

**DEPARTMENT OF THE ARMY PERMIT**  
**DRAFT REGIONAL GENERAL PERMIT**  
**FOR**  
**CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD (TMDL) ACTIVITIES**

**PERMIT NO:** NAB-2014-00602

**EFFECTIVE DATE:**

**EXPIRATION DATE:**

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Baltimore District

The Baltimore District of the U.S. Army Corps of Engineers (Corps) is proposing to issue this Total Maximum Daily Load Regional General Permit (TMDL RGP) for activities in waters of the U.S., including jurisdictional wetlands that are part of an overall watershed strategy (e.g., Chesapeake Bay TMDL Watershed Implementation Plan (WIP)) whose purpose is to meet nutrient and sediment load reduction targets under the Chesapeake Bay TMDL mandates. Activities authorized by this TMDL RGP include, but are not limited to, the retrofit of existing stormwater management facilities, the retrofit of existing stormwater management outfalls, and the restoration and enhancement of non-tidal streams and non-tidal wetlands. The purpose of stream and wetland restoration and enhancement projects must be to meet nutrient and sediment load reduction targets under the Chesapeake Bay TMDL and to restore and/or enhance aquatic resource functions at the project site.

**AUTHORITIES:** Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material into waters of the United States.

**APPLICABLE WATERS:** Applicable waters include nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, the District of Columbia, and military installations in northern Virginia within the geographic boundaries of the Baltimore District Corps of Engineers Regulatory Branch.

**EXCLUDED WATERS:** This RGP does not authorize discharges or work into waters of the U.S. channelward of the high tide line. Additional excluded waters of Maryland within the regulatory geographic boundary of the Corps Philadelphia District regulatory include adjacent and contiguous jurisdictional wetlands to Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the

dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north.

### **IMPACT AREA THRESHOLDS FOR TMDL RGP:**

The total temporary and permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) for the overall project must not exceed 1.0 acre (43,560 square feet). Of this, no more than 2,000 linear feet of streams, rivers, open waters, and/or a combination thereof may be impacted. In addition, the following conversion thresholds must not be exceeded:

- A. **Wetland Conversion:** The conversion of jurisdictional wetlands to uplands or other aquatic habitat type (e.g., streams, rivers, open water, etc.) must not exceed 5,000 square feet.
- B. **Converting non-wetland aquatic resources to uplands:** The conversion of other waters (excluding wetlands) to uplands must not exceed 5,000 square feet or 200 linear feet of streams, rivers, and/or open waters.
- C. **Converting non-wetland aquatic resources to open water or other aquatic habitat type:** The conversion of other waters (excluding wetlands) to open water or other aquatic habitat type must not exceed 10,000 square feet of jurisdictional waters or 500 linear feet of streams and rivers.

This TMDL RGP applies to the discharge of dredged or fill material and/or the placement of structures that are components of a single and complete project, including all attendant features both temporary and/or permanent, which individually and/or cumulatively result in direct or indirect impacts as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. Authorization under the TMDL RGP requires compliance with all of the terms and conditions of the TMDL RGP and that the activities authorized have only minimal individual and cumulative adverse effects on the environment. All individual impacts for a single and complete project will be added cumulatively to determine eligibility for authorization under the TMDL RGP.

**ACTIVITIES AUTHORIZED BY TMDL RGP:** This general permit authorizes the following activities subject to the conditions and limitations contained herein for the purpose of meeting nutrient and sediment load reductions under the Chesapeake Bay TMDL mandates.

1. To the extent that a Corps permit is required, activities authorized by this TMDL RGP, include but are not limited to, the retrofit of existing stormwater management facilities, the retrofit of existing stormwater management outfalls and the restoration and enhancement of non-tidal streams and non-tidal wetlands.
2. The project must be part of an overall watershed strategy (e.g., Chesapeake Bay TMDL WIP) to meet nutrient and sediment load reduction targets for existing development under the Chesapeake Bay TMDL.
3. Stream reaches where stream restoration and enhancement projects are proposed must meet one or more of the following:

- a. Geomorphic evidence of active stream degradation (i.e., Bank Erosion Hazard Index (BEHI) score of Moderate, High, Very High, Extreme;
  - b. A Benthic Index of Biotic Integrity (IBI) score of fair or worse (Fair=30-50%; Poor=17-30%, and Very Poor=0-17%) and a Rapid Bioassessment Protocol (RBP) score of marginal to poor;
  - c. Evidence of floodplain disconnection (e.g., bank height ratio, entrenchment ratio, stage/Q relationship, Hydrologic Engineering Center River Analysis System (HEC-RAS) or other hydraulic model);
  - d. Other appropriate metric that demonstrates water quality impairment and stream degradation of the project reach.
4. Stream and wetland restoration and enhancement projects must restore and/or enhance aquatic resource functions at the project site in addition to providing reduction of sediment and/or nutrients in accordance with the TMDL goals and watershed strategy.
  5. This TMDL RGP authorizes the relocation and/or conversion of nontidal waters, including nontidal wetlands and nontidal streams, on the project site when proposed as part of a stream or wetland restoration or enhancement activity provided there is a net increase in aquatic resource functions and services and provided they are within thresholds established by this RGP.
  6. All retrofit activities are limited to the minimum necessary to reduce nutrient and sediment loads for the purpose of TMDL nutrient and sediment reductions. All stream and wetland restoration and enhancement activities are limited to the minimum necessary to reduce nutrient and sediment loads for TMDL purposes and to restore and/or enhance aquatic resource functions.
  7. This TMDL RGP also authorizes temporary construction structures, fills, and work necessary to construct the TMDL activity. The use of construction mats is considered to be a discharge of fill material and must be included in the quantification of impact area authorized by the TMDL RGP. Authorized temporary fills must be the minimum necessary to complete the project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of clean materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations and revegetated with native wetland species within 30 days following completion of the work. Authorized temporary fills may not be used for the purpose of on-going project access and maintenance activities. Access fills are considered to be permanent impacts when used in an on-going manner to monitor or conduct maintenance at the project.

**ACTIVITIES NOT AUTHORIZED BY TMDL RGP:** This TMDL RGP does **not** authorize the following:

1. Stream or wetland restoration and enhancement activities that are implemented for the sole purpose of nutrient or sediment reduction. The restoration or enhancement activity must also improve the aquatic habitat functions of the water of the U.S.
2. Activities in stable streams with BEHI score of Low.
3. Activities in waters that have an IBI score greater than 50% and a RBP score of suboptimal to optimal.
4. Stream channelization activities.
5. Construction of any new stormwater management facilities in aquatic resources, including streams or wetlands.
6. Construction of earthen or stone cofferdams or causeways due to problems with excessive sedimentation of the waterway during installation and removal of the fill.
7. Stream restoration and enhancement projects that are primarily designed to protect public infrastructure using bank armoring or riprap are not authorized.
8. Stream and wetland restoration and enhancement projects that are solely designed to improve aquatic habitat functions and services must be reviewed under Nationwide Permit 27.
9. Activities for the purpose of restoring streams damaged by acid mine drainage.
10. Activities that are built to offset, compensate, or otherwise mitigate for an impact to a waters of the U.S. elsewhere.
11. Activities that do not comply with the conditions, terms, and limitations herein do not qualify for this TMDL RGP and will require separate Department of the Army authorizations.
12. Single and complete projects, including all attendant features both temporary and permanent, which will result in more than one acre (43,560 square feet) of impact, both direct and indirect, to waters of the United States, including jurisdictional wetlands or 2,000 linear feet of streams, rivers, and other open waters.
13. Existing or proposed activities associated with an ongoing Corps or Environmental Protection Agency enforcement action until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.
14. Activities that have more than minimal individual and/or cumulative adverse environmental effects.
15. Activities that have more than minimal individual and/or cumulative adverse impact on navigation.

**STATE AND LOCAL APPROVALS:** In order for this TMDL RGP to be valid, a person or entity seeking verification under this TMDL RGP (“prospective permittee”), must obtain all other required Federal, state, or local permits.

**APPLICATION SUBMITTAL:** All applications for regulated activities under this TMDL RGP shall be completed using the established Corps of Engineers permit application procedures for that locality (see <http://www.nab.usace.army.mil/Missions/Regulatory.aspx>). In Maryland, a Joint

Federal/State application must be submitted to the Maryland Department of the Environment. Where required by the terms of this TMDL RGP, an application and supporting documents for work in the District of Columbia and for work in northern Virginia military installations must be submitted to the Baltimore District Regulatory Branch. The Corps encourages pre-application meetings to facilitate processing of the application.

1. The contents of the application must include the following written information, in addition to the information specified in the application.
  - a. Documentation that describes the watershed strategy and how it supports selection of the project site. A watershed strategy for screening and prioritizing TMDL projects is required to focus retrofit and restoration efforts at locations that will provide the most benefit in terms of sediment and nutrient reduction, as well as improvement to stream function at the project site. The watershed strategy shall incorporate upland best management practices, upland stormwater retrofits, and Low Impact Development (LID) practices to the maximum extent practicable prior to impacting waters of the U.S.
  - b. Proper design of stream restoration and enhancement projects requires an assessment of current site conditions, watershed conditions, and a careful selection of available restoration techniques. Stream restoration and enhancement project design must be developed through a functional assessment process, such as the stream functions pyramid<sup>1</sup> (Harman et al., 2011) or functional equivalent. Therefore, an application for stream and restoration and enhancement projects must demonstrate that the necessary assessments have been conducted. The application must include the following function-based assessment information:
    - i. Programmatic goals and objectives
    - ii. Site selection and watershed assessment
    - iii. Site-level function-based assessment, including representative geo-referenced photographs
    - iv. Specific restoration design objectives
    - v. The restoration design approach and alternative design analysis
    - vi. Project design review
    - vii. Post-construction monitoring plan demonstrating that functional lift is occurring compared with baseline values.In general, the level of detail needed to perform a function-based assessment will be based on the size and complexity of the proposed project.
  - c. A restoration plan and narrative identifying how all temporary fills and structures will be removed and the area restored to pre-project conditions.
  - d. 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.

- e. Evidence that the prospective permittee has already contacted and received a response from the U.S. Fish and Wildlife Service concerning any Federally listed Threatened and Endangered Species that may be affected by the proposed activity.
2. Corps application submittal thresholds:
- a. The permittee is not required to submit an application to the Corps prior to commencing the work for the following activities:
    - i. All retrofit activities on existing stormwater management facilities;
    - ii. All retrofit activities performed on existing concrete stream channel and concrete stormwater management outfalls;
    - iii. All activities to restore or enhance existing piped stream channels; and
    - iv. Projects with total temporary and permanent impacts not to exceed 200 linear feet of stream channel or 5,000 square feet of nontidal waters of the U.S. and zero impacts to wetlands.
  - b) The permittee is not required to submit an application to the Corps prior to commencing the work when the total temporary and permanent impacts for the single and complete project meet the following impact thresholds. However, the permittee must submit post-construction reporting to the Corps within 90 days of project completion, including: (1) Name and 8-digit U.S. Geological Survey Hydrologic Unit Code of the stream; (2) Location of the completed work (latitude and longitude); (3) Dates during which the work occurred; (4) The function-based assessment information outlined in number 1(b) above; (5) As-built plans; and (5) A set of geo-referenced photographs that show the pre-construction and post-construction conditions for the project. These documents must be submitted to the Corps within 90 days of project completion.
    - i. Greater than 200 linear feet but not exceeding 500 linear feet of stream channel, or
    - ii. Greater than 5,000 square feet but not exceeding 10,000 square feet of waters of the U.S., or
    - iii. Not more than 5,000 square feet of nontidal wetlands.
  - c) The permittee must submit an application to the Corps prior to commencing the activity if the total temporary and permanent impacts for the single and complete project are:
    - i. Greater than 500 linear feet but not exceeding 1,000 linear feet of stream channel, or
    - ii. Greater than 10,000 square feet but not exceeding ½ acre of waters of the U.S. impacts, or
    - iii. Greater than 5,000 square feet but not more than 10,000 square feet of nontidal wetlands, or
    - iv. Activities that will occur in or adjacent to a proposed or existing Federally authorized civil works project, or
    - v. Activities that will occur along and/or within 150 feet of the horizontal limits of a Federal navigation project for required setback distances.

- d) The permittee must submit an application to the Corps prior to commencing the activity for Corps evaluation and 15-day agency coordination if the total temporary and permanent impacts for the single and complete project are:
- i. Greater than 1,000 linear feet but not exceeding 2,000 linear feet of stream channel, or
  - ii. Greater than ½ acre but not exceeding one acre of waters of the U.S., or
  - iii. Greater than 10,000 square feet of nontidal wetlands, or
  - iv. Activities that have the potential to cause effects to any historic properties listed, determined to be eligible for listing, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties, or
  - v. Activities that may have effects on any Federally listed threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the designated critical habitat of such species.
3. All terms and conditions of this TMDL RGP still apply to activities that do not require Corps notification.
  4. Prospective permittees are not relieved of the obligation to comply with other Federal laws such as the National Historic Preservation Act and the Endangered Species Act. An application submittal is required (even if an application submittal is not otherwise required) if threatened or endangered species or its critical habitat might be affected by the activity or is in the vicinity of the project, or if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places, including previously unidentified properties. The prospective permittee may not begin the activity until notified by the Corps that the requirements of the Endangered Species Act and/or the National Historic Preservation Act have been satisfied and that the activity is authorized.
  5. The RGP verification may include site-specific special conditions imposed by the Corps to avoid and minimize adverse impacts to waters of the United States. When an application submittal to the Corps is required under the terms of this RGP, the applicant shall not begin the activity until notified by the Corps that the project may proceed under this RGP with any special conditions imposed by the Corps.
  6. Work that does not qualify for this TMDL RGP will require submission of an application for an alternative permitting procedure to the Corps (see 33 CFR Part 325.1).
  7. 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. Stream restoration and enhancement activities must be for the purpose of restoring and enhancing aquatic stream and wetland functions (i.e., provide functional lift) and services of the degraded stream at the project site as well as meeting Chesapeake Bay Program TMDL reduction targets for nutrients and sediments.
2. Stream and wetland restoration and enhancement activities proposed for the sole purpose of nutrient and sediment reduction are not eligible for authorization under this TMDL RGP.
3. Vegetation Protection and Restoration: Riparian and wetland vegetation in the authorized project area shall be protected from unnecessary clearing and disturbance to the maximum extent practicable through:
  - a. Minimization of project and impact footprint;
  - b. Designation of staging areas and access points in open, upland areas;
  - c. Fencing or other barriers demarking construction areas; or
  - d. Use of alternative equipment (e.g., crane).
4. No activity, fill, or discharge shall occur channelward of the high tide line.
5. The project must be designed to be self-sustaining.
6. Monitoring: The prospective permittee must monitor the project for at least five years after construction to ensure the integrity of the work and successful growth of planted vegetation. The monitoring reports shall be submitted to the Baltimore District Regulatory Branch by December 31 of each monitoring year. A monitoring year must include monitoring documentation for a minimum of one full growing season. The monitoring protocols shall include, at a minimum, baseline conditions, as-built plans, stream stability monitoring, routine inspections, and geo-referenced photo documentation. In the event there are unforeseen changes in site conditions or other factors that affect the integrity of the project and/or project performance, the prospective permittee shall develop necessary contingency/adaptive management plans and coordinate these with the Corps and any other appropriate regulatory agencies (e.g., Maryland Department of the Environment, District Department of the Environment, etc.) for written approval prior to implementation. Approved maintenance and remedial measures necessary for any project authorized under this RGP must be conducted in accordance with the terms and conditions of the authorization. Maintenance that requires deviations from the original design may require a separate or additional authorization. The prospective permittee shall provide revised as-built drawings to the Corps within 60 days of completion of the modifications. Additional monitoring and maintenance requirements may be required based on a project-specific evaluation.



## **GENERAL CONDITIONS:**

### **General Requirements:**

1. **Geographic Applicability:** This regional general permit will authorize work undertaken within the geographical limits of the State of Maryland, the District of Columbia, and military installations of northern Virginia under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch.
2. **Compliance Certification:** Each permittee who receives a TMDL RGP 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 TMDL RGP 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. **Applicability:** Applicability of the TMDL RGP shall be reviewed with reference to the Corps definition of waters of the United States, including wetlands, and navigable waters of the United States. Applicants are responsible for delineating boundaries of all waters of the United States, including wetland boundaries. The identification and delineation of jurisdictional waters of the United States, including wetlands, must be performed using a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and applicable supplemental guidance.
4. **Other Permits:** Authorization under the TMDL RGP 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.
5. **Minimal Effects:** Projects authorized shall have no more than minimal individual or cumulative adverse environmental effects, as determined by the Baltimore District.
6. **Discretionary authority:** The Baltimore District Corps of Engineers retains discretionary authority to require processing of an individual permit for any project 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.
7. **Single and Complete Project:** This TMDL RGP shall only be applied to single and complete projects. For purposes of this TMDL RGP, 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 TMDL RGP cannot be used more than once for the same single and complete project.
8. **Multiple General Permit Authorizations:** An activity can be authorized by more than one general permit, if the activity is a single and complete project (33 CFR

330.2(i)), that will result in no more than minimal adverse environmental effects, and that will satisfy the terms and conditions of the applicable general permits. 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.

9. **Contractor Compliance:** The prospective permittee shall ensure that a copy of the TMDL RGP and any accompanying authorization letter are available and visible for reference at the project site, 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:**

10. **Historic Properties.** Any activity authorized by the TMDL RGP shall comply with Section 106 of the National Historic Preservation Act. Prospective permittees must submit an application to the Corps if the authorized activity may have the potential to cause effects to any historic properties listing on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for presence of historic resources shall be sought from the State Historic Preservation Officer, as appropriate, and the National Register of Historic Places. When reviewing applications, the Corps will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The Corps 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 of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required. If the permittee discovers any previously unknown archaeological or other cultural resource while accomplishing the work authorized by the TMDL RGP, the permittee shall immediately notify the Corps of what has been found and stop work in the permit area until the required coordination has been completed. The permittee shall not begin or continue work until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed.

11. **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.
12. **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, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps 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.
13. **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.
14. **Endangered Species:** No activity is authorized under this TMDL RGP that “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. The TMDL RGP does not authorize any activity that may directly or indirectly affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act; or which may directly or indirectly destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and procedures. Prospective permittees must submit an application if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. The application must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The Corps shall determine if consultation with U.S. Fish and Wildlife Service is required under Section 7 of the ESA. If consultation is required, the prospective permittee shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Authorization of an activity by this TMDL RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct in the absence of a separate authorization (e.g., an ESA Section 10 permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS. Information on the location of threatened and endangered species and their critical habitat can be obtained from FWS. The Corps will be initiating consultation under the Endangered Species Act on this TMDL RGP and any conditions from that consultation will be inserted into the TMDL RGP.

15. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the FWS to determine if such “take” permits are required for a particular activity.
16. **Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act:** Essential Fish Habitat (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. Essential Fish Habitat has been defined by Congress as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” The designation and conservation of EFH seeks to minimize adverse effects on habitat caused by fishing and non-fishing activities. 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. The Corps will be initiating consultation under these authorities on this TMDL RGP, and any conditions from that consultation to protect NOAA trust resources will be added into this TMDL RGP.
17. **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 responsible for the designated Wild and Scenic River or study River (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

18. **Federal Navigation Project:** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
19. **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.
20. **Fills Within Floodplains:** The authorized activity must comply with applicable requirements of any FEMA-approved state or local floodplain management requirements.
21. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require applicants to demonstrate that the structures comply with established State dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
22. **Environmental Justice:** Activities authorized under this TMDL RGP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
23. **Federal Liability:** In issuing this TMDL RGP, 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 TMDL RGP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.
24. **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:**

25. **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.
26. **Mitigation:** In general, compensatory mitigation will not be required for stream and wetland restoration and enhancement activities since only stream and wetland restoration and enhancement activities that result in net increases in aquatic resource functions and services are authorized by this RGP. For all other authorized activities under this RGP, mitigation (avoiding, minimizing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
27. **Heavy Equipment in Wetlands:** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance. The use of mats is considered to be a discharge of fill material and must be included in the quantification of impact area authorized by the TMDL RGP.
28. **Soil Erosion and Sediment Controls:** Appropriate soil erosion and sediment control measures, practices, and devices must be used and maintained in effective operating condition during construction, to reduce erosion and retain sediment on-site during and after construction. These devices and methods must be capable of: (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil or other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted "in the dry" whenever practicable. This should be accomplished using stream diversion devices. Permittees are encouraged to perform work within waters of the United States during periods of low flow or no flow.
29. **Removal of Temporary Fills:** Temporary fill and the use of mats are both considered to be a discharge of fill material and must be included in the quantification of impact area authorized by the TMDL RGP. Temporary fill (e.g., access roads, cofferdams, etc.) in waters and wetlands authorized by this RGP shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric and laid on the existing wetland grade. Upon completion of the work, all temporarily disturbed waters and wetlands must be restored to preconstruction contours and temporarily disturbed wetlands and stream banks planted with native wetland species.
30. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through, or

spawn/nursery within the area (e.g., anadromous/catadromous fish); unless the activity's primary purpose is to impound water. A low flow channel must be maintained through any discharges placed across the stream channel so as to not impede flow in the waterway and/or not to block or impede the movements of anadromous and resident fish.

31. **Water Crossings:** All temporary crossings of waterbodies shall be suitably bridged, culverted, or otherwise designed and constructed to withstand and prevent the restriction of high flows; to maintain low flows; and to sustain the movement of aquatic species indigenous to the waterbody. The permittee shall apply any appropriate time-of-year restrictions to protect aquatic resources present within the project area and downstream of the project site.
32. **Suitable material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, treated wood, petroleum products, waste concrete, tires, etc.). Material used for installation or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
33. **Management of Water Flows:** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or expected high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration and enhancement activities).
34. **Spawning Areas:** Activities, including structures and work in navigable waters of the U.S., or discharges of dredged or fill materials, in fish spawning or nursery areas during spawning seasons, must be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year. Activities that result in the physical destruction (e.g., through excavation, dredging, fill or downstream smothering by substantial turbidity) of an important spawning/nursery habitat are not authorized by this permit.
35. **Migratory Bird Breeding Areas:** Activities in waters of the United States that serve as breeding and wintering areas for migratory birds must be avoided to the maximum extent practicable.
36. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
37. **Adverse Effects from Impoundments:** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

#### **General Procedural Conditions:**

38. **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. The permittee shall permit the District Engineer or authorized representative(s) to make periodic inspections at any time deemed necessary to

ensure that the work is being performed in accordance with the terms and conditions of this TMDL RGP. The Baltimore District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized by this TMDL RGP, as deemed necessary on a case-by-case basis.

39. **Maintenance of Authorized Fill:** The permittee must properly maintain the work authorized herein in good condition and in compliance with the terms and conditions of this permit, including maintenance to ensure public safety. The permittee must develop necessary contingency/adaptive management plans and implement appropriate remedial actions in consultation with the Corps and other appropriate regulatory agencies prior to any work within areas subject to federal jurisdiction. Changes to the original authorized scope or materials may require a new authorization or modification to the original project authorization under this TMDL RGP.
40. **Property rights:** This RGP does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
41. **Modification, suspension, and revocation:** This TMDL RGP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7. Any such action shall not be the basis for any claim for damages against the United States.
42. **Special Conditions:** The Baltimore District may impose special conditions on any project authorized under the TMDL RGP that are determined necessary to avoid or minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
43. **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.
44. **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.
45. **Transfer of authorization:** In order to transfer authorization under this TMDL RGP, 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.



46. **Binding effect:** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
47. **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 TMDL RGP. The Corps will determine whether or not to continue use of the TMDL RGP 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 TMDL RGP, in accordance with Department of the Army regulations.

#### **Duration of Authorizations and Permit Expiration:**

48. **Duration of Authorization and Expiration Date:** This TMDL RGP expires five years from the effective date listed at the top of page 1. Unless further modified, suspended, or revoked, this general permit will be in effect until \_\_\_\_\_. Upon expiration, it may be considered for revalidation. The construction period expires for individual projects verified/authorized by this RGP when the RGP expires, is suspended, or revoked, whichever date occurs sooner. The Baltimore District will issue a public notice announcing any changes to the Regional General Permit when they occur; however, it is incumbent upon you to remain informed of any changes to this RGP. If this RGP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. The Corps may re-evaluate the terms and conditions of this RGP at any time it deems necessary to protect the public interest. Activities authorized under this TMDL RGP 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 TMDL RGP's expiration, modification, or revocation. This provision does not apply if a specific TMDL RGP verification has been modified, suspended, or revoked. The permittee must be able to document to the Corps satisfaction that the project was under construction or contract by the appropriate date.

#### **DEFINITIONS:**

*Certain terms that are referenced in the TMDL RGP are explained briefly in this section. Several definitions are excerpted from regulation and/or other sources and are so noted. Should a term be defined by regulation in the future, the definition would defer to the new regulations.*

**Aquatic Habitat:** Those places and conditions used by aquatic organisms to fulfill their life cycle requirements. Aquatic habitats include saturated materials and spaces, for example (rocks, coral, gravel, interstices, sand, mud, woody debris, riffles, reefs, burrows). The term can also refer to an entire aquatic ecosystem/ecosystem component (e.g., wetlands, floodplains, streams, estuaries, lakes).

**Aquatic Resource Functions:** See *functions*

**Best Management Practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. (77 FR 34, pg 10288)

**Construction Mats:** Construction, swamp, and timber mats (herein referred to as “construction mats”) are generic terms used to describe sheets or mats made from a variety of materials in various sizes that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. A timber mat consists of large timbers bolted or cabled together. Construction mats are considered as fill whether they are installed temporarily or permanently.

**Conversion:** A change from one aquatic habitat type to another aquatic habitat type (e.g., from a stream to a wetland or vice versa), or from an aquatic habitat to an upland habitat.

The following are examples of activities which are not considered conversion:

- Re-establishment of submerged aquatic vegetation or emergent tidal wetlands in areas where these shallow water habitat and wetland types previously existed. This would be a considered rehabilitation.
- Changes in wetland plant communities caused by restoring wetland hydrology (e.g., filling, blocking, or reshaping drainage ditches to restore hydrology) would be considered a rehabilitation activity and not conversion.
- Relocation of non-tidal waters and wetlands on a project site, including relocation activities that convert open water impoundments to non-tidal wetlands and vice versa, provided there is a net increase in aquatic resource functions and services. (77 FR 34, pgs 10215, 10275)

**Cumulative Effects:** see *Cumulative Impacts*

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

**Direct Effects:** Effects that are caused by the activity and occur at the same time and place (77 FR 34, pg 10288)

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve specific aquatic resource functions. Enhancement results in the gain of selected aquatic resource functions, but may also lead to decline in other resource functions. Enhancement is undertaken for a

specified purpose(s) such as water quality improvement, flood water retention, or wildlife habitat and does not result in a gain in aquatic resource area. (77 FR 34, pg 10288; 73 FR 70, pg 19689; 33 CFR 332.2)

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions. (77 FR 34, pg 10288; 73 FR 70, pg 19689; 33 CFR 332.2)

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

**Floodplain:** An area on a stream's valley floor which is inundated during stream surges (such as following rainfall or snowmelt events). Commonly the "floodplain" is referred to as the area of the valley floor which is inundated during flood events (up to and including the 100 year flood).

**Functions:** The term functions means the physical, chemical, and biological processes that occur in ecosystems. (73 FR 70, pg 19689; 33 CFR 332.2)

**Functional Lift (or "Functional Gain"):** Measurable improvement of aquatic resource functions between existing and proposed conditions as a result of a restoration or enhancement activity in a defined area (e.g. project site).

**High-tide line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. (51 FR 219; 33 CFR 328.3(d))

**Impact:** See "Temporary Impact," "Permanent Impact," and "Cumulative Impact"

**Independent Utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the

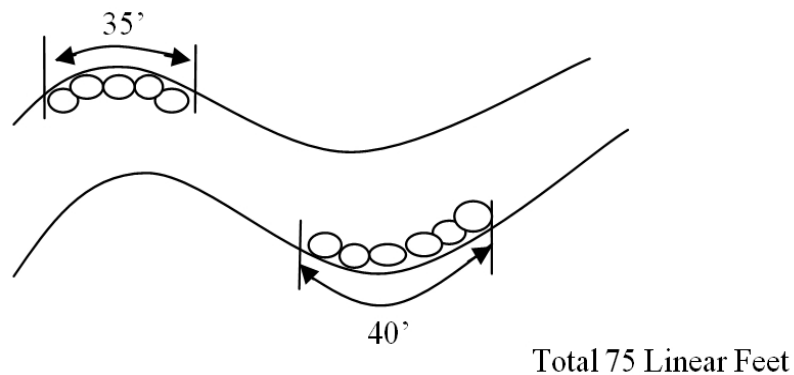
other phases are not built can be considered as separate single and complete projects with independent utility (77 FR 34, pg 10289). A clear purpose and level of functionality is required for a project to have independent utility. For example, the construction of a single-family home with a driveway that connects to an existing road has independent utility and is considered a valid project. Conversely, construction of an access road with no beginning or end point in the middle of a jurisdictional wetland does not have independent utility because it does not have a clear purpose and is dependent on future development.

**Indirect Effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. (77 FR 34, pg 10289)

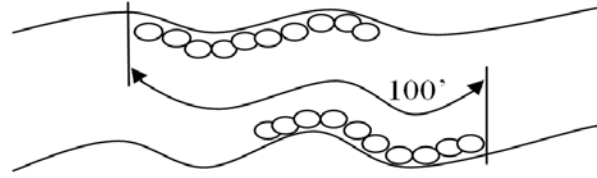
**Jurisdictional:** Areas regulated by the US Army Corps of Engineers under authorities granted by Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act.

**Linear Feet of Stream Impact:** For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts in this RGP, the linear footage of stream impact should be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

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



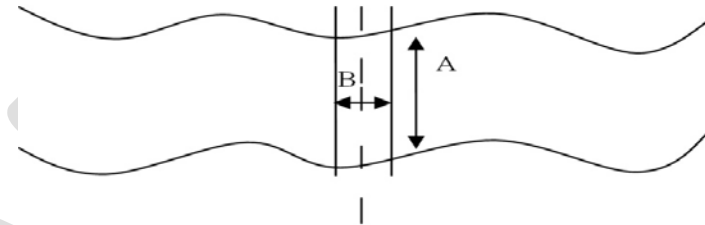
b. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.



Total 100 Linear Feet

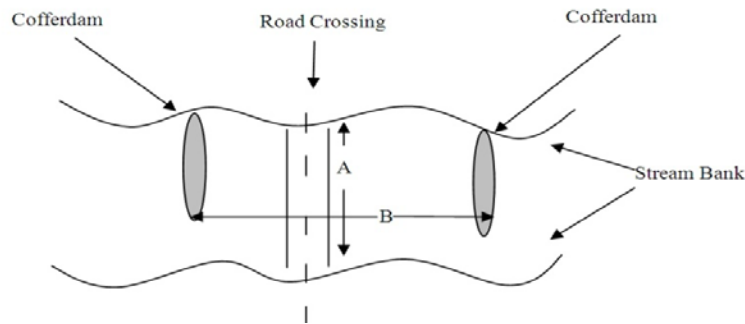
c. For traverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of the bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

Road Crossing



d. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

A (width) or B (length) whichever is greater.



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

**Outfall:** See “Stormwater Management Outfall”

**Permanent Impact:** The permanent alteration of an aquatic resource that is expected to remain after a permitted activity’s construction activities are completed.

**Relocation:** For the purpose of this RGP, relocation is defined as the in-kind replacement of any impacted resource within the project site.

**Restoration:**

1) The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: *re-establishment* and *rehabilitation* (77 FR 34, pg 10289; 73 FR 70, 33 CFR 332.2)

*Re-establishment:*

The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

*Rehabilitation:*

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

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (73 FR 70, 33 CFR 332.2)

**Stormwater Management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality

degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment. (77 FR 34, pg 10290)

**Stormwater Management Facilities:** Stormwater management facilities are those facilities including but not limited to, stormwater retention and detention ponds and other stormwater management best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff. (77 FR 34, pg 10290)

**Stormwater Management Outfall:** A point where a stormwater management conveyance system discharges into waters of the U.S. (e.g., streams, lakes, and wetlands).

**Stormwater Management Retrofit:** Stormwater management retrofits are a diverse group of projects that provide nutrient and sediment reduction on existing development that is currently untreated by any BMP or is inadequately treated by an existing BMP.

**Temporary Impact:** The temporary alteration of an aquatic resource that is restored after a permitted activity's construction activities are completed. Temporary impacts include activities in which the ground is restored to its preconstruction contours and elevations, such that previous functions and values are restored.

**Total Maximum Daily Load (TMDL):** A Total Maximum Daily Load, or TMDL, is a calculation of the maximum amount of a pollutant that a waterbody can receive and still safely meet water quality standards.

**TMDL Activity:** For the purpose of this RGP, a "TMDL Activity" is an activity that has been proposed to help meet TMDL water quality standards and includes construction in or through "Waters of the US."

Citations:

Cowardin, L.M., V. Carter V., F.C. Golet, E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service Report No. FWS/OBS/-79/31. Washington, D.C.

Environmental Laboratory. 1987. Corps of Engineers Wetland Delineation Manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

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<http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/overviewoftmdl.cfm>. Accessed January 22, 2014. (EPA 2014).

Final Rule for Regulatory Programs of the Corps of Engineers, 33 CFR Parts 320 through 330, as published in the November 13, 1986 Federal Register, Vol. 51, No. 219. (51 FR 219)

Final Notice of Issuance and Modification of Nationwide Permits, as published in the February 21, 2012 Federal Register, Vol. 77, No. 34 (77 FR 34)

Final Revisions to the Clean Water Act Regulatory Definitions of “Fill Material” and “Discharge of Fill Material,” as published in the May 9, 2002 Federal Register, Vol. 67, No. 90. (67 FR 90).

Final Rule for “Compensatory Mitigation for Losses of Aquatic Resources, “ as published in the April 10, 2008 Federal Register, Vol 73, No. 70. (73 FR 70, 33 CFR 332)

The Clean Water Act of 1977. Section 404 (B)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material. Federal Register, 40 CFR Part 230-Section 404(b)(1), as published December 24, 1980. (45 FR 85344)

The Council on Environmental Quality (CEQ). CEQ regulations for implementing NEPA as published in the November 28, 1978 Federal Register, Vol. 43, No.55990 (43 FR 55990; 40 CFR Parts 1500-1508)

By Authority of the Secretary of the Army:

COL J. Richard Jordan, III  
Colonel, Corps of Engineers  
District Engineer

Endnote Reference:

<sup>1</sup>Harman, W., R. Starr, M. Carter, K. Tweedy, M. Clemmons, K. Suggs, C. Miller. 2012. *A Function-Based Framework for Stream Assessment and Restoration Projects*. U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, Washington, D.C. EPA 843-K-12-006.