waterbody in accordance with General Condition 31.

   c) Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and

   d) A mitigation plan describing how the unavoidable losses are proposed to be compensated (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)).

8. Any compensatory mitigation required by special conditions of the NWP verification shall be completed before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When compensatory mitigation involves use of a mitigation bank or in-lieu-fee program, the special conditions of the permit must identify the specific mitigation bank or in-lieu-fee program used to provide the required compensatory mitigation and the number and resource type of credits the permittee is required to secure. Proof of payment to the

approved mitigation bank or in-lieu-fee program shall be submitted to the appropriate Corps district prior to commencement of construction of the authorized activity. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions and services. A watershed approach to compensatory mitigation that considers the importance of landscape position and resource type of compensatory mitigation projects for the sustainability of aquatic resource functions within the watershed should be used.

SPECIAL NOTES:

1. Where the Commonwealth, State or the District of Columbia (District) has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the Commonwealth/State/District to obtain an activity specific review and approval by the Commonwealth/State/District prior to submitting any required pre-construction notification (PCN) to the Corps of Engineers.

2. The attached addresses should be used for notification to those agencies required by regional conditions.

List of Agencies:

(1) Environmental Protection Agency
1650 Arch Street - 3ES42
Philadelphia, Pennsylvania 19103-2029

(2) U.S. Department of the Interior
Fish and Wildlife Service
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850

(3) U.S. Department of the Interior
Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

(4) National Marine Fisheries Service
Habitat Conservation Division
74 Magruder Road, Sandy Hook
Highlands, New Jersey 07732

(5) National Marine Fisheries Service
Chesapeake Bay Office
410 Severn Ave., Suite 107A
Annapolis, Maryland 21403

(6) Pennsylvania Historical & Museum Commission
Bureau of Historic Trust
P.O. Box 1026
Harrisburg, Pennsylvania 17110

(7) Pennsylvania Fish & Boat Commission
Bureau of Fisheries & Engineering
450 Robinson Lane
Bellefonte, Pennsylvania 16823-9616

(8) Pennsylvania Department of Environmental Protection
Bureau of Watershed Management
Division of Waterways, Wetlands & Stormwater Management
Rachel Carson State Office Building
P.O. Box 8460
Harrisburg, Pennsylvania 17105-8775

(9) Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, Pennsylvania 17110-9797

(10) Maryland Department of Natural Resources Environmental Review, B-3
Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

(11) Maryland Historical Trust
Division of Historical & Cultural Programs
100 Community Place
Crownsville, Maryland 21032-2023

(12) Maryland Department of the Environment
Water Resources Administration
Tidal Wetlands Division
Montgomery Park Business Center
1800 Washington Boulevard, Suite 430
Baltimore, Maryland 21230-1708

(13) Maryland Department of the Environment
Non-tidal Wetlands and Waterways Division/CZC Unit
Montgomery Park Business Center, Suite 430
Baltimore, Maryland 21230-1708

(14) District of Columbia Office of Planning Historic Preservation Office
1100 4th Street, SW
Suite E 650
Washington, DC 20024

(15) District Department of Environment
Water Quality Division
51 N Street, NE, 6th Floor
Washington, DC 20002

(16) Virginia Department of Historic Resources
Attn: Project Review
2801 Kensington Avenue
Richmond, Virginia 23221

(17) Virginia Department of Game and Inland Fisheries
4010 West Broad Street
P.O. Box 11104
Richmond, Virginia 23230

(18) Northern Regional Office
Virginia Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193

(19) Virginia Marine Resources Commission
Habitat Management Division
2600 Washington Avenue, 3rd Floor
Newport News, Virginia 23607-0756

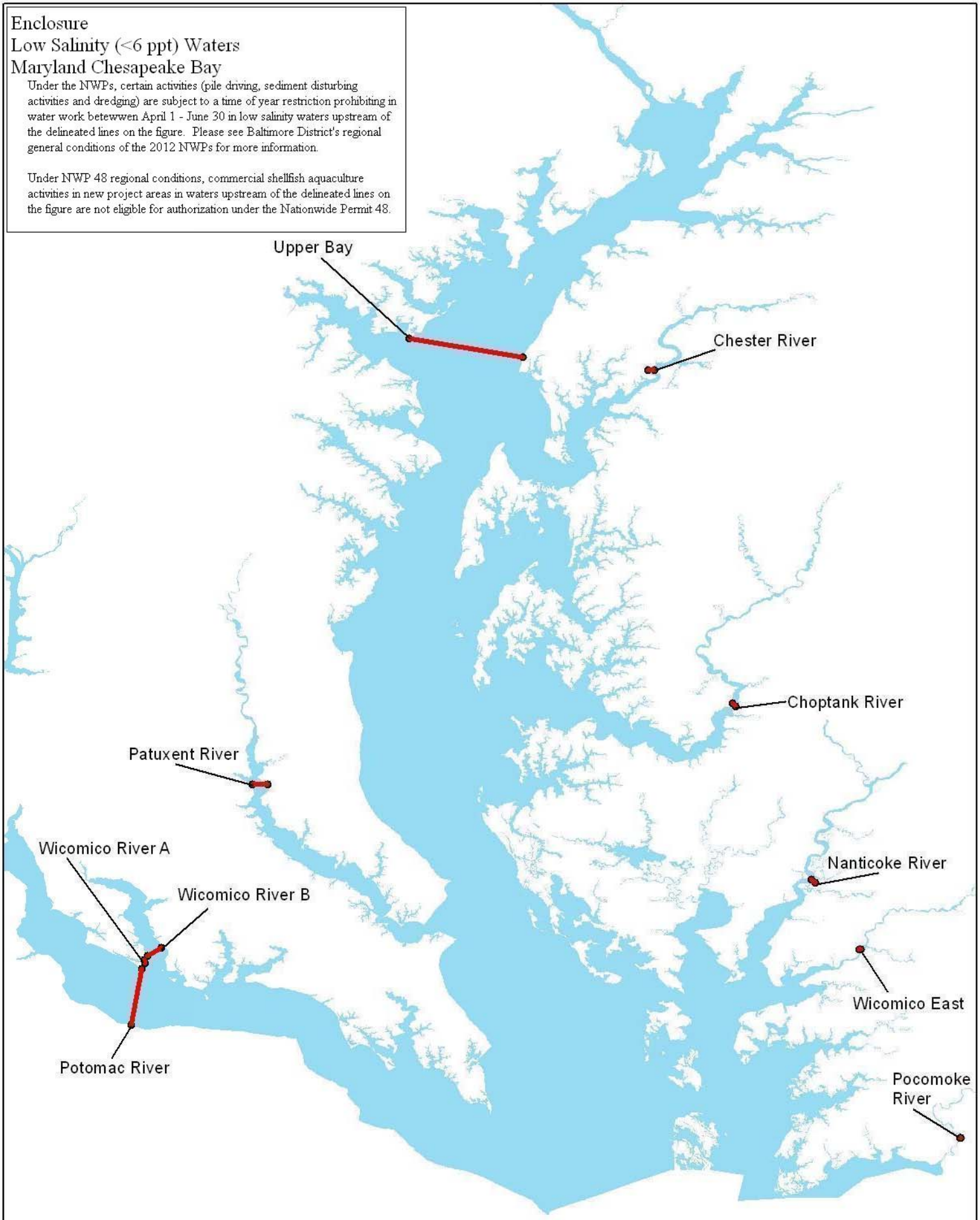
(20) U.S. Fish and Wildlife Service
Division of Habitat and Resource Conservation
4401 N. Fairfax Drive, Suite 840
Arlington, Virginia 22203

(21) U.S. Fish & Wildlife Service
District of Columbia
1849 C Street NW, Room 3331
Washington, DC 20240-0001

Enclosure
Low Salinity (<6 ppt) Waters
Maryland Chesapeake Bay

Under the NWPs, certain activities (pile driving, sediment disturbing activities and dredging) are subject to a time of year restriction prohibiting in water work betewwen April 1 - June 30 in low salinity waters upstream of the delineated lines on the figure. Please see Baltimore District's regional general conditions of the 2012 NWPs for more information.

Under NWP 48 regional conditions, commercial shellfish aquaculture activities in new project areas in waters upstream of the delineated lines on the figure are not eligible for authorization under the Nationwide Permit 48.



2012 NWPs Regional Conditions
Baltimore District
U.S. Army Corps of Engineers

EPA AND USACE INTERPRETIVE RULE REGARDING APPLICABILITY OF THE EXEMPTION UNDER SECTION 404(F)(1)(A) OF THE CLEAN WATER ACT TO CERTAIN AGRICULTURAL CONSERVATION PRACTICES

U.S. Environmental Protection Agency and U.S. Department of the Army Interpretive Rule Regarding the Applicability of Clean Water Act Section 404(f)(1)(A)

SUBJECT: Interpretive Rule Regarding Applicability of the Exemption from Permitting under section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices.

PURPOSE: The purpose of this interpretive rule is to clarify the applicability of the exemption from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA) to discharges of dredged or fill material associated with certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality.[1]

BACKGROUND:

Section 404(f)(1)(A) of the CWA exempts from permit requirements certain discharges associated with normal farming, silviculture, and ranching activities in waters of the United States, including wetlands. It is important to emphasize that this interpretive rule identifies additional activities considered exempt from permitting under section 404(f)(1)(A), but does not affect, in any manner, the scope of agriculture, silviculture, and ranching activities currently exempt from permitting under section 404(f)(1)(A) including, for example, plowing, seeding, cultivation, minor drainage, etc.

Section 404(f)(1)(A) does not provide an automatic exemption for all discharges related to farming, silvicultural or ranching practices. Rather, Section 404(f)(1) exempts only those discharges associated with activities specifically identified in subparagraphs (A) through (F), and "other activities of essentially the same character as named" (44 FR 34264). Section 404(f)(1)(A) lists discharges of dredged or fill material from "normal farming, silviculture and ranching activities, such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices." This interpretive rule further clarifies the scope of this statutory exemption.

[1] As this interpretation addresses primarily agricultural-related activities, characterizations of such practices have been developed in consultation with the U.S. Department of Agriculture (USDA).

Section 404(f)(1)(A) is limited to discharges associated with activities listed in the statute and defined by the agencies' regulations and that are part of an "established (i.e., ongoing) farming, silviculture, or ranching operation" (40 CFR 232.3(c)(1)(ii)(A); 33 CFR 323.4(a)(1)(ii)). This "established" requirement reconciles the dual intent reflected in the legislative history that although section 404 should not unnecessarily restrict farming, silviculture, or ranching from continuing at a particular site, discharge activities which could destroy wetlands or other waters should be subject to regulation.[2]

The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers' (Corps) regulations (40 CFR 230 and 33 CFR 320) and preamble to these regulations provide additional detail on "normal" activities listed in section 404(f)(1)(A). The words "such as" have been consistently interpreted as meaning the section applies "to the activities named in the statute and other activities of essentially the same character as named," and "preclude[s] the extension of the exemption ... to activities that are unlike those named." (44 FR 34264).

INTERPRETATION FOR CERTAIN CONSERVATION PRACTICES:

USDA and NRCS's natural resources conservation programs help people reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters. These longstanding USDA programs are effective in promoting the water quality and broader environmental goals identified in both the Food Security Act and Clean Water Act. The agencies believe working together to improve the consistency and integration of programs like these is fully consistent with the law, promotes the mutual objectives of our regulations and statutes, and increases clarity and predictability for the agriculture community. The result is good for the nation's waters and for farmers and foresters who want to protect the resources on their lands.

In light of the longstanding adoption of these agricultural conservation practices and their goal of protecting and enhancing water quality, the section 404(f)(1)(A) exemption is interpreted to cover certain agricultural conservation practices as "normal farming" activities. Normal farming necessarily includes conservation and protection of soil, water and related resources in order to sustain agricultural productivity, along with other benefits to environmental quality and continued economic development. "Upland soil and water conservation practices" are explicitly identified in the statute as "normal" farming activities, and conservation activities within the waters of the U.S. that include discharges in waters of the U.S. and that are designed to protect and enhance the waters of the U.S. have been determined to be of essentially the same character. As the statute does not limit the exemption to only those activities explicitly listed, it is reasonable to conclude that agricultural conservation practices that are associated with waters and where water quality benefits accrue are similar enough to also be exempt from the section 404 permitting requirements. This interpretation preserves congressional intent by ensuring that beneficial agricultural conservation practices will not be unnecessarily restricted so long as those activities are designed and implemented to protect and enhance water quality and do not destroy waters.

[2] This interpretive rule does not affect section 404(f)(2) of the CWA.

Specific NRCS agricultural conservation practices, identified by the EPA, the Army, and USDA, that could include the discharge of dredged or fill material in a waters of the U.S. for the purposes of benefitting those waters are appropriately considered "normal farming" activities and exempt from permitting under Section 404(f)(1)(A). To qualify for this exemption, the activities must be part of an "established (i.e., ongoing) farming, silviculture, or ranching operation," consistent with the statute and regulations. The activities must also be implemented in conformance with NRCS technical standards. So long as these activities are implemented in conformance with NRCS technical standards, there is no need for a determination of whether the discharges associated with these activities are in "waters of the United States" nor is site-specific pre-approval from either the Corps or the EPA necessary before implementing these specified agricultural conservation practices. The EPA, the Army, and USDA will enter into a Memorandum of Agreement to develop and implement a process for identifying, reviewing and updating NRCS agricultural conservation practices and activities that may include discharges in waters of the United States that would qualify under the exemption established by section 404(f)(1)(A).

3/25/14 (Date)

Nancy K. Stoner
Acting Assistant Administrator for Water
U.S. Environmental Protection Agency

MAR 25 2014 (Date)

Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
U.S. Department of the Army

USDA, EPA AND USACE MOU CONCERNING IMPLEMENTATION OF THE 404(F)(1)(A) EXEMPTION FOR CERTAIN AGRICULTURAL CONSERVATION PRACTICE STANDARDS (INCLUDING LIST OF EXEMPT CONSERVATION PRACTICES)

MEMORANDUM OF UNDERSTANDING
Among the U.S. Department of Agriculture,
The U.S. Environmental Protection Agency, and the U.S. Department of the Army

Concerning Implementation of the 404(f)(1)(A) Exemption for
Certain Agricultural Conservation Practice Standards

I. Purpose and Scope

The Environmental Protection Agency (EPA) and the Department of the Army (the Army) issued, in March 2014, an interpretive rule clarifying the applicability of the exemption from Clean Water Act (CWA) section 404 permitting provided by CWA section 404(f)(1)(A) for discharges to waters of the United States associated with certain conservation practice standards where they are undertaken as part of an established farming operation. This Memorandum of Understanding (MOU) describes how the three agencies will work together to implement the interpretive rule, to protect and enhance water quality and ensure consistency and predictability for the public. This MOU also identifies the procedures for coordinating to maintain the list of conservation practice standards exempt from section 404 permitting, including revisions to the list. This list is included as Attachment A to this MOU.

II. Authorities

EPA and the Army enter into this MOU pursuant to their responsibilities and authorities under the Clean Water Act, and specifically section 404. 33 U.S.C. § 1251, et seq. NRCS enters into this MOU pursuant to its responsibilities and authorities under the Soil Conservation and Domestic Allotment Act. 16 U.S.C. §590 a-f.

III. Background

CWA section 404(f) provides that the discharge of dredged or fill material into waters of the United States in connection with certain activities is exempt from CWA section 404 permitting requirements. These activities include "normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber and forest products, or upland soil and water conservation practices." CWA section 404(f)(1)(A).

EPA and the Army issued, in March 2014, an interpretive rule clarifying that certain NRCS conservation practice standards designed and implemented to protect and enhance water quality

are considered "normal farming" activities when conducted as part of an established farming operation, and are discharges therefore exempt under CWA section 404(f)(1)(A) from CWA section 404 permitting requirements. The CWA section 404(f) exemptions also have been previously addressed by agency regulations. 40 C.F.R. §232.3; 33 C.F.R. §323.4. The interpretive rule does not change the agencies' regulations, including those addressing CWA section 404(f)(2)[1].

NRCS works with partners and private landowners and managers on conservation planning and assistance designed to result in productive lands and healthy ecosystems. The foundation for this assistance is science-based conservation practice standards that guide the design and implementation of measures to address natural resource concerns, including water quality and quantity. These standards provide technical requirements, which are tailored to state and local conditions and provide specifications for installation of conservation measures. NRCS worked with the EPA and the Army to evaluate its list of conservation practice standards and identify those designed and implemented to protect and enhance water quality when implemented in waters of the United States.

The NRCS conservation practices standards considered as of the date of this MOU to be "normal farming" when conducted as part of an ongoing operation and thus exempt from permitting under CWA section 404(f)(1)(A) are listed in Attachment A to this MOU. Note that the agencies expect this list to evolve over time as NRCS modifies or develops new conservation practice standards. The agencies intend periodically to update the list consistent with section V. of this MOU.

IV. Agricultural Conservation Practice Standards Considered Exempt as "Normal Farming" under CWA §404(f)(1)(A).

The Army, the EPA, and NRCS have examined NRCS' conservation practice standards, and identified those being designed and implemented to protect and enhance water quality that, when they involve a discharge of dredged or fill material to waters of the United States and are conducted as part of an ongoing farming operation, are exempt from permitting under CWA section 404(f)(1)(A). The current list of identified conservation practice standards that are exempt can be found on the EPA's website at *http://water.epa.gov/lawsregs/guidance/wetlands/agriculture.cfm*. EPA will update the list on its website to reflect any future changes made as a result of the process in Section V. below. The agencies agree that the list on EPA's website will guide their implementation of the interpretive rule. Details regarding conservation practice standards are available on NRCS' website at *http://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143_026849*

[1] CWA Section 404(f)(2) is the so-called "recapture" provision. Section 404(f)(2) requires that activities are not exempt where they have certain effects on waters, including wetlands. For example, a proposed discharge to waters of the U.S. is not exempt where it is associated with an activity that would convert waters to non-waters.

V. Management of the List of Exempt Practice Standards

NRCS reviews its existing conservation practice standards every five years on a rolling schedule, and through a public process, modifying the practice standards where appropriate, and also develops new conservation practice standards as needed.
The agencies will manage the list of NRCS conservation practice standards considered as "normal farming," as needed. Revisions may become necessary because, for example, NRCS has modified an existing conservation practice standard to enhance its water quality benefits in a way that makes it appropriate for the agencies to add the conservation practice standard to the list of those considered as "normal farming." Similarly, it may be appropriate to remove a conservation practice standard from the list if the agencies observe implementation of the practice standard is not resulting in anticipated water quality benefits.

The Army, the EPA, and NRCS intend to meet and discuss appropriate changes to the list of practice standards exempt from permitting at a frequency agreed upon by the agencies, but at least annually. The discussion will consider potential addition to this list of practice standards of new or revised NRCS conservation practice standards as well as potential deletion of conservation practice standards based on available data regarding water quality effects or other relevant implementation information. To ensure effective implementation of the interpretive rule, the agencies will regularly share information, as appropriate, regarding the use of exempt conservation practices in aquatic areas. The agencies will reach out to other interested entities, including states, as the list of exempt practices is regularly reviewed.

The agencies will coordinate to seek consensus on any modifications to the list of exempted agricultural conservation practice standards, consistent with agency responsibilities established under Federal statutes and regulations.

VI. Other Roles and Responsibilities

A. Working with Landowners and Land Managers -- NRCS retains the primary federal role of working with landowners and land managers, state agencies, private organizations, etc., regarding the use of conservation practices. Where NRCS is the technical assistance provider, the agency has the responsibility to appropriately identify and implement conservation practices in a manner consistent with the applicable conservation practice standards. Landowners not relying on NRCS for technical assistance have the responsibility to ensure that implementation of the conservation practice is in accordance with the applicable NRCS conservation practice standard. It is important to emphasize that practices are exempt only where they meet conservation practice standards.

B. Applicability of the Exemption to a Particular Project-- Discharges in waters of the U.S. are exempt only when they are conducted in accordance with NRCS practice standards. Landowners are not required, however, to obtain preapproval from the Corps or EPA for the exemption to apply to implementation of a practice standard identified in the list of exempt practices. Where NRCS is supplying the technical assistance for a particular conservation activity, the agency has the lead responsibility to work with landowners and managers to ensure that practices are applied in accordance with standards and to address and correct issues that may

arise regarding the consistency of a particular project with conservation practice standards. Where NRCS is not providing technical assistance, the landowner has the responsibility to ensure that implementation of the conservation practice is in accordance with the applicable NRCS conservation practice standard. Even where NRCS is not providing technical assistance, the agency plays an important role in helping to respond to issues that may arise regarding project specific conformance with conservation practice standards. EPA and the Corps are responsible for responding to project specific issues that may arise associated with compliance with section 404(f), including concerns that are raised by states or federally recognized tribes.

C. Development of New Conservation Practice Standards -- NRCS remains solely responsible under its authority for developing agricultural conservation practice standards. However, if NRCS anticipates a new or modified practice standard could be a candidate for the list of "normal farming" practices exempt from permitting, NRCS will coordinate with the Army and the EPA as the conservation practice standard is being developed to help facilitate agreement among the agencies to add the practice to the list of conservation practice standards exempt from permitting as described in section V above.

D. Outreach and Training -- Although the interpretive rule is effective immediately, Headquarters offices will work with field offices to educate and train their staffs on the implementation of the interpretive rule. The agencies will use their best efforts to accomplish this education and training in the most efficient and timely manner. To the extent funds and staffing allow, the three agencies will work together to develop any fact sheets, bulletins, and webinars for agencies' staff and agricultural producers, explaining the CWA section 404(f) exemption, the March 2014 interpretive rule and its application to conservation practice standards. Where appropriate and feasible, the agencies will conduct joint training on these provisions.

E. CWA Responsibilities -- Nothing in this MOU affects the authorities of the EPA, Army, or authorized states, or federally recognized tribes to implement or enforce CWA provisions.

VII. Additional Provisions

A. The policies and procedures contained within this MOU do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by the United States. Deviation or variance from the administrative procedures included in this MOU will not constitute a defense for violators or others concerned with any Section 404 action.

B. This MOU does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

C. Nothing in this MOU is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. The agencies will handle their own activities and utilize their own resources, including the expenditure of their own funds, in pursuing these objectives. Each agency will carry out its separate activities in a coordinated and mutually beneficial manner.

D. As required by the Antideficiency Act, 31 U.S.C. 1341 and 1342, all commitments made by the EPA, NRCS or the Army in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, obligates the EPA, NRCS or the Army to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations. Any activities that involve the transfer of funds, services, or property among the agencies will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

VIII. Effective date and Modification of the MOU

A. This MOU will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or until revoked by any of the signatory agencies alone upon 90 days written notice.

B. Modifications of this MOU may be made by mutual agreement and Headquarters-level approval by all the signatory agencies. Such modifications will take effect thirty (30) days from the last signature of the modified document by all the signatory agencies.

for (Date) 3/25/14

Robert Bonnie
Under Secretary for Natural Resources and Environment
U.S. Department of Agriculture

(Date) 3/25/14

Nancy K. Stoner
Acting Assistant Administrator for Water
U.S. Environmental Protection Agency

Jo-Ellen Darcy (Date) MAR 25 2014

Jo-Ellen Darcy
Assistant Secretary (Civil Works)
U.S. Department of the Army

Attachment A

NRCS CONSERVATION PRACTICE STANDARDS
EXEMPT FROM PERMITTING UNDER CLEAN WATER ACT SECTION 404(f)(1)(A)

Practice #	Practice Name	Creation Date	Notes
314	Brush Management	Sep-09	
315	Herbaceous Weed control	Apr-10	
320	Irrigation Canal or Lateral	Sep-10	
326	Clearing and Snagging	Jul-10	
327	Conservation Cover	Sep-10	
338	Prescribed Burning	Sep-10	
342	Critical Area Planting	Dec-13	
353	Monitoring Well	Sep-10	
380	Windbreak/Shelterbelt Establishment	May-11	
382	Fence	Apr-13	
383	Fuel Break	Apr-05	
386	Field Border	Dec-13	
388	Irrigation Field Ditch	Apr-11	
390	Riparian Herbaceous Cover	Sep-10	
391	Riparian Forest buffer	Jul-10	
393	Filter Strip	Dec- 13	
394	Firebreak	Sep-10	
395	Stream Habitat Improvement and Management	Sep-10	
396	Aquatic Organism passage	Apr-11	
398	Fish Raceway or Tank	Sep-09	
399	Fishpond Management	Sep-11	
400	Bivalve Aquaculture Gear and Biofouling Control	Apr-11	
412	Grassed Waterway	Apr-10	activities that convert waters to non-waters are not exempt
422	Hedgerow Planting	Sep-10	
423	Hillside Ditch	May-08	
453	Land Reclamation, Landslide Treatment	Feb-05	
455	Land Reclamation, Toxic Discharge Control	May-05	
460	Land Clearing	Sep-11	
484	Mulching	May-11	
490	Tree/Shrub Site Preparation	Jan-06	
500	Obstruction Removal	Jan-10	
511	Forage Harvest Management	Apr-10	

512	Forage and Biomass Planting	Jan-10	
528	Prescribed Grazing	Sep-10	
533	Pumping Plant	May-11	
544	Land Reclamation, Abandoned Mined land	Aug-06	
548	Grazing Land Mechanical Treatment	Sep-10	chiseling or deep ripping in wetlands is not exempt
550	Range Planting	Apr-10	
568	Trails and Walkways	Jan-10	
575	Animal Trails and Walkways	Apr-10	
578	Stream Crossing	Sep-11	
587	Structure for Water Control	Apr-10	
601	Vegetative Barrier	Jan-10	
612	Tree/Shrub Establishment	May-11	
643	Restoration and Management of Rare and Declining Habitats	Sep-10	
644	Wetland Wildlife Habitat Management	Sep-10	
646	Shallow Water Development and Management	Sep-10	
647	Early Successional Habitat Development / Management	Sep-10	
650	Windbreak/Shelterbelt Renovation	Jul-10	
654	Road/Trail/Landing Closure and Treatment	Nov-08	
655	Forest Trails and Landings	Sep-11	
657	Wetland Restoration	Sep-10	
659	Wetland Enhancement	Sep-10	
660	Tree/Shrub Pruning	Jan-06	
666	Forest Stand Improvement	May-11	

April 22, 2014

Questions and Answers

The March 2014 Interpretive Rule (IR)
and the Applicability of the Clean Water Act, Section 404(f)(1)(A)

Overview: The Interpretive Rule (IR) published by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) recognizes that agricultural conservation activities implemented consistent with Natural Resources Conservation Service (NRCS) conservation practice standards provide many benefits for water quality. The IR interprets the provisions of the Clean Water Act (CWA) designed to exempt from the section 404 permit requirements certain agricultural conservation practices that enhance or protect water quality. The Agencies collaborated with the U.S. Department of Agriculture (USDA) to identify conservation practices that occur in waters of the United States and contribute to water quality improvements. The exemption for these identified conservation practices is self-implementing, meaning that a producer does not need to notify the regulatory agencies, seek a jurisdictional determination, or submit an application for a CWA section 404 permit. However, a producer must ensure that the practice is implemented in accordance with the applicable NRCS technical standards to be covered by the exemption. Nothing in the IR changes the roles or responsibilities of any of the three agencies, each of which have a role to play in ensuring that the IR is implemented effectively in a fair and consistent manner that encourages the adoption of these agricultural conservation practices.

Q. 1. What part of the CWA does the IR address?

A. 1. The IR addresses section 404(f)(1)(A) of the CWA, which outlines exemptions from section 404 permitting requirements for discharges of dredged or fill material into waters of the United States,[1] including wetlands. These exemptions are often referred to as the "agricultural" or "normal farming" (including silviculture and ranching) exemptions. Section 404(f)1(A) allows discharges of dredged or fill material into waters of the United States without a section 404 permit when such discharges are associated with ongoing normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices.

[1] The definition of "Waters of the United States" can be found at 33 CFR part 328 and may include the territorial seas, rivers, most streams, lakes, wetlands, many ditches, channels, and other small drainage ways. The definition of "dredged and fill material" can be found at 33 CFR part 323.2. Examples of fill material include, but are not limited to, soil, rock, sand, clay, construction debris, wood chips, and materials used to create any structure or infrastructure in the waters of the United States.

Q. 2. What does this IR do?

A. 2. The IR clarifies section 404(f)(1)(A) by recognizing that specific NRCS conservation practices implemented in waters of the United States are exempt from permitting requirements under CWA section 404.

The list of exempt conservation practices clarified by the IR can be found at: http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm. It is critical to emphasize that this list is in addition to all previously exempt agriculture, silviculture, and ranching practices covered by section 404(f). The IR does not eliminate or limit any existing exemptions, it only adds to the existing exemptions.

Q. 3. When do the IR and associated Memorandum of Understanding (MOU) take effect?

A. 3. The IR and associated MOU became effective April 3, 2014. EPA and USACE are also making the IR available to the public for their review through notice in the Federal Register. The agencies expect this notice to be published shortly, and the public will have 45 days to provide comments, which may generate revisions to the list of activities.

Q. 4. Where does this IR apply?

A. 4. The IR applies to the 56 NRCS conservation practices listed and attached to the March 25, 2014, MOU where they are being implemented in waters of the United States for water quality purposes, and are associated with an established (i.e., ongoing) farming, ranching, or silviculture operation.

Q. 5. Does the interpretive rule affect the CWA section 404(f) "recapture" clause?

A. 5. No. CWA section 404(f)(2) continues to apply.[2]

Q. 6. Does this interpretive rule change existing agricultural exemptions?

A. 6. No. The IR does not change any of the current agricultural exemptions or provisions of the exemptions, and provides that: *"Normal farming necessarily includes conservation and protection of soil, water, and related resources in order to sustain agricultural productivity along with other benefits to environmental quality and continued economic development. 'Upland soil and water conservation practices' are explicitly identified in the statute as 'normal' farming activities, and conservation activities within the waters of the U.S. that includes discharges in waters of the U.S. and that are designed to protect and enhance the waters of the U.S. have been determined to be of essentially the same character."* There are six parts (A-F) under section 404(f)(1). The IR only addresses exemptions under part A. The IR does not change or otherwise affect the applicability of the exemptions under B through F or the process

[2] For all exemptions, if the activity would change the use, and either impair the flow or circulation, or reduce the reach of waters of the United States, it would not be exempt and would, therefore, require a section 404 permit prior to construction or any work in waters. This provision is in section 404(f)(2) of the CWA and is often referred to as the "recapture" clause.

for obtaining such exemptions. Parts B, C, and E also cover several exemptions important to agriculture, such as maintenance of levees and drainage ditches, construction of farm and stock ponds, irrigation ditches, and farm and forest roads. The interpretive rule also does not affect the recapture provision contained in section 404(f)(2).

Q. 7. Does the IR affect normal farming and soil and water conservation activities in upland and dryland areas?

A. 7. No. The CWA does not apply outside of jurisdictional waters of the United States.

Q. 8. Why were not all of NRCS conservation practices listed?

A. 8. Two criteria were used to select the exempted conservation practices:

- The conservation practice could be applied in waters of the United States (i.e., it is not entirely an upland-located conservation practice).
- The conservation practice is designed to enhance and protect water quality.

Q. 9. Who manages the conservation practice standard development and revision?

A. 9. NRCS has sole responsibility for developing and revising the NRCS conservation practice standards through its existing science-based and public process.

Q. 10. Will there be opportunities to change the exempt conservation practice list (add or delete certain conservation practices)?

A. 10. Yes. At least annually NRCS, USACE, and EPA will coordinate and meet to evaluate and determine whether to make any changes to the list of exempt conservation practices.

Q. 11. How does a producer implement an exempt practice?

A. 11. The listed conservation practices are exempt when they are implemented in accordance with the applicable NRCS technical standards. Like all section 404(f) exemptions, the listed exemptions are self-implementing, which means that producers are not required to obtain approval from EPA or USACE to use them. While not a requirement, producers may wish to contact a technical expert, such as an NRCS planner, technical service provider, conservation district, resource planner, or other party with similar planning and technical capabilities.

If a producer already has an NRCS conservation plan with listed exempt practices, they need only to follow the national conservation practice standard, design procedures, specifications, job sheets, or any other implementation requirements set forth in the plan. As defined in the standard, this may require following temporary erosion and sediment control best management practices or implementation at appropriate times to avoid disturbance of nesting and migrating species.

Q. 12. Do farmers, ranchers, and silviculturists need to notify the agencies, USACE or EPA, to receive a 404 determination and exemption or to proceed with project implementation?

A. 12. No. Site-specific pre-approval from either USACE or EPA is not necessary before implementing any of the exempted conservation practices. This IR does not change exemption authorities or roles of the agencies.

Q. 13. What is the purpose of the MOU?

A. 13. The MOU further explains the intent of the IR and describes how the three agencies will work together to implement the IR to protect and enhance water quality, ensure consistency and predictability for the public, as well as to describe future efforts to ensure the exemption list is maintained and modified, as appropriate. The MOU also identifies the initial list of exempt conservation practices which can be found at:
http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm.

Q. 14. How does the statement in the MOU: "Even where NRCS is not providing technical assistance, the agency plays an important role in helping to respond to issues that may arise regarding project specific conformance with conservation practice standards" apply?

A. 14. NRCS will continue to provide technical assistance for producers to assist with voluntary conservation activities and to help them with their natural resource management decisions on private, Tribal, and other non-Federal lands, including instances when a producer is planning to implement or is in the process of implementing a conservation practice and wishes to engage NRCS technical assistance to meet the requirements of the conservation practice. NRCS is also available to respond to questions from landowners regarding the implementation of conservation practices. As with all existing CWA section 404(f) exemptions, NRCS will not function in a CWA section 404 compliance role**.** EPA and USACE determine compliance with CWA section 404(f).

STATE AND FEDERAL WATERWAYS AND WETLANDS REGULATIONS WEB LINKS

MDA Public Drainage Associations

- Regulations for Agricultural Drainage Projects (COMAR 15.20.01)

MDE Waters and Floodplains

- Water Quality Regulations (COMAR 26.08.02)
  - Stream Segment Designations (COMAR 26.08.02.08)
- Regulations for Construction on Nontidal Waters and Floodplains (COMAR 26.17.04)

MDE Nontidal Wetlands

- Nontidal Wetlands Regulations (COMAR 26.23.01-06)

MDE Tidal Wetlands

- Tidal Wetlands Regulations (COMAR 26.24.01-04)

U.S. Army Corps of Engineers and U.S. EPA

- Section 404 Regulations (33 CFR 323; 33 CFR 328-330)
  - Part 323—Permits for Discharges of Dredged or Fill Material into Waters of the U.S.
  - Part 328 – Definitions of Waters of the U.S.
  - Part 329 – Definitions of Navigable Waters of the U.S.
  - Part 330 – Nationwide Permit Program

Regulations for the State of Maryland can be found in the Code of Maryland Online (COMAR) at http://www.dsd.state.md.us/comar/comar.aspx.

Federal regulations can be found in the Electronic Code of Federal Regulations (e-CFR) on the Federal Digital Systems at http://www.ecfr.gov/cgi-bin/ECFR?page=browse.