

37. Suitable material: No activity may use unsuitable material (*e.g., trash, debris, car bodies, asphalt, petroleum products, waste concrete, tires, etc.*). Material used for installation or discharged must be free from toxic pollutants in toxic amounts (*See Section 307 of the Clean Water Act*). If treated wood pilings or other treated wood materials are used for structures, they must be pesticide pressure-treated in a manner consistent with the pesticide's EPA-approved labeling, in accordance with standards established by the American Wood Protection Association or the International Code Council – Evaluation Service Reports.
38. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or expected high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*i.e., stream restoration and enhancement activities*).
39. Spawning Areas: Activities, including work in WOTUS, or discharges of fill materials, must be avoided in fish spawning or nursery areas during spawning seasons. 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, fill or downstream smothering by substantial turbidity, etc.*) of an important spawning/nursery habitat (as determined by National Marine Fisheries Service and/or FWS) are not authorized by this permit.
40. Migratory Bird Breeding Areas: Activities in WOTUS that serve as breeding and wintering areas for migratory birds must be avoided to the maximum extent practicable.
41. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
42. Adverse Effects from Impoundments: Adverse effects on the aquatic system due to accelerating the passage of water and/or restricting its flow from the construction of an impoundment must be minimized to the maximum extent practicable. This RGP does not authorize impeding flows.
43. Hazardous Wildlife Attractants On or Near Airports: Permittees must consider the activity's effects on aviation safety and design a project so it does not create a wildlife hazard. All authorized activities that may attract hazardous wildlife shall be consistent with the siting criteria and land use practice recommendations stated in Section 1-3 of the Federal Aviation Administration Advisory Circular 150/5200-33. This document can be found at: http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf
44. Inspections: A copy of the Corps verification letter or signed self-verification form must be provided to any contractor and made available at the project

site to any regulatory representative. The permittee shall permit the Corps or 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 this TMDL RGP. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized by this TMDL RGP, as deemed necessary on a case-by-case basis.

45. **Maintenance of Project:** The permittee must properly maintain the work authorized herein in good condition and in compliance with the terms and conditions of this permit, including maintenance to ensure public safety and integrity of the authorized work. The permittee must develop necessary contingency/adaptive management plans and implement appropriate remedial actions in consultation with the Corps and other appropriate regulatory agencies prior to any work within areas subject to federal jurisdiction. Changes to the original authorized scope or materials may require a new authorization or modification to the original project authorization under this TMDL RGP.
46. **Property Rights:** This TMDL RGP does not convey any property rights, either in real estate or material, or convey 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.
47. **Modification, Suspension, and Revocation:** This TMDL RGP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 *CFR* 325.7. Any such action shall not be the basis for any claim for damages against the United States. The Corps will issue a public notice announcing any changes to the TMDL RGP when they occur; however, it is incumbent upon you to remain informed of any changes to this TMDL RGP.
48. **Special Conditions:** The Corps may impose special conditions on any project authorized under the TMDL RGP that are determined necessary to avoid or minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
49. **False or Incomplete Information:** The Corps has relied upon information and data provided by the permittee in granting authorization pursuant to this permit. A permit verification may be revoked, in whole or in part, if the Corps discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee. In addition, the United States may institute appropriate legal proceedings.
50. **Transfer of Authorization:** If the permittee wants to transfer this authorization, the transferee and permittee must supply the Corps with a written request in

order to transfer authorization under this TMDL RGP. Such transfer is effective upon written approval by the Baltimore District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

51. Duration of Authorization and Expiration Date: Unless further modified, suspended, or revoked, this general permit will be in effect until five years from the effective date listed at the top of page 1. Upon expiration, it may be considered for renewal. Except as provided in General Condition #52 below, work authorized under this TMDL RGP must be completed before the TMDL RGP expires, is suspended, or revoked, whichever date occurs sooner. The Baltimore District will issue a public notice announcing any changes to the Regional General Permit when they occur; however, it is incumbent upon permittees to remain informed of any changes to this TMDL RGP. If this TMDL RGP 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 TMDL RGP at any time it deems necessary to protect the public interest.
52. Grandfather Provision for Expiring TMDL RGP: Activities authorized under this TMDL RGP that have commenced or are under contract to commence the work in reliance upon this authorization, will have twelve months from the date of this TMDL RGP's expiration, modification, or revocation to complete the activity under the terms and conditions of this TMDL RGP. The permittee must be able to document to the Corps' satisfaction that the project was under construction or contract by the appropriate date.
53. Existing or proposed activities associated with an ongoing Corps or EPA enforcement action are not authorized until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.
54. All applicants must submit a Joint Permit Application (JPA) with the documentation listed in Section VI. Proposed activities that qualify for self-verification (*see Section IV*) may proceed without Corps verification once the JPA and required documents are received by the Corps. When Corps verification is required, construction in WOTUS may not begin until the applicant has been notified in writing by the Corps that the activity is eligible for authorization under the TMDL RGP with any special conditions, if applicable.

IX. DEFINITIONS:

Certain terms that are referenced in the TMDL RGP are defined in this section. Several definitions are excerpted from regulation and/or other sources and are so noted. The terms not defined herein shall have the meaning defined in the Corps' regulations at 33 *CFR Parts 320-332* or in the *Section 404(b) (1)* regulations at 40 *CFR Part 230*.

Aquatic Habitat: An area used by aquatic organisms to fulfill their life cycle requirements. Aquatic habitats include saturated materials and spaces, which may include rocks, coral, gravel, interstices, sand, mud, woody debris, riffles, reefs, and burrows. The term can also be used to define an entire ecosystem (*e.g., wetlands, floodplains, streams, estuaries, lakes, etc.*).

Aquatic Resource Functions: *See Functions*

Best Management Practices (BMPs): Policies, practices, procedures or structures implemented to mitigate adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. (82 *Fed. Reg. 1860, 2005 (Jan. 6, 2017)*)

Construction Mats: Construction, swamp, and timber mats (*i.e., "construction mats"*) are generic terms used to describe sheets or mats made from a variety of materials in various sizes that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. Construction mats are considered as fill whether they are installed temporarily or permanently.

Conversion: For the purposes of this TMDL RGP, conversion is defined as a change from one aquatic habitat type to another aquatic or upland habitat type.

The following are examples of activities that are not considered conversion under this TMDL RGP:

- i. Changes in degraded wetland plant communities caused by filling, blocking, or reshaping excavated drainage ditches to restore hydrology determined to have previously existed at the project site would be considered a rehabilitation activity and not conversion, provided the activity results in a gain in aquatic resource function. Historical evidence that the proposed habitat type previously existed at the site is required. Historical evidence collected from aerial photographs, prior delineations, historical maps, forensic soil analysis, and local nearby reference sites may provide details of the former extent and conditions of the aquatic habitat that previously existed on the site.
- ii. Re-establishment of open water habitat and vegetated wetlands in a former aquatic resource where these shallow water habitat and

wetland types can be determined to have previously existed at the project site would not be considered conversion, provided the activity results in a gain in aquatic resource area and functions. See above for appropriate historical evidence that is required to document that the proposed habitat type previously existed at the site.

- iii. Relocation of WOTUS on a project site, including relocation activities that create open water impoundments where existing nontidal wetlands are located and vice versa would generally not be considered conversion, provided there is a net increase in aquatic resource functions and services and the impacted resource is replaced in-kind within the project site.

Cumulative Impacts: The impact on the environment which results from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR 1508.7)

Direct Effects: Effects that are caused by the activity and occur at the same time and place (82 Fed. Reg. 1860, 2006 (January 6, 2017))

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource functions, but may also lead to decline in other resource functions. Enhancement does not result in a gain in aquatic resource area. (33 CFR 332.2)

Fill Material: Material placed in WOTUS where the material has the effect of (i) replacing any portion of a water of the United States with dry land or (ii) changing the bottom elevation of any portion of water. Examples of such 'fill material' include, but are not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in WOTUS. The term fill material does not include trash or garbage. (33 CFR 323.2(e))

Floodplain: An area on a stream's valley floor which is inundated during stream surges (e.g., following rainfall or snowmelt events). Commonly the "floodplain" is referred to as the area of the valley floor which is inundated during flood events.

Functional or Conditional Assessment Methodology (FCAM): The term was covered in detail in the 2008 Mitigation Rule (33 CFR 332.3). For the purposes of the TMDL RGP, an FCAM is a methodology which assesses a range of functions and conditions of a stream or wetland. The FCAM must be approved by the Corps prior to use.

Functions: The term functions means the physical, chemical, and biological processes that occur in ecosystems. (33 *CFR* 332.2)

Functional Lift (or “*Functional Gain*”): Measurable improvement of physical, chemical, and biological aquatic resource functions between existing and proposed conditions as a result of a restoration or enhancement activity at the project site.

High-tide line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that 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 in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. (33 *CFR* 328.3(d))

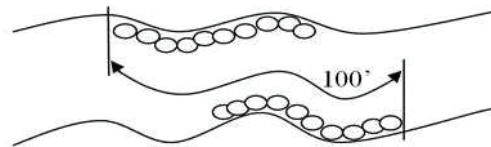
Independent Utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project 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 (82 *Fed. Reg.* 1860, 2006). 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.

Indirect Effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. (82 *Fed. Reg.* 1860, 2006)

Jurisdictional: Areas regulated by the Corps under authorities granted by Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act.

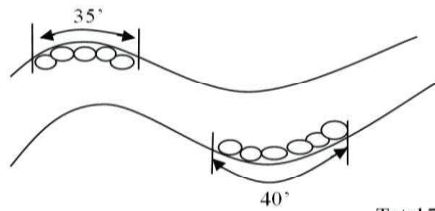
Linear Feet of Stream Impact: For categorical determinations (*e.g.*, 200 linear feet or 5,000 linear feet) involving stream impacts in this RGP, the linear footage of stream impact should be measured as shown in the following plan view drawings (*Note: this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet*):

- i. For regulated work on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both stream banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.
- ii. 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

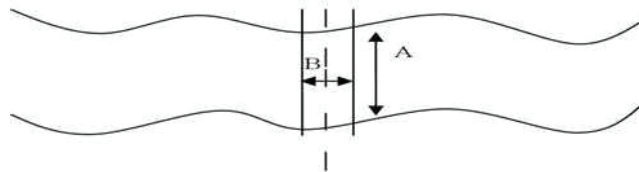
- iii. For traverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of the bank to the top of the opposite bank and from the upstream to downstream



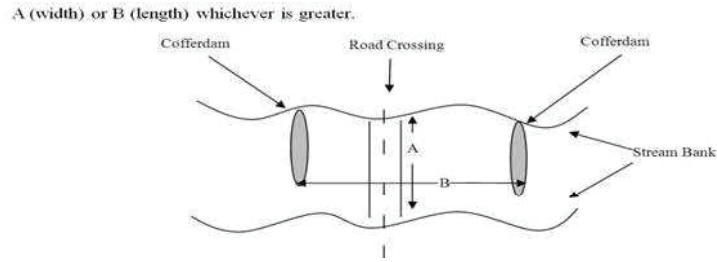
Total 75 Linear Feet

limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

Road Crossing



- iv. 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.



Open Water Habitat: Open water habitats are aquatic systems or bodies of water that lack emergent vegetation, are permanently inundated under normal circumstances, and deeper in nature than an area defined as wetland. Open water habitats are not considered wetlands because they lack one or more of the required parameters as defined in the 1987 Corps of Engineers Wetland Delineation Manual and Regional Supplements. Water depths are often the limiting factor in the presence or absence of emergent vegetation and the underlying substrates are usually interpreted as 'non-soils.' (*Environmental Laboratory 1987 and Cowardin et al. 1989*).

Outfall: An outfall is defined as an outlet, conveyance, or discharge point of WOTUS, including jurisdictional storm drain networks, and outlets of stormwater management facilities.

Permanent Impact: The permanent alteration of an aquatic resource that is expected to remain after a permitted activity's construction activities are completed. Permanent effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, change the use of the waterbody, or cause the conversion of an aquatic area. The acreage of permanent impacts to WOTUS is not a net threshold that is calculated after considering relocation of an aquatic resource that may be used to move an aquatic resource from one place to another on the project site as part of a restoration project or after considering compensatory mitigation that may be used to offset permanent impacts to aquatic functions and services. For example, permanent impacts to a stream bed would include the linear feet and area of streams that are filled or excavated. Permanent impacts include relocation of aquatic resources from one place to another on the project site. WOTUS that are temporarily filled but restored to pre-construction conditions after construction are considered temporary impacts and are not considered in the measurement of permanent impacts.

Relocation: For the purpose of this RGP, relocation is defined as the in-kind replacement of any impacted resource within the project site provided there is a net increase in functions that support or enhance aquatic biological resources. Relocation of impacted resources within existing ecologically important aquatic or upland resources (*e.g., riffle and pool complexes, mature forests*) would not meet the terms of this TMDL RGP when there is not a net gain in functions at the project site as compared to baseline values.

Re-establishment: The manipulation of the physical, chemical, or 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. (33 *CFR* 332.2)

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area. (33 *CFR* 332.2)

Restoration: The manipulation of the physical, chemical, or 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 (33 *CFR* 332.2)

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment. (77 *Fed. Reg.* 10184 (Feb. 21, 2012))

Stormwater Management Facilities: For the purposes of this RGP, stormwater management facilities are those conventional, structural measures including but not limited to, stormwater ponds, infiltration basins, and sand filters which retain water for the purpose of controlling runoff and/or improving the quality (*i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants*) of stormwater runoff.

Stormwater Management Retrofit: For purposes of this RGP, stormwater management retrofit refers to those activities that modify an existing stormwater management facility for the purpose of improving nutrient and sediment removal by the existing structural stormwater management facility that currently has little or no treatment.


Stream Restoration and Enhancement: For purposes of this RGP, stream restoration and enhancement includes any activities for the purpose of restoration and enhancement of stream conditions and functions, which may include improvement of water quality, geomorphology, hydrology, or biology, that support and/or enhance aquatic resources and that support reduction of sediment and/or nutrients at the project site in accordance with an acceptable watershed strategy.

Temporary Impact: The temporary alteration of an aquatic resource that is restored after a permitted activity's construction activities are completed. Temporary impacts include activities in which WOTUS are restored to their preconstruction contours and elevations, and stabilized within 30 days following completion of construction and re-vegetated with native species by the end of the first growing season following completion of the work, such that previous functions and values are restored.

Total Maximum Daily Load (TMDL): A Total Maximum Daily Load, or TMDL, is a “pollution diet” that identifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. *See 33 U.S.C. 1313.*

TMDL Activity: For the purpose of this RGP, a “TMDL Activity” is an activity that has been proposed to meet the Chesapeake Bay TMDL pollution reductions and includes activities that discharge dredged or fill material into WOTUS. The Chesapeake Bay TMDL is available at <https://www.epa.gov/chesapeake-bay-tmdl-document>.

By Authority of the Secretary of the Army:

A handwritten signature in black ink, appearing to read 'John T. Litz', with a stylized, wavy line extending from the end of the signature.

John T. Litz
Colonel, Corps of Engineers
District Engineer