

ENCLOSURE 2

Proposed 2017 Nationwide Permit Regional Conditions for Maryland

I. Nationwide Permit Specific Regional Conditions:

Note: see “Section II. Nationwide Permit General Regional Conditions” for additional regional conditions that are applicable to multiple and/or all NWPs. Unless otherwise noted, all regional conditions listed in this enclosure are applicable for activities in Maryland.

Nationwide Permit #3 Maintenance

Restricted use of Nationwide Permit (NWP) 3 Maintenance in Maryland - NWP 3 is duplicative with the Maryland State Programmatic General Permit (MDSPGP). However, the portion of NWP 3(a) 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 may still be used in Maryland.

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 32 and regional general condition 32a) for that portion of NWP 3(a) applicable to 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 that is effective in Maryland, as specified below.
 - a. For work associated with NWP 3(a), that occurs along federally authorized channels the permittee must 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/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>
2. **Essential Fish Habitat Regional Conditions:** For activities in all tidal and nontidal coastal plain streams 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.
 - a. **NWP 3(a)-Repair, Rehabilitation, or Replacement Activities:**
 - i. The PCN will be coordinated with NMFS, when the project affects more than 10,000 square feet of tidal wetlands and/or tidal waters.

- ii. For culvert replacement and repair activities, are 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.
- iii. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer (See general condition 32 and regional general conditions 32a) 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.
 - b. A PCN shall:
 - 1. 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
 - 2. 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

Nationwide Permit #4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities

1. 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 #23 Approved Categorical Exclusions

Permit Specific Regional Conditions –

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 32 and regional condition 32a)

Nationwide Permit #25 Structural Discharges

Permit Specific Regional Conditions –

1. For any activity which includes the pouring of concrete, the sealed forms shall remain in place until the concrete is set.

Nationwide Permit #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities

Permit Specific Regional Conditions –

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 32 and regional condition 32a).
3. **Essential Fish Habitat Regional Conditions** (For activities in all tidal and nontidal coastal plain streams 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.):
 - a. 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 #30 Moist Soil Management for Wildlife

Permit Specific Regional Conditions –

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 32 and regional general conditions 32a).

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; 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.
 - d. Activities that cause interference with navigation. No work may extend into anchorage areas; customary boating channels; navigation fairways; marked, lighted, or charted channels; or State or Federal Navigation Channels.
 - e. Activities that adversely affect ingress to and egress from neighboring properties.
 - f. Commercial aquaculture activities for crustaceans or finfish.
 - g. 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).

- h. Activity or vehicular access to the project site that have more than a minimal adverse impact on coastal or wetland vegetation.
 - i. Oyster gardening activities.
 - j. The establishment of Aquaculture Enterprise Zones or preapproved areas of the Atlantic Coastal Bays.
 - k. Activities that impound water.
 - l. 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.
 - m. Activities that use unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete, slag, tires, wallboard, plastic, wood, metal, crushed glass, trash, and garbage).
 - n. 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.
 - o. 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.
2. **Shellfish Certification:** Shellfish introduced into tidal waters of the Chesapeake Bay and its tributaries, or in the Maryland coastal bays and their tributaries, must be certified (under Maryland standards) as being disease and parasite free.
 3. **Vertical and Horizontal Lines:** The total number of vertical and horizontal lines must be minimized to the maximum extent practicable.
 4. **Private Aids to Navigation:** If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, the permittee must prepare and provide for United States Coast Guard (USCG) approval (address below), a Private Aids to Navigation Application (CG-2554) prior to commencement of the authorized work. The form can be found at this link: http://www.uscg.mil/forms/cg/CG_2554.pdf.

Commander (dpw)
Fifth Coast Guard District
431 Crawford Street, Room 100
Portsmouth, VA. 23704-5504
Attn.: Private Aids to Navigation
Email address: CGD5Waterways@uscg.mil
Fax Number: (757) 398-6303

The permittee must provide the Corps with a copy of the USCG's approval of aids to navigation within 30 days of the date of issuance by the USCG.

- 5. Local Notice to Mariners:** Prior to the proposed project start/placement date, the permittee must provide coordinates (latitude and longitude) for all perimeter corners of the approved lease area, including minimum depth and other pertinent facility information to the USCG, and request that a Local Notice to Mariners (LNM) be issued regarding the authorized work. This written request can be done either by e-mail, letter or fax to:

Commander (dpw)
Fifth Coast Guard District
431 Crawford Street, Room 100
Portsmouth, VA. 23704-5504
Attn.: LNM
Fax Number: (757) 398-6303

No authorized work may commence until this required USCG LNM has been issued by the USCG, identifying the location and schedule for commencement of the approved aquaculture work.

No authorized aquaculture work may commence until the permittee informs the Corps in writing, with the date that the USCG publishes the LNM.

- 6. Navigation Charts:** The permittee must submit a copy of the Corps permit and plans for 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.
- 7. 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.
- 8. 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.

9. **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

10. Reporting:

- a. The permittee must maintain accurate records and submit an annual report covering the previous year's activities to the Corps before January 31 of each year. Annual reports must be submitted to: U.S. Army Corps of Engineers, Baltimore District (ATTN: Regulatory Branch), 10 South Howard Street, Baltimore, MD 21201; the National Marine Fisheries Service, Habitat Conservation Division, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, 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, Corps permit number, 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) The total number of vertical, horizontal lines, buoys and other structures utilized on site.
 - 6) 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;
 - 7) Identify the date(s) (mm/dd/yy) that the authorized aquaculture equipment, gear, and/or suitable substrate was deployed;
 - 8) Name(s) of cultivated species;
 - 9) A statement regarding the presence or absence of submerged aquatic vegetation within the authorized lease area;
 - 10) A statement regarding any entanglements or interactions with Federally protected threatened and endangered species;
 - 11) A statement whether any temporary protective enclosures such as nets, etc. were used and a description of gear that was used;
 - 12) 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;
 - 13) 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.

11. **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.
12. If the project does not have a prior authorization from the Corps in effect as of March 17, 2017, the prospective permittee must submit a pre-construction notification (PCN). The Joint State/Federal Application for a Commercial Shellfish Aquaculture Lease and Federal Permit (Joint Application) shall serve as the PCN.

The application is located at: <http://dnr2.maryland.gov/fisheries/Documents/Commercial-Shellfish-Lease-Application.pdf>.

The instructions are located at:

<http://dnr2.maryland.gov/fisheries/Documents/Shellfish-Lease-Application-Instructions.pdf>

The Maryland Department of Natural Resources will forward the Joint Application to the Corps. Alternatively, the applicant may submit the application directly to the Corps. The Corps' review period shall commence with the receipt of a completed PCN at the Corps District Office.

13. In addition to the information required by NWP 48 and regional condition 32a, the PCN must include:
 - i. A copy of the lease or permit issued by the appropriate state government agency if a lease or permit has been issued at the time of PCN submittal;
 - 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, including approximate latitude/longitude coordinates of the project footprint;
 - 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 water depths (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:
 - a) Description of proposed activities, including site preparation, and harvest activities (e.g., dredging, harrowing and dragging of

- bottom substrate, tonging), and a description of how structures and vertical and horizontal lines would be arranged throughout the project area, spacing of rows and spacing between structures;
- b) Types of aquaculture gear to be used, including anchoring devices, maximum number of vertical and horizontal lines, and buoys;
 - c) Acreage of project footprint affecting bottom and water column;
 - d) Impacts (temporary and/or permanent) to aquatic areas required for access to the aquaculture facility/gear, and remedial measures proposed to restore temporarily affected aquatic areas;
 - e) 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).
- vi. If the applicant proposes work in waters adjacent to property owned by others, the applicant must provide proof of notification to adjacent property owners via certified mail, return receipt requested. In addition, the applicant may include any statement of no objection or comments from the adjacent property owner(s).
- vii. The PCN must include details that clearly identify how adverse effects to navigation and/or ingress to and egress from neighboring properties has been avoided.

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 proposed 2017 NWPs published in the *Federal Register* on June 1, 2016 (81 FR 35186), 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.

Nationwide Permit General Condition #17 Tribal Rights

Within the Baltimore District's geographic area of review, no application reviewed by the District is considered complete until completion of tribal coordination. The prospective

permittee of an application reviewed by the Baltimore District shall not begin the activity until notified in writing by the District Engineer that the activity may proceed under the nationwide permit with any special conditions imposed, if applicable.

Nationwide Permit General Condition #18 *Endangered Species*

Regional Condition 18b - Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species (Applicable to the District of Columbia and Maryland):

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 and Maryland): 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 and the District of Columbia having Salinity Levels Less Than 6 Parts Per Thousand (ppt):

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 1 μ Pa or 206dB peak re 1 μ Pa at a distance of >10m from the pile being installed; and levels >155dB peak re 1 μ Pa 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 1 μ Pa) 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 #32 Pre-Construction Notification

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *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 32, (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*, 10*, 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, 52, A, and B.

**These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions 18, 22 & 32, and the regional conditions to identify these circumstances.*

Regional General Conditions 32a

1. 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/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>

2. 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/Missions/Regulatory/PermitTypesandProcess.aspx>). 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 32:
 - 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
 - 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.
 - 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.
 - 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.
3. 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.
4. 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 and Maryland. 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.

5. Any requests to waive the 300 linear foot limitation for the intermittent and ephemeral streams for NWP 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, and B 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 32.
 - 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)).
6. 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.

Nationwide Permit General Condition for Aerial Transmission Lines Across Navigable Waters

1. 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

- a. 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;
 - b. 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
 - c. 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.
2. 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.

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.