



Public Notice

U.S. Army Corps of Engineers

Baltimore District
ATTN: Regulatory Branch
10 S. Howard Street
Baltimore, MD 21201

Date: September 30, 2016

Action ID: NAB-2016-00055
Special Public Notice #16-56

The purpose of this Public Notice is to inform the public that the U.S. Army Corps of Engineers, Baltimore District has issued the Maryland State Programmatic General Permit-5 (MDSPGP-5) for a five year period. The MDSPGP-5 will be implemented and in full effect in the applicable portions of the State of Maryland on October 1, 2016. The MDSPGP-5 will expire on September 30, 2021, unless a decision is made to suspend or revoke it by or before that date. A copy of the MDSPGP-5 is attached and can be viewed on our web page at:

<http://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process>

On January 22, 2016, the Corps issued Special Public Notice #16-05 requesting comments on whether to issue the MDSPGP-5 for a 5-year period. Following a thorough review of all comments received in response to the Special Public Notice and the public hearing held on February 24, 2016, the Corps has decided to issue the MDSPGP-5.

STATUTES: In accordance with 33 CFR 325.2 (e)(2), MDSPGP-5 authorizes various activities described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

LOCATION OF AUTHORIZED ACTIVITIES: This MDSPGP-5 applies to activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland that are located within the regulatory geographic boundaries of the Baltimore District.

EXCLUDED WATERS: 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 Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal tributaries are excluded from the authority of this MDSPGP-5. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's Regulatory geographic boundaries.

PURPOSE: The MDSPGP-5 provides a streamlined form of Department of the Army authorization in waters of the United States within the State of Maryland for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and satisfy other public interest review factors. The MDSPGP-5 has been developed in cooperation with the Maryland Department of the Environment (MDE), which has regulatory authority over waters of

the State of Maryland. Programmatic general permits are authorized for a five-year period at which time they must be re-evaluated for their impacts on the aquatic environment.

All activities that have received written project-specific verification under the MDSPGP-4, that have commenced or are under contract to commence the authorized work by September 30, 2016, have until September 30, 2017 (12 months from the expiration date of the MDSPGP-4) to complete the work under the terms and conditions of the MDSPGP-4. If the work cannot be completed by September 30, 2017, the project must receive written reauthorization under the MDSPGP-5 or alternate Corps permit review procedures. Note that this requirement applies to projects that have a valid State authorization that has not expired. If there are no additional modifications to the previously approved project that require MDE's approval, or if the project is grandfathered by MDE, the permittee must submit directly to the Corps, a written request or an application for reauthorization under the MDSPGP-5.

Below is a list of some of the notable changes from the Maryland State Programmatic General Permit-4 (MDSPGP-4) to the MDSPGP-5:

NEW ACTIVITIES:

Activity b(6), Culvert Pipe Grouting/Sealing and Joint Repairs: This new activity authorizes the discharge of grout paving material associated with repairs to degraded pipe and box culverts in waters of the United States, including jurisdictional wetlands. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting in waters of the United States, including jurisdictional wetlands. This activity must not block or impede the movements of aquatic species (e.g., resident fish, anadromous fish, etc.). This activity does not authorize the installation of new culverts or work on existing bottomless arch culverts and bridge spans. Grout/concrete must be cured prior to contact with the stream. (Sections 10 and 404, all waters of the United States).

Category A: The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other open waters, is limited to the minimum necessary to repair the structure or to ensure the safety of the structure and are not to exceed 10,000 square feet of waters of the U.S. and/or 1,000 linear feet of streams. Impacts to tidal streams or tidal wetlands are not authorized under Category A and must be reviewed under Category B or an alternate Corps permit review procedures, as appropriate.

Category B: The total temporary and permanent impacts to waters of the United States including jurisdictional wetlands are not to exceed 1/2 acre (21,780 square feet) of waters of the U.S. and/or 2,000 linear feet of streams.

Activity e(10), New Stormwater Management Facilities: This new activity provides authorization for discharges of dredged or fill material into non-tidal waters of the United States for the construction of new stormwater management facilities (i.e., not the retrofit of

existing facilities), including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; and the construction of new low impact development (LID) integrated management features such as bioretention facilities (e.g., rain gardens), vegetated filter strips, grassed swales, and infiltration trenches. This activity also authorizes temporary structures, work, and discharges of dredged or fill material necessary for construction activities including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. This activity does not authorize discharges of dredged or fill material into tidal waters, tidal wetlands, non-tidal wetlands adjacent to tidal waters, perennial streams or Use III or IV intermittent streams. The discharge of dredged or fill material for the construction of new stormwater management facilities and LID features proposed in other intermittent and/or ephemeral streams will be considered on a case by case basis. This activity cannot be used in combination with other MDSPGP-5 activities. (Section 404; nontidal waters only).

Category A: The total temporary (i.e., construction impacts including stream diversion devices, etc.) and permanent impacts to nontidal waters of the United States, including nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet and/or 200 linear feet of streams, rivers, and other nontidal open waters. Category A activity does not authorize work in applicable nontidal navigable waters under Section 10 of the Rivers and Harbors Act of 1899, (e.g., Potomac River, Susquehanna River, etc.). Applications proposing work in applicable navigable waters under Section 10 of the Rivers and Harbors Act must be reviewed under a Category B or alternate Corps permit review procedures, as appropriate.

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

REVISIONS TO EXISTING ACTIVITIES & CONDITIONS:

1. Provision providing for the authorization of temporary structures and construction access was added to the following activities: b(1) General Maintenance, b(2) Armoring Bridges, Causeways, and Culverts, b(4) Maintenance of Tidal Roadside Ditches, b(5) Maintenance of Mosquito Ditches, e(5) Clearing Debris and Windfalls and, e(9) Residential, Commercial and Institutional Activities. To ensure that impacts to the aquatic environment from the installation of temporary structures and construction access fills are minimal, two conditions were added to the activities listed above:

a. Upon completion of the project, all temporary construction materials must be removed and stabilized with straw bales, silt fence, or other erosion and sediment control devices to prevent its reentry into waters of the United States, including wetlands, and the site returned to preconstruction conditions.

b. All temporary construction structures and materials (i.e. access roads, fill, dewatering devices, stream diversions, etc. must be removed within 14 calendar

days after the structure is no longer needed, subject to any time of year restrictions. The affected areas must be returned to pre-construction conditions which include contours, elevations, stream substrate and re-vegetation with native wetland species. If time-of-year restrictions interfere with the removal of the structures, the permittee must immediately contact the Corps and/or MDE Project Manager for further instruction.

2. Activities c(1), c(2), and c(3) of the Underground and Overhead Utility Line Activities, activity (d) Linear Transportation Activity, and e(9) for Residential, Commercial, and Institutional Development Activities now require a Category B review when the proposed work will affect any navigable water of the U.S. In the previous MDSPGP-4, Category B review was required only when the work would affect tidal wetlands and tidal waters. However, all navigable waters are now included to ensure that impacts to navigation from these activities do not cause interference with navigation. Clarified that navigable waters are considered affected when the proposed work would be in, under, or over the navigable water.

3. Endangered Species Act (ESA) process and requirements: Changes were made to this general condition to comply with Section 7 of ESA. Any project that has the potential to affect critical habitat, threatened or endangered species, such as Atlantic sturgeon, shortnose sturgeon, sea turtles, and whales, are not eligible for authorization under Category A and must be reviewed by the Corps as a Category B or an alternate Corps permit.

All Applications: Prior to application submittal, applicants must conduct an initial review for ESA resources, including FWS and/or NMFS species or critical habitat, utilizing the appropriate website(s) provided below. A complete permit application must contain evidence that the applicant has already contacted and received a response from the FWS and/or NMFS concerning any Federally listed or proposed threatened and endangered species and designated or proposed critical habitat that may be affected by the proposed activity.

For FWS ESA species, an applicant must use the FWS Chesapeake Bay Field Office Project Review website (FWS website tool) provided below to determine if any Federally listed species are present in the proposed project area. A complete application must contain one of the following:

1) If species or designated critical habitat are determined to be present in the proposed project area using the FWS website tool: A FWS Official Species List tailored for the proposed project area must be obtained and submitted with the application. An Official Species List is considered valid for 90 days.

2) If no listed species or designated critical habitat are determined to be present in the proposed project area using the FWS website tool: A report that includes an online self-certification letter, map of action area, and Official Species List must be obtained and submitted with the application.

For NMFS ESA species and/or critical habitat, an applicant must use the NOAA Fisheries Species Information and Maps website (NMFS website tool) provided below to determine if any Federally listed species or critical habitat are present in the proposed project area. A

complete application must include mapping depicting the project location in relation to any Federally listed species and/or critical habitat.

MDE, in cooperation with MD DNR, will also conduct an initial application review and notify the Corps and FWS or NMFS if any Federally listed species or critical habitat is likely to be in the vicinity of the project. The Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Information on the location of threatened and endangered species and their critical habitat can be obtained from the offices of the FWS and NMFS or their web pages at:

<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html> and, <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html>, respectively.

Category A Activities: To comply with the ESA for the protection of listed threatened or endangered species, any project that proposes pile driving in tidal waters under Category A must meet one of the following conditions listed in Section VII.B.4.c.i:

Pile Driving for Category A Activities: For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 150 db re 1 μ Pa RMS or 206 dB peak re 1 μ Pa and must meet **one** of the following conditions:

- (1) Plastic or concrete piles must be less than 12 inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
- (2) Timber piles must be 10 inches or less when a vibratory hammer is utilized for installation.
- (3) Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
- (4) Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
- (5) Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
- (6) Piles of any size/type with any hammer method must be installed between November 30 and March 15.

(Note: Any pile driving activity that does not meet one of the conditions above must be reviewed by the Corps as a Category B activity or an alternate Corps permit review process, as appropriate.

Pile Driving for Category A and Category B Activities: For Categories A and B activities, pile driving must be initiated with a soft start each day of pile driving, building up

power slowly from a low energy start-up over a 20 minute period to allow for fish and other wildlife to leave the area.

Sediment Disturbing Activities Time-of-Year Restriction for Category A and Category B Activities: Sediment disturbing activities, which includes pile driving activities for Category B Activities, are prohibited during the period April 1 through June 30 within all tidal waters of the Chesapeake Bay in Maryland and its tidal tributaries with salinity levels <6 ppt for the protection of shortnose sturgeon during early life stages in these waters.

4. ***Activity a(3) Piers:*** The general description of this activity now clarifies that design limitations are required for the entire pier project, including proposed work and existing, previously authorized structures. For example, a new platform is proposed to be added to an existing pier with an “L” head. The proposed would meet Category A only if the total area of the new platform and the existing “L” head did not exceed 200 square feet. Changes to Category A limits include authorization for up to 2 additional personal watercraft slips, with or without lifts, in addition to 4 boat slips per property. Category B for this activity was clarified to include boat lifts and personal watercraft lifts in the type of authorized boat lifts. The requirement for finger piers to be constructed on the landward side of the “T” head or “L” head was removed. In addition, the calculated square footage of the main pier section is no longer included in the total square footage of the fixed or floating auxiliary platforms. Platforms constructed within the landward 50% of the main pier section is authorized in canals where a parallel walkway may be constructed adjacent to an existing or proposed bulkhead as long as they do not exceed 6 feet in width. Finger piers or platforms must be constructed in a minimum depth of 2 feet of open water at Mean Low Water (MLW). A pier project must have received a county variance or meet the minimum extended property line setback requirements established by the local jurisdiction in which the activity is proposed.

5. ***Activity c(1) Utility Lines:*** This activity has been clarified that pipes or pipelines that carry gaseous, liquid, liquescent, or slurry substances over navigable waters of the U.S. are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a Section 404 permit from the Corps.

Category A: The requirement for a utility line making a direct or perpendicular crossing was updated to allow for diagonal crossing of waterways in instances where site conditions limits the ability to make a direct or perpendicular crossing.

Category B: A requirement was added for submittal of as-built drawings 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. Three previous general conditions of the MDSPGP-4 were added to the Category B activity-specific conditions. These conditions require that (1) requires aerial electric power transmission lines crossing Section 10 navigable waters must meet minimum clearances; (2) the Corps must coordinate overhead utility lines authorized under the MDSPGP-5 with the Department of Defense Siting Clearinghouse to evaluate potential effects on military activities; and (3) requires the permittee submit as-built drawings to the Corps and National Oceanic and Atmospheric Administration, Nautical Data Branch within 60 days of completing the activity for any aerial

transmission line, submerged cable, or submerged pipeline authorized to cross a Section 10 navigable waters. This change was to bring these notification requirements more visibility to ensure compliance. In the MDSPGP-4, these conditions were previously general conditions applicable to these utility crossings.

Category A and Category B: A previous general condition of the MDSPGP-4 has become an activity-specific condition that requires (1) the activity does not block or impede movements of anadromous or resident fish species; (2) near normal downstream flows are to be maintained and flooding minimized; (3) fill must be of materials and placed in a manner that will not be eroded by expected high flows; and (4) stream diversions are to be used, other than earthen or stone cofferdams or causeways, in accomplishing the work. A condition has also been added that requires a plan be provided with the application for directional drilling activities for remediation of the inadvertent return of drilling muds.

6. Activity a(5) Boat Ramp Construction, Repair and Expansion: This activity was modified to allow the authorization of a maximum of two access piers associated with the boat ramp. Access piers must be directly abutting the boat ramp and must not extend more than the channelward extent of the boat ramp or the minimum necessary to provide adequate access to the boat ramp, whichever is less.

Category A: Access piers must not exceed 5 feet in width and must be constructed a minimum of 3 feet above mean low water level. Fixed access piers must be constructed a minimum of 3 feet above the mean low water level. Pile driving activities authorized under Category A must utilize pile driving methods identified in Section VII.B.4.c.i.

7. Activities a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters and a(10) New Minor Dredging in Tidal Waters: The following changes have been made to Category A of these two activities. Projects that do not meet the limits and requirements of Category A must be reviewed under Category B or alternate permit review procedures:

Category A: Proposed hydraulic maintenance dredging activities must be reviewed under Category B or alternate permit review. In addition, a condition was added to Category A a(9) Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters and Category A a(10) New Minor Dredging in Tidal Waters requiring dredging in tidal waters in depths greater than -3 feet Mean Low Water to be conducted behind turbidity curtains or other exclusion structure during the period March 16 through November 30 to prevent aquatic animals from entering the dredge footprint. Dredging activities that would occur in this time period without the use of turbidity curtains or other exclusion devices must be reviewed under Category B or an alternate Corps permit review process. Category A activities for Maintenance Dredging of Previously Authorized Dredged Areas in Tidal Waters does not authorize dredging in submerged aquatic vegetation bed or shellfish beds. Category A New Minor Dredging in Tidal Waters does not authorize the dredging of or disposal into intertidal mudflats, wetlands, shellfish beds, and sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist within the last five years), or anadromous fish spawning areas

8. **Activity b(1) General Maintenance:** For Category A and B activities, a requirement was added that applications must include information regarding the original design capacities and configurations of the structures and fills (e.g., outfalls, intakes, impoundments, canals, culverts, etc.). The impact threshold for Category A was increased as described below. The activity's description was amended to provide clarification that temporary impacts are included in this activity.

Category A: The total (temporary and permanent) impact threshold for Category A activities was increased from 10,000 square feet of waters of the U.S. and 500 linear feet of stream channel to one acre of waters of the U.S. and 2,000 linear feet of stream channel. Clarification was added that the activity includes authorization for temporary structures, work, and discharges of dredged or fill material necessary for associated construction activities or repairs, including but not limited to stream diversion devices, access fills, structures and/or fills for dewatering of construction sites, and placement of construction matting. Turbidity curtains or exclusion structures are required when dredging in depths greater than -3 feet Mean Low Water from March 16 through November 30 to prevent aquatic animals from entering the dredge footprint. Impacts to submerged aquatic vegetation are not authorized under Category A. Pile driving activities authorized under Category A must utilize pile driving methods identified in Section VII.B.4.c.i

9. **Activity b(3) Bulkhead Repair or Replacement, including Stone Toe Protection:** The name of the activity was updated to become Bulkhead Repair or Replacement, including Stone Toe Protection. **Category A** activities are now limited to 500 linear feet of shoreline and must be placed at the mean high water shoreline. **Category B** activities may fill up to ½ acres of tidal waters/wetlands and not exceed 2,000 linear feet of shoreline. New or replacement bulkheads may be placed up to three feet channelward of the mean high water shoreline. Also the activity description was revised to include temporary structures, work, and discharges of dredged or fill material associated with construction access. Conditions were added to require temporary impacts to be minimized to the maximum extent practicable and that pre-construction conditions, including contours, elevations, stream substrate, and native plant species, must be restored upon completion of the work.

10. **Activity d Linear Transportation Projects:** A new requirement of every application for both Categories A and B activities if the proposed crossing is not a preferred crossing option (bridge or bottomless arch), the applicant must provide a narrative with their application describing measures considered to minimize impacts to waters of the U.S.

11. **Activity c(8) Outfall Structures and Associated Intake Structures:** A new restriction for Category A activities does not authorize intake structures which now must be reviewed under Category B procedures if directly associated with an authorized outfall structure.

12. **Activity e(9) Residential, Commercial, and Institutional Development Activities:** The general description for this activity was revised to provide examples of residential, commercial and institutional developments which are authorized under this activity. A new requirement has been added for both Categories A and B activities if any proposed crossing is not a preferred crossing option (bridge or bottomless arch), the applicant must

provide a narrative with their application describing measures considered to minimize impacts to waters of the U.S. For Category B activities that propose a utility crossing, as-built drawings are now required within 60 days of completing construction for all aerial transmission line, submerged cable, or submerged pipeline crossings over navigable waters.

13. Activity f(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures other than Revetments: Stone toe protection was added to the general description of this activity.

14. Activity h. Private Landowner Oyster Gardening: – This activity was formally Private Landowner Oyster Aquaculture in the MDSPGP-4 which has been renamed to clarify that this activity authorizes private landowner oyster gardening for personal use. The activity now includes authorization for the placement of cages placed on the bottom substrate and floats placed at the water’s surface or within the water column by riparian landowners for purposes of growing oysters for personal use or to assist in restoration efforts, subject to the activity-specific impact limits and requirements, and the general conditions of this general permit (Section 10; limited to tidal waters of the United States). The overall impact was increased to 200 square feet of either floats or cages.

Category A: Does not authorize the use of vertical lines and activities cannot be located within 50 feet from mapped SAV beds. The requirements have been updated to ensure compliance with ESA.

Category B: Activities may require project-specific coordination with NMFS.

DEFINITIONS: Definitions have been added in the Definition Section of the MDSPGP-5 for “*adjacent*”, “*federally authorized civil works project*”, and “*personal watercraft*.” Also, the definition for “*discharge of fill material*” has been further clarified by adding an additional definition that defines when the placement of pilings in waters of the United States constitutes a discharge of fill material and requires a Section 404 permit.

GENERAL:

Maryland’s Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a statewide permit program for protecting Maryland’s aquatic resources. Maryland’s procedures for the granting of permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses (for non-water dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluation criteria within Maryland’s programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. The Baltimore District Engineer will continue to evaluate the MDSPGP-5 process, to determine if activities have been authorized in accordance with the requirements of the MDSPGP-5 and in compliance with Federal Regulations.

The MDSPGP-5 will protect the aquatic resources of the State of Maryland within the Baltimore District of the U.S. Army Corps of Engineers’ regulatory geographic boundaries and jurisdictional authorities; will reduce the administrative burden of the program for both the Corps of Engineers and the State of Maryland through

interagency cooperation; will improve the regulatory response time; and will add predictability within specified limits to the permit program for the potential applicant and general public.

The decision to reissue the MDSPGP-4 as the MDSPGP-5 with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the MDSPGP-5 on the public interest. This decision reflects the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal was balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal were considered including the cumulative effects thereof; among those were conservation, economics, aesthetics, general environmental concerns, wetlands, cultural resources, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

Since the MDSPGP-5 is duplicative of some Nationwide Permits (NWP) and offers a more simplified and streamlined regulatory process, those NWP that are duplicated in the MDSPGP-5 and are suspended in Baltimore District's Special Public Notice #12-32 dated March 19, 2012 remain suspended. This public notice is available on the Baltimore District website at:

<http://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process>

Water Quality Certification (WQC) is required in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment for any activity that would be authorized by MDSPGP-5 and involves the discharge of dredged and/or fill material into waters of the United States, including wetlands. The State's Clean Water Act, Section 401 Water Quality Certification decision on the Maryland State Programmatic General Permit-5 (MDSPGP-5) was issued by the MDE on September 13, 2016. The WQC will be applicable to all authorizations under the MDSPGP-5.

The State's Coastal Zone Management Act (CZMA), Section 307 Federal Consistency on the Maryland State Programmatic General Permit-5 (MDSPGP-5) was issued by the MDE on September 13, 2016. The CZM will be applicable to all authorizations under the MDSPGP-5.

State and local authorizations may be required for the MDSPGP-5 to be valid.

The MDSPGP-5 processing procedures and conditions ensure compliance with Section 106 of the National Historic Preservation Act. The MDSPGP-5 is conditioned to ensure that on a case-by-case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act. The applicant will notify the Corps if the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places.

The MDSPGP-5 processing procedures and conditions ensure compliance with Executive

Order 13175, through coordination with Tribal Nations. Such coordination shall be performed in accordance with the applicable District's tribal coordination procedures.

The Baltimore District has determined, in consultation with National Marine Fisheries Service (NMFS) that activities authorized under the MDSPGP-5 may affect but are not likely to adversely affect Federally-listed Threatened and Endangered Species. The MDSPGP-5 processing procedures and conditions ensure compliance with Section 7 of the Endangered Species Act, as amended.

The Baltimore District has determined in consultation with NMFS that the adverse effects of this MDSPGP-5 on Essential Fish Habitat (EFH) for Federally managed species are no more than minimal and an expanded consultation has been conducted with NMFS. The MDSPGP-5 processing procedures and conditions ensure that authorized work will comply with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended.

A webinar for the MDSPGP-5 will be held on November 9, 2016 from 10 a.m. to 12 p.m. Please monitor the Baltimore District web site at: <http://www.nab.usace.army.mil/Missions/Regulatory.aspx> for further details and updates on the MDSPGP-5 and this upcoming webinar. In addition, once completed, the MDSPGP-5 webinar content will be posted on the Baltimore District web site.

It is requested that you communicate this information concerning the revised MDSPGP-5 to any persons known by you to be interested and not being known to this office, who did not receive a copy of this notice.

If you have any questions concerning this matter, please contact Mr. Steve Elinsky of this office at 410-962-4503 or email Mr. Elinsky at Steve.Elinsky@usace.army.mil

Beth E. Bachur
Acting Chief, Regulatory Branch