

Public Notice

**U.S. Army Corps
of Engineers**

Baltimore District

ATTN: CENAB-OP-R

P.O. Box 1715

Baltimore, MD 21203-1715

Date: August 15, 2011

Action ID: NAB-2011-00297-B02

Special Public Notice# 11-66

Subject: Issuance of the Regional General Permit-1 authorizing new commercial, research, and educational bivalve shellfish aquaculture activities for a five year period.

The purpose of this notice is to inform the general public that the Baltimore District, U.S. Army Corps of Engineers is issuing Regional General Permit-1 (RGP-1) authorizing new commercial, research, and educational bivalve shellfish aquaculture activities in tidal navigable waters of the United States within the State of Maryland. For a full description of the types of activities authorized by this RGP-1, the applicable waters, and the permit conditions, please see the attached RGP-1.

In accordance with 33 CFR 325.5(c), Regional General Permit-1 (RGP-1) authorizes the work described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

All activities eligible for authorization under this RGP-1 must meet all terms and eligibility criteria, limitations, and general and activity-specific conditions specified in the RGP-1. In order for this RGP-1 to be valid, a person or entity seeking verification under this RGP-1 must obtain all other Federal, state and/or local authorizations required by law prior to commencement of such work in waters of the U.S. Activities that do not comply with the provisions of this RGP-1 may require a Standard Individual Permit.

This RGP-1 provides a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and satisfy other public interest review factors. The RGP-1 is effective as of August 15, 2011.

This RGP-1 will expire on August 15, 2016 unless suspended or revoked.

A copy of this RGP-1 is attached and may also be found on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Wetlands%20Permits/aquaculture.htm>

On February 14, 2011, the Baltimore District issued Special Public Notice 11-12, requesting comments on whether to issue, for a 5-year period, the proposed draft RGP-1. Following a thorough review of all comments received in response to the special public notice, the Corps has decided to issue the RGP-1. The decision to issue the RGP-1 was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed RGP-1 on the public interest. This decision reflects the national concern for the 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 are conservation, economics, aesthetics, general environmental concerns,

wetlands, cultural resources, fish and wildlife resources, flood hazards, floodplain functions, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

The Maryland Department of the Environment has certified compliance of the activities authorized by RGP-1, individually and cumulatively, with the State's Clean Water Act Section 401 water quality standards provided all of the application requirements and lease conditions established by the Maryland Department of Natural Resources are met. The Corps or the State of Maryland may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

The Maryland Department of the Environment has determined that the activities authorized by the RGP-1 are consistent with the enforceable policies of the Maryland Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act. The Corps or the State of Maryland may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

A review of the RGP-1 indicates that processing procedures and conditions are sufficient such that authorized work is not likely to adversely affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. The RGP-1 is conditioned to assure that all authorized activities must comply with the requirements of Section 106 of the National Historic Preservation Act. A review of the RGP-1 indicates that processing procedures and conditions are sufficient such that authorized work will likely result in no more than minimal adverse effects on Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act as amended.

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 Bachur, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203.

This Public Notice is available on the Baltimore District website at:
http://www.nab.usace.army.mil/Wetlands%20Permits/public_notices.htm

WILLIAM P. SEIB
Chief, Regulatory Branch



**US Army Corps
of Engineers**
Baltimore District

Applicant: General Public in the State of Maryland

Effective Date: August 15, 2011

Expiration Date: August 15, 2016

**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT-1
STATE OF MARYLAND**

The Baltimore District of the U.S. Army Corps of Engineers (Corps) hereby issues Regional General Permit-1 (RGP-1) for new commercial, research, and educational bivalve shellfish aquaculture activities in tidal navigable waters of the United States within the State of Maryland.

APPLICABLE WATERS: Applicable waters include the Chesapeake Bay and its tidal tributaries within the State of Maryland downstream of the geographic exclusion lines as defined in Figure 1 and the Atlantic Coastal Bays and their tidal tributaries within the State of Maryland.

Important Note: Bivalve shellfish aquaculture projects proposed within Sinepuxent Bay will receive additional scrutiny to protect sensitive flounder early life stages (larvae, juveniles) and their important nursery habitats. Figure 2 demarcates the Sinepuxent Bay “high scrutiny area”. The following habitat types in the Maryland coastal bays are priorities for protection:

TYPE 1: Shallow (<1 meter at mean low water) unvegetated flats adjacent (within 100 yards or less) to salt marsh, and within salt marsh creeks and guts. The latter habitat is preferred by recently metamorphosed larvae and earliest juveniles (up to 60 mm total length). Preferred substrate is fine-grained, and comprised of fine sand, silt, and clay (Wyanski, 1990).

TYPE 2: Submerged aquatic vegetation (SAV) beds, and shallow sand flats (<1 meter at mean low water), particularly sand flats contiguous to within 100 yards of SAV. As early juvenile flounder reach 60-80 mm total length, the tendency is for movement from Type 1 to Type 2 habitat (Wyanski, 1990; Able & Kaiser, 1994; Burke et al. 1991).

EXCLUDED WATERS: Waters within the Chesapeake Bay and its tidal tributaries upstream of the geographic exclusion lines as defined in Figure 1.

TOTAL ACREAGE LIMIT FOR RGP-1: The total lease acreage allowed under the RGP-1 for all authorized leases combined may not exceed 20,000 acres in the applicable waters of the Chesapeake Bay as defined in Figure 1 and the Atlantic Coastal Bays and their tidal tributaries within the State of Maryland.

ACTIVITIES AUTHORIZED BY RGP-1: The general public is 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/or Section 404 of the Clean Water Act (33 U.S.C. 1344), to perform the following activities subject to the conditions and limitations specified below:

1. The discharge of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, bed maintenance by surface dredging (< 1-foot deep) and harvesting activities necessary for new commercial, research, and educational bivalve shellfish aquaculture activities. All proposed dredged or fill material must be deemed suitable substrate by the Corps and the Maryland Department of the Natural Resources (DNR) under the joint State/Federal shellfish aquaculture review process.
2. The installation, operation, and maintenance of buoys, floats, racks, trays, bags, nets, other temporary protective enclosures, lines, tubes, containers, anchors, stakes, and other structures necessary for new commercial, research, and educational bivalve shellfish aquaculture activities, including temporary wet storage, upweller and downweller devices, and harvesting.
3. The expansion of a previously authorized project area for an existing commercial, research, and educational bivalve shellfish aquaculture operation.
4. This RGP-1 applies to activities authorized under individual on-bottom, submerged land leases administered by 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) of no more than 50 acres in total coverage.
5. This RGP-1 applies to activities authorized under individual water column leases administered by DNR utilizing on-bottom cages of no more than 5 acres in total coverage and off-bottom suspended culture (e.g., floats/mesh cages) of no more than 3 acres in total coverage.

Note: All authorized equipment, gear, and manmade material must be securely anchored and clearly marked. All perimeter corners of the authorized aquaculture project area must be clearly marked and maintained in good condition in accordance with U.S. Coast Guard requirements. This authorization is limited to indigenous species of filter-feeding bivalve shellfish.

Shellfish seeding is defined as the placement of shellfish seed and/or suitable substrate to increase bivalve shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments (e.g., cultch), or other approved materials placed into waters for shellfish culture such as natural materials and concrete in pieces with a maximum diameter of 3-inches. Unsuitable materials for shellfish seeding for purposes of this RGP-1 may consist of, but is not limited to, asphalt, bituminous concrete, slag, tires, wallboard, plastic, wood, metal, crushed glass, trash, and garbage.

ACTIVITIES NOT AUTHORIZED BY RGP-1:

This RGP-1 does **not** authorize the following:

1. Attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as trash or garbage.
2. The cultivation of non-indigenous bivalve shellfish species to the Chesapeake Bay and Coastal Bays of Maryland.
3. Commercial aquaculture activities for crustaceans or finfish.
4. Oyster gardening activities. Oyster gardening involves the grow-out of oyster seed in floats for noncommercial purposes and are typically attached to private piers. These activities will require authorization under another form of Department of the Army permit (e.g., Maryland State Programmatic General Permit).
5. The establishment of Aquaculture Enterprise Zones or preapproved areas of the Atlantic Coastal Bays. These activities will be reviewed and must be authorized under another form of Department of the Army permit.
6. Shellfish habitat restoration activities, including shellfish seeding that are conducted to restore populations of shellfish in navigable waters of the United States. Shellfish habitat restoration activities may be authorized by another form of Department of the Army permit (e.g., nationwide permit# 27 or individual permit).
7. Existing on-going commercial shellfish aquaculture activities. Existing on-going commercial shellfish aquaculture activities may be authorized by another form of Department of the Army permit (e.g., nationwide permit# 48).
8. Fossil shell extraction by mining, dredging, or other methods.
9. Activities that impound water.
10. 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.
11. Activities that do not comply with the conditions, terms, and limitations herein do not qualify for this RGP-1 and will require separate Department of the Army authorizations.
12. Existing or proposed activities associated with an ongoing Corps or EPA 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.
13. Activities that have more than minimal individual and/or cumulative adverse environmental effects.
14. Activities that have more than minimal individual and/or cumulative adverse impact on navigation.

STATE AND LOCAL APPROVALS:

1. In order for this RGP-1 to be valid, a person or entity seeking verification under this RGP-1 (“permittee”, “applicant”, or “prospective permittee”), must obtain the following state and/or local permits prior to commencement of such work in waters of the United States from:
 - Submerged Land Lease and/or Water Column Lease issued by the Maryland Department of Natural Resources (DNR);

- Water Quality Certification and Coastal Zone Management Consistency Determination issued by the Maryland Department of the Environment (MDE);
 - Any other required Federal (e.g., U.S. Coast Guard), State or local government permits.
2. Water Quality Certification: The MDE has certified compliance of the activities authorized by the RGP-1, individually and cumulatively; with the State's Clean Water Act Section 401 water quality standards provided that all of the application requirements and lease conditions established by the Maryland Department of Natural Resources are met. The Corps or the State of Maryland may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
 3. Coastal Zone Management Consistency: The MDE has determined that the activities authorized by the RGP-1 are consistent with the enforceable policies of the Maryland Coastal Zone Management Program, as required by Section 307 of the Coastal Zone Management Act. The Corps or the State of Maryland may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

PROCEDURES:

1. Applicants must obtain written authorization from the U.S. Army Corps of Engineers and any required State approvals for this RGP-1 authorization to be valid and before aquaculture activities can commence or gear can be placed in the water.
2. Prior to completing a permit application, an applicant should consult with the various state and federal agencies that share a role in permitting and providing technical assistance to the aquaculture industry. The applicant should contact the State's Aquaculture Coordinator at the earliest possible date. The Aquaculture Coordinator, who has been designated to be the point of contact for aquaculture permits and licenses in the State of Maryland, will facilitate the submission of a complete application and consultation with the U.S. Army Corps of Engineers (Corps), the National Marine Fisheries Service (NMFS), the Maryland Department of Natural Resources (DNR), the Maryland Department of the Environment (MDE), the U.S. Coast Guard and the Maryland Historical Trust.
3. Those activities in the Potomac River extending beyond the mean low water line must be authorized by the Maryland Department of Natural Resources in order to comply with this RGP-1.
4. On-Bottom Submerged Land Lease Aquaculture Activities: These activities refer to shellfish seeding, rearing, cultivating, transplanting, bed maintenance by surface dredging (< 1 foot deep), and harvesting activities on the waterway bottom. Activities may also include installation of bags, nets, other predator exclusion devices, anchoring systems, and marker buoys associated with the on-bottom submerged land lease aquaculture activities. To obtain authorization for submerged land lease activities covered by this RGP-1, the applicant must complete a Joint Application for a MD DNR Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit. This Joint DNR/Corps application can be obtained by writing to the Department of Natural Resources or telephoning (410) 962-8315. With internet access, this application can also

be obtained by downloading a copy at the following link:

<http://www.dnr.state.md.us/fisheries/oysters/industry/aquaculture/>

5. Water Column Lease Aquaculture Activities: These activities refer to installation and deployment of structures, including cages, floats, racks, trays, buoys, lines, tubes, containers, anchors, and stakes on or within the water column. To obtain authorization for submerged land lease activities covered by this RGP-1, the applicant must complete a Joint Application for a MD DNR Commercial Shellfish Aquaculture Lease and Corps of Engineers Federal Permit. This Joint DNR/Corps application can be obtained by writing to the Department of Natural Resources or telephoning (410) 962-8315. With internet access, this application can also be obtained by downloading a copy at the following link: <http://www.dnr.state.md.us/fisheries/oysters/industry/aquaculture/>
6. The Department of Natural Resources will forward the application to the U.S. Army Corps of Engineers for separate but concurrent review of the aquaculture project. The U.S. Army Corps of Engineers will then conduct an independent review of the application materials.
7. If the proposed activity qualifies for this RGP-1, the Corps will send the applicant a letter acknowledging the qualification and stating that the applicant must obtain all required State permits before the proposed work may begin. The Corps will strive to finalize the RGP-1 permit decision within 60 days of receiving a complete application.
8. Work that does not qualify for this RGP-1 will require submission of an application for an Individual Permit to the Corps (see 33 CFR Part 325.1).
9. The applicant must ensure that all necessary authorizations have been obtained prior to beginning the work.

ACTIVITIES DO NOT QUALIFY FOR THIS REGIONAL GENERAL PERMIT UNLESS THEY SATISFY ALL OF THE ACTIVITY-SPECIFIC AND GENERAL CONDITIONS LISTED BELOW:

ACTIVITY SPECIFIC CONDITIONS:

1. **Private Aids to Navigation:** Prior to commencing the authorized work in navigable waters of the United States, the DNR/permittee must have received an approved “Private Aids to Navigation” permit from the U.S. Coast Guard (USCG). 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 USCG may be reached at the following address and telephone number: Commander, USCG, Fifth Coast Guard District, CG Atlantic Area/D5, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (757) 398-6360. The DNR acting for the permittee shall submit a “Private Aids to Navigation Application” to the Commander of the USCG.
2. **Local Notice to Mariners:** The permittee must ensure that the location of the approved aquaculture activity is published in the U.S. Coast Guard’s “Local Notice to Mariners”. At least three weeks in advance of the proposed placement date, the DNR acting on behalf of the permittee must provide perimeter corner coordinates (latitude and longitude) including minimum depth and other pertinent facility information to the USCG, and request that a Local Notice to Mariners is issued regarding the authorized work. The

USCG may be reached at the following address and telephone number: Commander, United States Coast Guard, Fifth Coast Guard District, CG Atlantic Area/D5, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (757) 398-6360.

3. **Navigation Charts:** The DNR acting on behalf of the permittee must submit a copy of the Corps permit and plans of the aquaculture operation to the National Oceanic and Atmospheric Administration (NOAA) for charting the location of the authorized operation on navigation charts. Their address is NOAA-Marine Chart Division, Nautical Data Branch-N/CS26, 1315 East West Highway-Station 7350, Silver Spring, MD 20910-3282.
4. **Submerged Aquatic Vegetation and Vegetated Tidal Wetlands:** No aquaculture activity, fill, or discharge shall occur within beds of submerged aquatic vegetation (SAV) or vegetated tidal wetlands, nor shall such vegetation be damaged or removed. Should an area become colonized by SAV or vegetated tidal wetlands after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional general permit and additional avoidance and minimization measures may be required to reduce impacts to SAV and vegetated tidal wetlands. Baseline information on the presence of SAV within or near a project site can be obtained from aerial photography survey information from Virginia Institute of Marine Science (VIMS) annual aerial surveys. The materials in a complete application will include and provide the Federal agencies (Corps, NMFS) with accurate and complete project plans showing an overview of the project footprint, overlaying a composite SAV distribution for the five (5) most recent growing seasons as determined by VIMS aerial surveys, areal cover, and species. Local site bathymetry should also be included in the latter information. These surveys can be found online at: <http://web.vims.edu/bio/sav/>
5. **Avoidance and Minimization:** Any authorized aquaculture projects adjacent to SAV or within an area that has become colonized by SAV after the authorized aquaculture activity is installed may require additional avoidance and minimization measures, such as relocating a structure; time of year restrictions; and/or separate Department of the Army authorization to reduce impacts to SAV.
6. **Interactions with 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 gear/equipment/deployed substrate or vessels associated with the aquaculture project must be reported to the National Marine Fisheries Service (NMFS) as follows. If the animal appears alive and uninjured (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 to be removed from the gear, 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 U.S. Army Corps of Engineers 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 in the aquaculture gear or a strike/direct contact between vessels or equipment used for the aquaculture operation and a listed species.

7. **Vessel Buffer:** When listed species are sighted, vessels must attempt to maintain a distance of 50 yards or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500 yard (1500 ft) buffer zone. Any vessel finding itself within the 500 yard (1500 ft) 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. Any interactions must be reported to the NMFS.
8. **Coastal or Wetland Vegetation:** No aquaculture activity or vehicular access to the project site shall occur in such a way as to have more than a minimal adverse impact on coastal or wetland vegetation.
9. **Equipment Anchoring and Lease Marking:** All authorized equipment, gear, and manmade material must be securely anchored. The permittee must clearly and permanently mark all in-water structures and equipment with the permittee's name and the lease number issued by the DNR. These markings must be maintained to ensure that they are readable and visible at all times for identification purposes.
10. **Inspection of Aquaculture Operation:** The permittee must regularly inspect the condition of the structures (e.g., floats, cages, lines, anchors, etc.) associated with this aquaculture operation as authorized herein, to ensure that any structures/gear do not affect safety on the waterway or interfere with general navigation. The permittee shall recover all storm-damaged, accident-damaged, or dislodged equipment within 10 days after it is dislodged and shall either restore their location within the permitted areas as authorized or dispose of such equipment in accordance with state and local ordinances and lease agreements issued by the State of Maryland.
11. **Disposal of Structures, Gear, or Waste:** Disposal of structures, gear or waste products on-site or into waters of the United States is prohibited. All structures, gear and waste products, including dead or dying culture animals, shall be disposed of in an approved upland disposal site in accordance with any Federal, State, and local regulations.
12. **Reporting:**
 - a. The permittee must maintain accurate records and submit an annual report covering the previous year's activities to the Department of Natural Resources before January 31 of each year. The DNR acting on behalf of the permittee shall submit these leaseholder-generated reports and an executive summary to the U.S. Army Corps of Engineers, Baltimore District (ATTN: CENAB-OP-R), P.O. Box 1715, Baltimore, MD 21203; the National Marine Fisheries Service, Habitat Conservation Division, Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403; and the National Marine Fisheries Service, Protected Resource Division, 55 Great Republic Drive, Gloucester, MA 01930 and must include the following minimum information:
 - i. Name of permittee, lease number, point of contact, phone number, and email address;

- ii. Copy of Corps authorization;
- iii. The size of the total lease area (in acres);
- iv. The following information must be included for each lease area:
 - 1. The location of areas within the lease area that were cultivated over the last year;
 - 2. Size of each cultivated area within the lease (in acres);
 - 3. Description of culture method(s) and harvesting method(s);
 - 4. Description of the type of material (e.g., spat-on-shell, shellfish shells, shell fragments, concrete fragments, or other approved materials) that was planted on the lease area.
 - 5. Identify the area in acres and the amount in cubic yards for each type of material (e.g., spat-on-shell, shellfish shells, shell fragments, concrete fragments, or other approved materials) that was planted on the lease area;
 - 6. Identify the date(s) (mm/dd/yy) that the authorized aquaculture equipment, gear, and/or suitable substrate was deployed;
 - 7. Name(s) of cultivated species;
 - 8. A statement regarding the presence or absence of submerged aquatic vegetation within the authorized lease area;
 - 9. A statement regarding any entanglements or interactions with Federally protected threatened and endangered species;
 - 10. A statement whether any temporary protective enclosures such as nets, etc. were used and a description of gear that was used;
 - 11. Information concerning storm damage, loss of equipment and recovery, including identification of the number and type of any structure/equipment/gear that were damaged, lost and/or were not recovered;
 - 12. Provide a signed statement that all perimeter markers are in place and that the work is being performed and maintained in accordance with the terms and conditions of the Corps' authorization.

GENERAL CONDITIONS:

General Requirements:

- 1. **Geographic jurisdiction:** This regional general permit will authorize work undertaken within the geographical limits of the State of Maryland under the regulatory jurisdiction of the Baltimore District.
- 2. **Compliance Certification:** Each permittee who receives an RGP-1 verification letter from the Corps must provide a completed and signed Certificate of Compliance documenting installation of the authorized activity. The Corps will provide the permittee the certification document with the RGP-1 verification letter. Each permittee should retain a copy for their records. The original Certificate of Compliance shall be mailed to: U.S. Army Corps of Engineers, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203-1715 within 30 calendar days of project installation.

3. **Other permits:** Authorization under the RGP-1 does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects:** Projects authorized shall have no more than minimal individual or cumulative adverse environmental effects, as determined by the Baltimore District.
5. **Discretionary authority:** The Baltimore District Corps of Engineers retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 CFR 320.4(a)). This authority is exercised on a case-by-case basis.
6. **Single and Complete Project:** This RGP-1 shall only be applied to single and complete projects. For purposes of this RGP-1, 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. This general permit shall not be used for any activity that is part of an overall project for which an individual permit is required.
7. **Multiple General Permit Authorizations:** This RGP-1 may be combined with any Corps general permit (e.g., Maryland State Programmatic General (MDSPGP) or Nationwide Permits (NWP)) to authorize a single and complete project. However, the project must meet the specific requirements of each general permit and the total extent of project impacts must not exceed the acreage limit of the general permit with the highest specified acreage limit.
8. **Permit On-Site:** The permittee shall ensure that a copy of the RGP-1 and the accompanying authorization letter are at the project office at all times, whenever work is being performed, and that all personnel with operational control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. 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. No contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

National Concerns:

9. **Historic Properties.** Activities authorized by this RGP-1 must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. (a) In cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), the activity is not authorized, until the requirements of Section 106 of the NHPA have been satisfied. (b) Federal applicants should follow their own procedures for complying with the requirements of Section 106 of the NHPA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal applicants must submit a written statement to the Corps if the activity may have the potential to cause effects to any

historic properties listed or determined to be eligible for listing on, or potentially eligible for listing on the NRHP, including previously unidentified properties. For such activities, the statement must identify 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. regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the NRHP (see 33 CFR 330.4(g)). The Corps shall comply with the current procedures for addressing the requirements of Section 106 of the NHPA. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the Corps shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

10. **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.
11. **Discovery of Previously Unknown Artifacts:** If you discover any previously unknown historic, cultural, or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
12. **National Lands:** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, or National Park Service.
13. **Endangered Species:** The Corps has concluded programmatic consultation under the Endangered Species Act for this regional general permit. No activity is authorized under

this RGP-1 that is likely to adversely affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which is likely to destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP-1 which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the National Oceanic and Atmospheric Administration (NOAA) Fisheries Protected Resources Division, 55 Great Republic Drive, Gloucester, Massachusetts, 01930-2276. The Corps will evaluate applications to determine if they meet the conditions of this RGP-1 and are consistent with the informal programmatic consultation completed and will provide that finding to National Marine Fisheries Service Protected Resources Division (NMFS PRD) for concurrence. If concurrence is obtained, then no further consultation under ESA Section 7 is required. If it is determined that an application is not consistent with the RGP-1 and/or not consistent with the programmatic informal consultation, then separate consultation under ESA Section 7(a)(2) will be required. Authorization of an activity by this RGP-1 does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of a separate authorization (e.g., an ESA Section 10 permit, a Biological Opinion, with “incidental take” provisions, etc.) from the NOAA Fisheries, both lethal and non-lethal “takes” of protected species are in violation of the ESA.

14. **Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act:** The Corps has concluded programmatic consultation under these authorities on this regional general permit. Upon receipt of a complete application, the Corps will coordinate/consult with NMFS. EFH consultation with NMFS shall be fully in accordance with required legal procedures under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996). The MSA requires Federal agencies such as the Corps to consult with the Secretary of Commerce, through National Marine Fisheries Service (NMFS), regarding any action or proposed action authorized, funded, or undertaken by the Federal agency that may adversely affect EFH identified under the MSA. The EFH regulations, 50 CFR Section 600.920, outline that consultation procedure. The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Maryland waters. If further EFH consultation is needed based on evaluation and consultation with NMFS, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded. The EFH final rule published in the Federal Register on January 17, 2002 defines an adverse effect as; “any impact which reduces the quality and/or quantity of EFH”. The rule further states that: An adverse effect may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from action occurring within EFH or outside EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

15. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. 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, U.S. Fish and Wildlife Service).
16. **Federal Navigation Project:** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
17. **Navigation:** (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee’s expense on authorized aquaculture activity and facilities in navigable waters of the United States. (c) 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, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. (d) 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 of Engineers, 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.
18. **Fills Within Floodplains:** The authorized activity must comply with applicable requirements of any local floodplain ordinances.
19. **Environmental Justice:** Activities authorized under this RGP-1 must comply with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”.
20. **Federal Liability:** In issuing this RGP-1, 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 RGP-1; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.
21. **Wave Wash:** The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RGP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no responsibility or liability of any kind for any

such damage and agrees that it shall not hold the United States liable or involve the United States in any actions or claims regarding any such damages.

General Conditions for Minimization of Environmental Impacts:

22. **Avoidance and Minimization:** The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site.
23. **Heavy Equipment in Wetlands:** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
24. **Temporary Fills:** All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction.
25. **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).
26. **Suitable material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for installation or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act (CWA)).
27. **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. The activity must be constructed to withstand expected high flows. The activity must not permanently restrict or impede the passage of normal or expected high flows.
28. **Spawning Areas:** 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 habitat are not authorized by this permit.
29. **Waterfowl Breeding Areas:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. An aquaculture activity will not meet the terms for this RGP-1 if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding, or resting activities by migratory birds identified at 50 CFR 10.13.
30. **Other Aquatic Resources:** An aquaculture activity will not qualify for this RGP-1 if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms, or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.
31. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.

General Procedural Conditions:

32. **Inspections:** A copy of this permit and any verification letter must be provided to any contractor and made available at the project site to any regulatory representative. All permitted aquaculture operations must be open to inspection during regular hours of

operation by the Corps or any officer authorized to enforce the provisions of this permit. The Baltimore District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized by this RGP-1, as deemed necessary on a case-by-case basis.

33. **Proper Maintenance:** The permittee must properly maintain the work authorized herein in good condition and in conformance with the terms and conditions of this permit, including maintenance to ensure public safety.
34. **Property rights:** This Regional General Permit 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.
35. **Modification, suspension, and revocation:** This RGP-1 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.
36. **Restoration directive:** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
37. **Special Conditions:** The Baltimore District may impose other special conditions on a project pursuant to this RGP-1 that are determined necessary to 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.
38. **False or incomplete information:** In granting authorization pursuant to this permit, the Baltimore District has relied upon information and data provided by the permittee. If, subsequent to notification by the Baltimore District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
39. **Abandonment:** The permittee must provide the Baltimore District with thirty (30) day advance written notification of the intent to abandon the activity authorized under this RGP. Upon abandonment of the activity authorized by this permit, all structures and equipment used to support the aquaculture operation must be completely removed from the waterway and the entire area restored to pre-construction conditions to the satisfaction of the Baltimore District.
40. **Enforcement cases:** This RGP does not apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps or EPA 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.
41. **Transfer of authorization:** In order to transfer authorization under this RGP-1, the transferee or permittee must supply the Baltimore District with a written request. 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.

42. **Binding effect:** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
43. **Changes to State Statutes, Regulations, or General Permits:** The Corps will review proposed changes to the State program statutes and regulations, including the development of State general permits, to determine whether, and to what extent, the proposed changes will affect this RGP-1. The Corps will determine whether or not to continue use of the RGP-1 under the modified State statutes, regulations, or general permits based on considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of this RGP-1, in accordance with Department of the Army regulations.

Duration of Authorizations and Permit Expiration:

44. **Duration of Authorization:** This RGP expires five years from the effective date listed at the top of page 1. Activities authorized under the RGP-1 must be completed by August 15, 2016. The Baltimore District will issue a public notice announcing any changes to the Regional General Permit when they occur; however, it is incumbent upon you to remain informed of any changes to the RGPs. Activities authorized under this RGP-1 that have commenced or are under contract to commence the work in reliance upon this authorization, will remain authorized provided the activity is completed within twelve months of the date of this RGP-1's expiration date. If a specific RGP-1 verification has been modified, suspended, or revoked, this provision does not apply. The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date.
45. **Expiration of RGP-1:** Unless further modified, suspended, or revoked, this general permit will be in effect until August 15, 2016. Upon expiration, it may be considered for revalidation. Upon expiration of this RGP-1, the continued operation of existing commercial shellfish aquaculture activities that received written verification from the Corps under this RGP-1 would be subject to the terms and conditions of nationwide permit# 48 until expired.

By Authority of the Secretary of the Army:

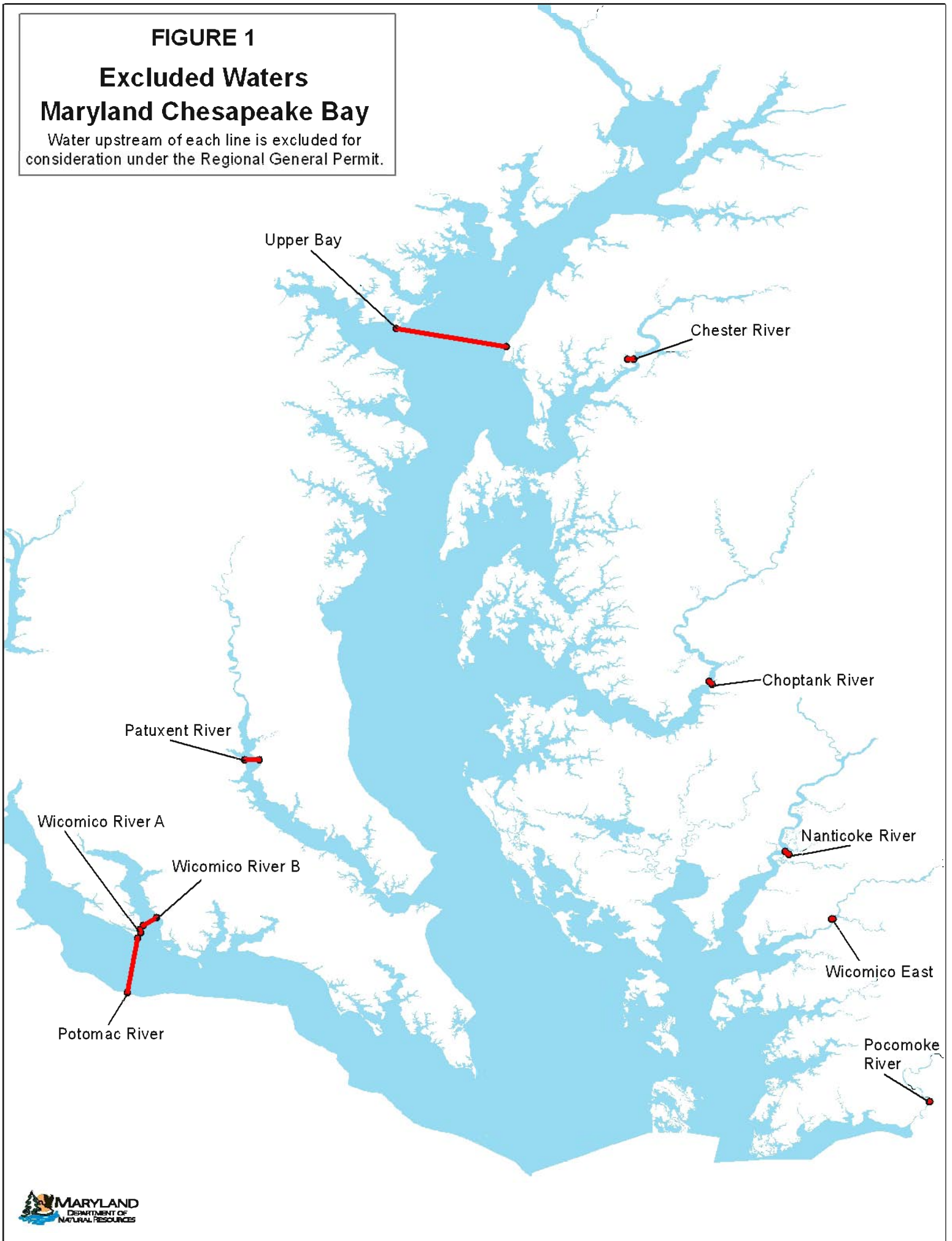


David E. Anderson
Colonel, Corps of Engineers
District Engineer

FIGURE 1

**Excluded Waters
Maryland Chesapeake Bay**

Water upstream of each line is excluded for consideration under the Regional General Permit.



**Department of the Army
Regional General Permit-1
State of Maryland
Excluded Waters - Maryland Chesapeake Bay**

Water upstream of the line connecting the following latitude & longitude coordinates for each waterway is excluded from eligibility under the Regional General Permit -1

Upper Bay	39	11.715	39.195250		76	26.607	-76.443450
	39	10.043	39.167383		76	16.456	-76.274267
Chester River	39	8.864	39.147733		76	5.205	-76.086750
	39	8.867	39.147783		76	4.615	-76.076917
Choptank River	38	39.074	38.651233		75	57.618	-75.960300
	38	38.729	38.645483		75	57.379	-75.956317
Patuxent River	38	31.783	38.529717		76	40.637	-76.677283
	38	31.761	38.529350		76	39.264	-76.654400
Potomac River	38	10.242	38.170700		76	51.504	-76.858400
	38	15.274	38.254567		76	50.535	-76.842250
Wicomico River A	38	15.72	38.262000		76	50.295	-76.838250
	38	16.066	38.267767		76	50.354	-76.839233
Wicomico River B	38	16.423	38.273717		76	50.059	-76.834317
	38	17.163	38.286050		76	48.831	-76.813850
Nanticoke River	38	23.239	38.387317		75	50.588	-75.843133
	38	22.967	38.382783		75	50.232	-75.837200
Pocomoke River	38	0.127	38.002117		75	37.263	-75.621050
	38	0.126	38.002100		75	37.169	-75.619483
Wicomico River (East)	38	17.003	38.283383		75	46.294	-75.771567
	38	17.003	38.283383		75	46.133	-75.768883

NMFS HIGHER SCRUTINY REVIEW - MD GP-1 AQUACULTURE PROPOSALS, SINEPUXENT BAY

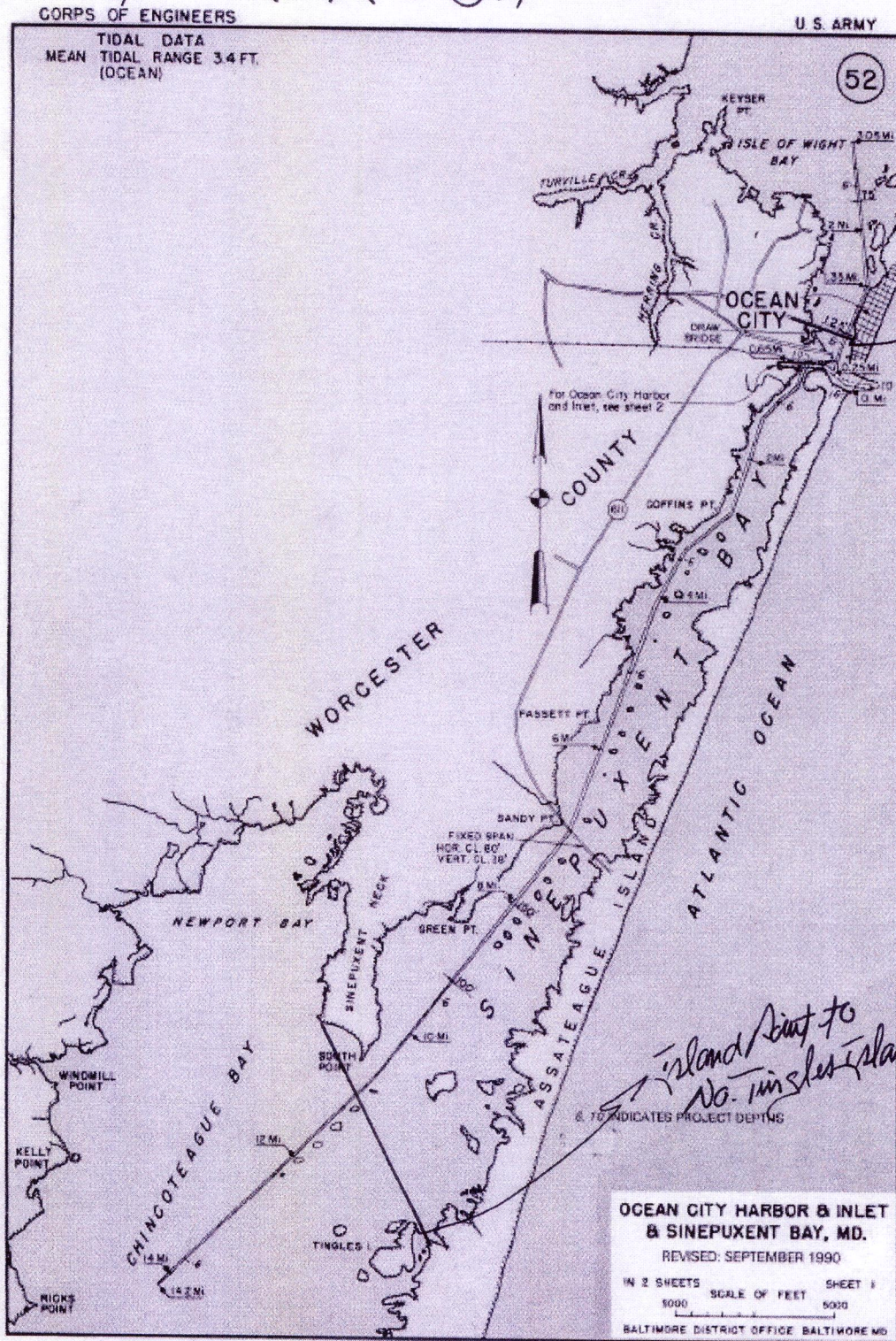


Figure 2
 Regional General Permit-1
 Sinepuxent Bay, State of Maryland
 National Marine Fisheries Service High Scrutiny Review Area