

**MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-3
FIRST ANNUAL REVIEW
EXECUTIVE SUMMARY**

On October 1, 2006, the Baltimore District of the U.S. Army Corps of Engineers reauthorized the Maryland State Programmatic General Permit-3 (MDSPGP-3) for a five year period. This annual monitoring report summarizes the impacts authorized and mitigation required for work authorized by the MDSPGP-3 for the first year of implementation from October 1, 2006 and September 30, 2007. It also examines the procedures used by the U.S. Army Corps of Engineers, Baltimore District and the Maryland Department of the Environment (MDE) to ensure aquatic resource protection and compliance with other Federal laws (e.g., Section 106 of the National Historic Preservation Act, Section 7 of the Federal Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act). The information presented in this report reflects data collected by both the Corps and MDE.

From October 1, 2006 through September 30, 2007, 2,036 permit applications were received and 2,147 permit authorizations were finalized. The Corps' national performance measure was met during this timeframe for all general permit decisions being made in 60 days or less. The analysis of a random sample of projects verified under the MDSPGP-3 indicates that impact avoidance and minimization of tidal and nontidal waters is accomplished through the Federal/State application review process.

For this timeframe, there was a no net loss of nontidal wetlands. Of the authorized nontidal wetland impacts, an approximate 1:1 acreage replacement ratio through required compensatory mitigation was met overall during this timeframe. For tidal wetlands, the data suggest that there was a net loss of 0.56 acres in Maryland. This tidal wetland loss may be attributed to impacts associated with shoreline stabilization and bulkhead repair projects for which compensatory mitigation is generally not required. In addition to the mitigation achieved through the regulatory program, 19.54 acres of vegetated tidal wetlands were established through authorized tidal wetland creation projects. The majority of these voluntary gains are a direct result of State education efforts and regulatory requirements that encourage the establishment of living shorelines for shore erosion control projects. In addition, the data suggest that there is a net loss of 29,467 linear feet of stream in Maryland. These stream losses may be attributed to ephemeral stream impacts that do not generally require compensatory mitigation in accordance with previous Federal mitigation guidance. Furthermore, these reported losses to tidal wetlands and streams may be attributed to data entry errors.

One hundred seventy-seven MDSPGP-3 projects authorized during the stated timeframe were randomly selected for compliance reviews. From this initial random selection, field inspections were performed on 110 MDSPGP-3 projects that had been authorized during the stated timeframe with work completed or on-going and with an undetermined construction status.

Two criteria were used to gauge project compliance. First, we identified if the work was in compliance with the authorized scope of work. Second, we assessed if the project was in compliance with the conditions of the authorization, including general, activity-specific, and special conditions, if appropriate. Some projects may have met both compliance criteria. If a project was deemed to be non-compliant during the field inspection, the investigators noted the severity of the non-compliance based on the extent, type of resource impacted, and permissibility of the action. Our review also documented any programmatic processing issues identified as part of our file and field evaluations. This programmatic information may be used to provide recommendations for operational efficiencies and result in future modifications to the MDSPGP-3 processes.

Of the total 110 compliance inspections performed by the Corps, sixty-six (60%) of inspected MDSPGP-3 projects were in compliance with the terms and conditions of the MDSPGP-3 verification. Non-compliance cases accounted for approximately 28% of all inspected MDSPGP-3 projects. A compliance status could not be determined for three of the inspected projects (3%) due to high water at the time of inspection and restricted access issues, and ten of the 110 inspected projects (9%) had not yet been built. For those projects with more than minor plan deviations or unauthorized fill activities, we will pursue appropriate noncompliance or enforcement actions in coordination with MDE.

These results clearly indicate the need for compliance monitoring. We recommend frequent and consistent field inspections of issued MDSPGP-3 permits to ensure better project compliance oversight and better tracking of compliance and required permit condition submittals. There is also a need for tracking of project mitigation construction and success status'. In addition, we recommend that the regulatory agencies further establish joint coordination processes to monitor permit compliance in Maryland so that there is effective and focused coverage of the region.

These findings suggest that there are data entry errors for impact and mitigation required fields. To improve the accuracy of tidal and nontidal wetland and stream impact and mitigation required data entry, we recommend development of a standard format, definitions, and training for all project managers. A Standard Operating Procedure for impact and mitigation data entry is recommended for use by the Corps and MDE to ensure more consistent data entry.

Overall, the MDSPGP-3 has successfully reduced duplication of effort between the Corps and MDE as seen by the majority of MDSPGP-3 verifications being comprised of Category I activities that do not generally require Corps case-by-case evaluation. In addition, the application processing time appears to be reasonable with most MDSPGP-3 applications being issued in 60 days or less. Based on the results of this study, the GIS application screening process is a beneficial tool to identify projects having cultural resources or threatened or endangered species in the project vicinity.

**MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-3
FIRST ANNUAL REVIEW
JULY 2008**

I. BACKGROUND

The U.S. Army Corps of Engineers, Baltimore District (District) has implemented a State Programmatic General Permit in Maryland since 1996. On October 1, 2006, the District reauthorized the Maryland State Programmatic General Permit-3 (MDSPGP-3) for a five year period. The MDSPGP-3 covers activities in waters of the United States, including jurisdictional wetlands within the State of Maryland that are within the District's regulatory boundaries.¹ The majority of nationwide permits (NWP) that are covered by the MDSPGP-3 were suspended in Maryland when the MDSPGP-3 was issued.²

The MDSPGP-3 builds upon the existing State Wetland and Waterway regulatory program administered by the Maryland Department of the Environment (MDE) and is designed to reduce unnecessary duplicative project evaluations for applicants and to promote more effective and efficient use of Federal and State resources while providing equivalent environmental protection for aquatic resources. The MDSPGP-3 is applicable to the people of the State of Maryland, including individual landowners, commercial developers, and public agencies. Activities that are components of a single and complete project that result in no more than one acre of impact to waters of the United States and have no more than minimal impacts to the aquatic environment, individually or cumulatively, are eligible for authorization by the MDSPGP-3. Potential adverse impacts and compliance with Federal laws and regulations are controlled by the general terms and conditions of MDSPGP-3, activity-specific conditions, and the individual case-specific review process, and special conditions (when appropriate) when Federal review of an application is required.

The MDSPGP-3 consists of three categories of activities. Category I consists of a suite of 29 work types including boating and navigation activities, repair and maintenance activities, utility lines, road crossings, fill activities, shoreline and bank stabilization activities, return water, and oyster aquaculture. Category I activities are generally non-reporting to the Corps. However, any Category I activity that is determined to have potential effects to historic properties and/or endangered species requires reporting to the Corps for a case-by-case consultation with the Maryland State Historic Preservation Office, U.S Fish and Wildlife Service, or National Marine Fisheries Service to ensure compliance under Section 106 of the National Historic Preservation Act and/or Section 7 of the Federal Endangered Species Act. The Category II screening process is used under certain circumstances³ for projects that meet the impact limits and conditions of Category I activities but require a case-by-case review by the Corps and may also require coordination with Baltimore District's Navigation Branch and/or National Marine Fisheries Service to ensure project compliance with Federal navigational interests or the Magnuson-Stevens Fishery Conservation and Management Act. Category III covers those activities that are not in Category I but impact not more than one acre of waters of the U.S., including jurisdictional wetlands. All Category III activities require reporting to the Corps and coordination with Federal and State resource agencies. Furthermore,

additional special conditions may be added to the MDSPGP-3 authorization on a case-by-case basis to ensure that the effects of the project on the aquatic environment are minimal.

II. INTRODUCTION

Several important modifications were incorporated into the MDSPGP-3 from the previous version of the MDSPGP-2. Most notably was the increase to the acreage limits for many Category I activities from 5,000 square feet to one acre. These changes are discussed in detail in the Special Public Notice #06-47 announcing the re-issuance of the MDSPGP-3. The special public notice announcing the re-issuance of the MDSPGP-3 and MDSPGP-3 permit document may be viewed on the Baltimore District website: <http://www.nab.usace.army.mil/Regulatory/permits.htm>. To address public concerns about implementation of these MDSPGP-3 modifications, the Corps and MDE committed to conducting annual programmatic monitoring reviews. This is the first annual monitoring report covering the period October 1, 2006 through September 30, 2007.

The purpose of this annual monitoring report is to document the impacts authorized and mitigation required for work authorized by the MDSPGP-3 for the first year of implementation. It also examines the procedures used by the U.S. Army Corps of Engineers, Baltimore District and the Maryland Department of the Environment (MDE) to ensure aquatic resource protection and compliance with other Federal laws (e.g., Section 106 of the National Historic Preservation Act, Section 7 of the Federal Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act). Summary statistics for aspects of the MDSPGP-3 for the first year, including the types and numbers of activities authorized; the impacts requested, authorized, and mitigated; the geographic distribution of authorized impacts; as well as results of selected project compliance monitoring are presented in this report.

Permit and mitigation data collected for this report were provided by the Maryland Department of the Environment unless specified otherwise. Compliance monitoring information was derived from field compliance inspections conducted and documented by Corps staff.

III. SUMMARY OF PROGRAMMATIC INFORMATION FROM MDE

The time period from October 1, 2006 through September 30, 2007 is the subject of this monitoring report. The annual programmatic monitoring data was compiled by MDE and provided to the Corps. The Corps relies on impact and mitigation information from MDE for this programmatic review. MDE's data are shown in the tables at the end of this report unless specified otherwise. In addition, a descriptive summary of MDE's data are included below.

A. Wetland Applications Received

According to the MDE, 1,524 tidal permit applications and 512 nontidal permit applications or a total of 2,036 permit applications were received from October 1,

2006 through September 30, 2007 (Table 1). More than half of all MDSPGP-3 applications received were for work located in Anne Arundel, St. Mary's, Talbot, and Worcester Counties. Anne Arundel County had the greatest number of applications for tidal work under the MDSPGP-3 (27%) for this time period. Frederick County accounted for 19% of all nontidal applications received.

B. Wetland Permit Authorizations:

The MDE tracking system indicates that 1,529 tidal permit authorizations and 618 nontidal permit authorizations for a total of 2,147 permit authorizations were finalized from October 1, 2006 through September 30, 2007 (Table 2). The number of permit authorizations was higher than the number of permit applications received for the stated time frame due to the carryover of pending applications at the beginning of the year from the previous year. More than half of all MDSPGP-3 authorizations were issued for projects located in Anne Arundel, Baltimore, St. Mary's, Talbot, and Worcester Counties. The highest numbers of tidal authorizations were issued in Anne Arundel accounting for approximately 27% of all tidal authorizations issued. Twelve percent of the nontidal authorizations were provided for work in Frederick County.

C. State and Corps Permit Application Evaluation Times:

Table 3 shows the mean and median evaluation times for tidal and nontidal projects, respectively. MDE calculates their "evaluation time" as the time period from when an application is received by MDE until the permit authorization is finalized.⁴ Overall, MDE made decisions on more than half of all MDSPGP-3 applications in 60 days or less. The Corps' national performance measure was met during this timeframe for all general permit decisions being made in 60 days or less.

D. Potential Occurrences of Sensitive Species and Cultural Resources:

All applications received by MDE are screened through Geographic Information System (GIS) for the presence of historic properties and threatened or endangered species or their critical habitat. Table 4 indicates the number of applications that received "hits" through the GIS screening for known cultural resources or threatened or endangered species or their critical habitat in the vicinity of the proposed project. Overall, more than one third of all tidal and nontidal applications received were identified as having the potential for cultural resources or sensitive species in the vicinity of the proposed project. Additional coordination with the Maryland Historical Trust and/or the Department of Natural Resources/U.S. Fish and Wildlife/National Marine Fisheries Service is completed on these projects resulting in an effect determination for compliance with Section 106 of the National Historic Preservation Act of 1966 and Section 7 of the Endangered Species Act, respectively.

E. MDSPGP-3 Activities:

Table 5 summarizes the data provided by MDE for the total number and types of activities that were authorized. Because there may be multiple activities verified for a

single and complete project authorized by a Category I MDSPGP-3 verification, the total number of activities is greater than the number of authorizations.

Based on this reported use of MDSPGP-3 during the time period October 1, 2006 through September 30, 2007, MDE estimates that 2,429 of the total 2,616 activities verified (93%) were authorized using a Category I verification. More than one third of all Category I verifications were authorized using the Category I-A3 (Piers) activity. The category I-F1 (Tidal Revetments, Tidal Shoreline Erosion Control Structures (not revetments), Existing Tidal Revetment/Bulkhead Armoring, and Nontidal Stream Bank Stabilization) activity accounted for approximately 20% of all Category I verifications, and Category I-B1 (General Maintenance) accounted for approximately 11% of total Category I verifications. Together, these three activities were the most frequently used activities and accounted for 66% of all Category I MDSPGP-3 verifications.

F. Impacts and Mitigation:

Table 6 summarizes the total permanent impacts requested, authorized, and mitigated for vegetated tidal wetlands, vegetated nontidal wetlands, and nontidal streams. Avoidance and minimization measures occurring during the application review are reflected in differences between the requested impacts and the authorized impacts. However, much of the avoidance and minimization measures result from preapplication meetings between the prospective applicant and the Corps/MDE evaluator. Generally, compensatory mitigation is required for all permanent tidal or nontidal wetland impacts either through the State's tidal or nontidal wetland compensation fund or by the permittee after the applicant has demonstrated that wetland and waterway losses cannot be avoided or further minimized. Furthermore, compensatory mitigation may be required for all permanent impacts of 200 linear feet or greater to stream channels as appropriate under Federal guidance and to the extent necessary to ensure that the impacts are minimal. Compensatory mitigation is generally obtained by adding a special condition to the MDSPGP-3 or the State authorization.

i. Tidal Wetlands

Approximately 1.74 acres of permanent impact to tidal wetlands were requested. Of these requested acres, approximately 98% (1.70 acres) were approved. As a result of the permit application evaluation process, a total of 1.14 acres of tidal wetland mitigation was required. This is a net loss of approximately 0.56 acres of tidal wetlands in Maryland during the first year of MDSPGP-3 implementation. This loss may be attributed to the lack of required tidal wetland mitigation for tidal wetland impacts associated with shoreline stabilization and bulkhead repair projects. Furthermore, this loss may also be a result of data entry errors. Further analysis revealed that there were several instances where permanent impacts were entered into the database for the areal coverage by a pier structure authorized by Section 10, or in other words, are not 404 fill. In general, the Corps does not consider a pier structure to result in permanent impacts but may result in temporary impacts

to vegetated wetlands during construction. Only permanent impacts to wetlands are entered into this database to determine net loss. This discrepancy may also include areas temporarily affected by construction, and therefore, would not necessarily result in permanent loss of wetland function.

In addition to the mitigation achieved through the regulatory program, 19.54 acres of vegetated tidal wetlands were established through authorized tidal wetland creation projects. The majority of these voluntary gains are a direct result of State education efforts and regulatory requirements that encourage the establishment of living shorelines for shore erosion control projects.

ii. Nontidal Wetlands

MDE reported that a total of 27.23 acres of nontidal wetland impact was requested. As a result of application review, including avoidance and minimization, a total of 21.78 acres of permanent nontidal wetland impact (80% of nontidal acres requested) were approved. Avoidance and minimization for 5.45 acres of nontidal wetlands was demonstrated as a result of the permit application evaluation process. In addition, an estimated 26.01 acres of nontidal wetland mitigation was required to offset these permanent impacts. Therefore, an approximate minimum 1:1 acreage replacement ratio for nontidal vegetated wetlands overall in the State of Maryland is being achieved through MDSPGP-3 implementation during the timeframe of this report.⁵

iii. Streams

As shown in Table 6, MDE reported that approximately 41,246 linear feet of permanent stream impacts were requested, and 39,003 linear feet of permanent stream impacts (95% of linear feet requested) were authorized during the stated timeframe. As a result of the application review process, approximately 2,243 linear feet of stream impact was avoided and minimized. An estimated 9,536 linear feet of compensatory stream mitigation was required to offset these authorized stream impacts. This is a net loss of approximately 29,467 linear feet of stream. Some of this reported net loss may be attributed to data entry errors or lack of clear direction on how to account for impacts and mitigation to ephemeral, intermittent, and perennial streams. For example, these reported stream impacts may actually be associated with ephemeral streams that have impacts entered into the database, but for which no stream mitigation was required. Generally, compensatory mitigation is not required for ephemeral stream impacts in accordance with past Federal mitigation policies. In addition, data entry for activities having only temporary impacts may also be included in the permitted stream impact totals, but not in the mitigated totals because only permanent stream impacts are entered into the database. Finally, there was no stream impact or mitigation data entered for approximately 40% of all authorized projects; therefore, it is not clear whether this loss is accurate.

IV. FIELD COMPLIANCE METHODOLOGY & RANDOM SAMPLE

A. Random Sample

In accordance with the Corps general permit compliance performance measure during this timeframe, a target of 5% of total MDSPGP-3 authorizations issued during the stated timeframe was used to develop the random sample for field compliance inspections. To ensure that all three categories (I, II, and III) of the MDSPGP-3 were adequately represented, approximately 5% from each category type was randomly selected separately producing a stratified random sample.

In reviewing this initial random sample, we determined that this random sample did not represent the suite of MDSPGP-3 activities or authorizations involving agency coordination. Therefore, to ascertain a broader scope of activities for permit compliance, we further sampled random cases to address Category I activities for maintenance dredging of previously authorized dredge areas (Activity I-A9), new minor dredging (Activity I-A10), and additional screening activity types within Category II. Overall, this sampling resulted in a stratified random sample totaling 122 projects, including 110 Category I cases, 4 Category II cases, and 8 Category III cases.

Furthermore, in order to determine the effectiveness of on-going coordination and implementation procedures, we sampled a subset of MDSPGP-3 cases identified by Maryland Historical Trust (MHT) and National Marine Fisheries Service (NMFS) that involved agency coordination during the stated timeframe. Project listings provided by MHT and NMFS were sorted using the monitoring sample criteria. Individual permits, nationwide permits, projects issued outside of the stated timeframe, pending projects, and other Federal non-Regulatory projects were excluded from our sample. A sample of 41 NMFS cases and 511 MHT cases resulted from this sorting process for the agency coordination subset. To adjust the MHT subset size for a smaller population that would be feasible to inspect for this report, 5% of the 511 MHT-coordinated cases were randomly selected of which only 11 involved Corps review and for which a project file was available for the compliance inspection. At MHT's request, we further sampled three cases with executed Memorandum of Agreements (MOAs) to ascertain the status of these signed agreements. Overall, this random stratified sample and agency coordination sample resulted in a total 177 MDSPGP-3 cases for which a construction status needed to be determined.

For these 177 cases, Corps regulatory staff made telephone inquiries to identify those projects that were constructed or under construction and retrieved the project file for these cases to prepare for a compliance inspection. Of the 177 telephone calls made, 101 projects involved work that was completed or on-going. Twenty-two projects were also included in the field inspection sample because no construction status could be determined after repeated attempts to contact project permittees. Overall, 123 projects had work completed or on-going or an undetermined construction status.

Fifty projects of the 177 cases (28%) were either not built or not pursued. In addition, through these telephone inquiries, it was determined that four projects in this sample had project data that had been incorrectly entered into the database because they had not been issued yet or were actually individual permits. Because these four cases did not meet the monitoring sample criteria, they were eliminated from further sampling and the data corrected in the database.

Project files for the random Category I sample with work that was determined to be complete or on-going as well as those non-responsive cases were requested from MDE. All other Category II and III project files with a completed, on-going, or unresponsive status were retrieved from Corps files. Three projects were determined to be duplicates and were already included in one of the other sampling categories. Six of the requested random Category I files were not received and 4 files were not available for inspection. As a result, 110 MDSPGP-3 project files out of the 123 files that were determined to be complete, under construction, and unresponsive to telephone inquiries were field inspected.

B. Compliance Inspection Methodology

Corps staff performed field compliance inspections on 110 projects in spring 2008. This programmatic monitoring accounted for approximately 5% of all MDSPGP-3 projects issued during Year 1 of the MDSPGP-3 implementation. Of the 110 field compliance sample cases, seventy-nine were Category I, five were Category II, and twenty-six were Category III projects. Four of the Category I projects involved MHT coordination and one had NMFS coordination. Three of the Category II projects had NMFS coordination. For Category III projects, seven involved MHT coordination and eighteen involved NMFS coordination.

Project managers were the principle investigators for each project file and site review. Project compliance was documented using compliance monitoring forms (Appendix). The file was reviewed initially to determine the nature of the activity verified, if the activity was categorized correctly, the results of the resource agency recommendations, and a preliminary determination of compliance with activity-specific terms and conditions of the MDSPGP-3 and special conditions, if applicable (e.g., adherence to specified timelines, etc.). Whenever possible, the investigator contacted the permittee or agent to inform them of our upcoming site inspection. The investigator confirmed and documented the work type, location, dimensions, project variations for authorized work and permit conditions, and if the special condition required by the Corps to avoid impacts to historic properties and/or endangered species or essential fish habitat were implemented correctly by the permittee. Based upon these factors, investigators determined whether the project was in compliance with the permit verification. In certain cases, MDE compliance staff attended the field inspections.

Two criteria were used to gauge project compliance. First, we identified if the work was in compliance with the authorized scope of work. Second, we assessed if the project was in compliance with the conditions of the authorization, including general, activity-specific, and special conditions, if appropriate. Some projects may have met

both compliance criteria. If a project was deemed to be non-compliant during the field inspection, the investigators noted the severity of the non-compliance based on the extent, type of resource impacted, and permissibility of the action. Our review also documented any programmatic processing issues identified as part of our file and field evaluations. This programmatic information may be used to provide recommendations for operational efficiencies and result in future modifications to the MDSPGP-3 processes.

V. COMPLIANCE INSPECTION FINDINGS

Of the total 110 compliance inspections performed by the Corps, sixty-six (60%) of inspected MDSPGP-3 projects were in compliance with the terms and conditions of the MDSPGP-3 verification. Non-compliance cases accounted for approximately 28% of all inspected MDSPGP-3 projects. A compliance status could not be determined for three of the inspected projects (3%) due to high water at the time of inspection and restricted access issues, and ten of the 110 inspected projects (9%) had not yet been built.

A. Category I

The Category I compliance inspection sample involved a high proportion of tidal projects (piers, pilings, revetments, and bulkheads). This is not surprising since these types of activities were reported to be the most frequently used under Category I verifications. Of the 79 Category I projects inspected, twenty-three (29%) were not in compliance with the MDSPGP-3 verification. Approximately three quarters of the 23 Category I non-compliance cases exceeded or were not consistent with the authorized scope of work. A little more than one third of these Category I non-compliance cases had not complied with the permit conditions required in the MDSPGP-3 authorization. Two cases met both compliance criteria.

Of the 23 total Category I non-compliance cases, 8 (approximately 35%) still met the terms and conditions of a Category I activity or had only minor plan deviations and accounted for a little more than one third of all Category I non-compliance cases. Examples of what we considered to be minor plan deviations included boat lifts that were constructed on the other side of the pier than what was shown on the plan, minor pier head reconfiguration, and additional piling installations. Of the 23 Category I non-compliance cases, 6 exceeded the Category I limits for scope of work and should have been evaluated as a Category III by Corps and Federal and State resource agencies. These findings suggest that contractors and permittees may not be applying for the required permit modifications to make changes to the authorized work before beginning construction.

Eight of the 23 Category I non-compliance cases (35%) had not adhered to the general and/or activity-specific conditions of the MDSPGP-3 verification. Of these 8 Category I cases in non-compliance with the permit conditions, two had not complied with the required stipulations of the executed Memorandum of Agreement (MOA) for Section 106 of the National Historic Preservation Act. Specifically, project materials were not submitted to the Corps and MHT within the timelines outlined in the MOA and project conditions. Further follow up is needed to determine if Section 106 work

required by the MOA was accomplished. With regard to other Category I cases involving non-compliance with the permit conditions, non-adherence for aquatic passage general conditions for in-stream structures and fill, non-adherence to specified submittals of post-bathymetric surveys in accordance with the activity-specific permit condition for Category I dredging projects, and non-adherence for removal of temporary fills were identified. These findings suggest that permittees are not meeting their requirements for information submittals after permit issuance as required by MDSPGP-3 permit condition and further follow up with permittees will be accomplished. It was suggested that instream structures and fill are not being constructed to provide for passage of aquatic life in all cases. Further follow up to ascertain causes for this type of work deviation will be conducted. Our evaluation of Category I project files also identified opportunities for improving programmatic operational processes including categorization, activity verification, coordination between Corps and MDE, and final permit verifications.

The two Category I projects having State compensatory mitigation requirements in our compliance sample were not constructed at the time of this compliance monitoring period. We anticipate additional projects will be constructed, including those with compensatory mitigation requirements in future monitoring years and will be included in our compliance inspections.

B. Category II

The five inspected Category II projects included tidal and nontidal projects that require Corps screening processes for Federal navigation, essential fish habitat, and stream mitigation. These screenings resulted in special conditions being added to two of these Category II projects and revised project designs to address agency recommendations in three of the five inspected Category II projects.

Of the five Category II permit files assessed in this study, four were determined to be in compliance with the terms and conditions of the permit. One Category II project had exceeded authorized limits and had not been constructed in accordance with the modified authorized scope of work and approved plans. Agency recommendations were incorporated through revisions to the authorized project design as part of the Category II screening process. However, evaluation of these Category II project files identified programmatic operational areas for improvement including supporting information to be included in permit verification packages to ensure enforceability and agency coordination procedures. In general, these findings suggest that the Category II screening process is working.

C. Category III

The 26 Category III projects assessed in this study included tidal and nontidal activities, involved resource agency coordination in the permit process, and may or may not have special conditions added to the permit verification to address concerns for impacts to the aquatic environment. Sixteen of the twenty-six Category III cases (61%) were issued with special conditions. Examples of special conditions that were required as a result of the Category III review for these 16 cases included requirements for time-of-year

restrictions to protect aquatic species, maximum dredge depths, turbidity curtain installation, compensatory mitigation submittals, and stream monitoring. In addition, of all 26 Category III cases assessed, one case included special conditions for Section 106 compliance with the executed Memorandum of Agreement. Overall, only one Category III MDSPGP-3 verification assessed in this study contained compensatory mitigation-related permit conditions. This low number of projects with required compensatory mitigation is probably due to the Category III inspection sample including only four nontidal projects with permanent impacts. The remaining projects in the Category III sample involved tidal impacts associated with dredging, pier and marina projects, shoreline stabilization, and temporary impacts. Further analysis reveals that these projects did not result in permanent impacts to wetlands, and therefore, compensatory mitigation was not required by the Corps.

As a result of the agency coordination process, we found that resource agency recommendations were incorporated into the permit verification approximately 94% of the time either through a project modification or by adding a special condition. Resource agency recommendations for sampled Category III cases included essential fish habitat coordination for submerged aquatic vegetation and summer flounder, protection of anadromous fish, and Section 106 consultation and compliance.

Of the twenty-six Category III permit files assessed in this study, 15 (58%) were determined to be in compliance with the MDSPGP-3 authorization, while 7 (27%) were found to be in non-compliance. Four of the inspected Category III projects were either not built or the compliance status was unable to be determined due to site access issues or extremely high tides at the time of the inspection. Most of the Category III cases found to be in non-compliance had exceeded or were not consistent with the authorized scope of work. In addition, two of the inspected Category III non-compliance cases had not complied with the permit conditions of the MDSPGP-3 authorization. One inspected Category III project exceeded the limits of work authorized and also did not comply with specific permit conditions.

Non-compliance with the authorized scope of work included, exceeding authorized impact limits to waters and jurisdictional wetlands, unauthorized work within jurisdictional areas on the project site, unauthorized dredged material disposal, and temporary impacts not restored to original contours. Non-compliance with permit conditions included requirements for aquatic species passage through in-stream structures and fill and submittal timelines for a compensatory mitigation site protection instrument. The findings of this study suggest that more than half of permittees are in compliance with their Category III MDSPGP-3 authorization, including the authorized plans.

VI. FINDINGS OF CATEGORY III SPECIAL CONDITIONS REVIEW

In addition to field compliance inspections, the Corps reviewed 105 final Category II and III authorizations with special conditions for the timeframe from October 2006 to September 2007. In this review, several special conditions were added to Category II and III permits for certain types of activities. Therefore, the Corps determined that these common special conditions may be incorporated into the permit verification as standard conditions for these types of activities. Additional standard conditions could be included

for the following activities to eliminate Federal review under Category II or to further increase the number of Category I activities by removing them from Category III review.

- Piers in or near Federal channels.
- Marsh creation
- Dredging
- Stream restoration.

Our review found that these special conditions are important for the protection of the aquatic resources and are similar enough that a suite of conditions may be incorporated into standard conditions. This will achieve the same protection and build in a more consistent approach to the permit process further streamlining the permit process.

Therefore the Corps will work to update the MDSPGP-3 processes to incorporate these revised standard conditions into the Category II process and Category III authorizations.

VI. CONCLUSIONS AND RECOMMENDATIONS

Overall, the MDSPGP-3 has successfully reduced duplication of effort between the Corps and MDE as seen by the majority of MDSPGP-3 verifications being comprised of Category I activities that do not generally require Corps case-by-case evaluation. In addition, the application processing time appears to be reasonable with most MDSPGP-3 applications being issued in 60 days or less. Based on the results of this study, the GIS application screening process is a beneficial tool to identify projects having cultural resources or threatened or endangered species in the project vicinity.

However, the findings of this monitoring report suggest that there are issues with reported losses of vegetated tidal wetlands and nontidal streams in Maryland. These reported losses may be attributable to inconsistent, incorrect, or the lack of data entry for impacts to vegetated tidal wetlands and nontidal streams and draws into question the accuracy of the impact and mitigation data. Differences in jurisdiction and activity regulation between the State and Corps regulatory programs may also account for some of these data entry inconsistencies. There appears to be confusion on how to enter impacts and mitigation data for stream restoration projects. Furthermore, impacts to ephemeral streams may have been reported as losses with no mitigation required because compensatory mitigation was not generally required for ephemeral stream impacts in accordance with previous Federal mitigation guidance. Therefore, we recommend that a Standard Operating Procedure for impact and mitigation data entry be developed for use by the Corps and MDE to ensure more consistent data entry. To improve the accuracy of tidal and nontidal wetland and stream impacted and mitigated, we recommend development of a standard format, definitions, and training for all project managers and better file documentation of permit decisions. In addition, all standards within the current Federal mitigation rule applies to the MDSPGP-3 and will help to ensure more consistent implementation of compensatory mitigation requirements overall.

Our compliance monitoring for a sample of 110 projects authorized under the MDSPGP-3 during the first year of implementation found that 66 of the 110 inspected MDSPGP-3 verifications were in compliance, while 31 of these inspected MDSPGP-3 verifications

were not in compliance. Non-compliance issues ranged from minor plan deviations to more complicated compliance issues. For those projects with more than minor plan deviations or unauthorized fill activities, we will pursue appropriate noncompliance or enforcement actions in coordination with MDE.

These results clearly indicate the need for compliance monitoring. We recommend frequent and consistent field inspections of issued MDSPGP-3 permits to ensure better project compliance oversight and better tracking of compliance and required permit condition submittals. There is also a need for tracking of project mitigation construction and success status'. In addition, we recommend that the regulatory agencies further establish joint coordination processes to monitor permit compliance in Maryland so that there is effective and focused coverage of the region.

Regional meetings with MDE and the Corps field staff were held approximately five months after issuance of the MDSPGP-3 and provided additional training in process implementation. During this annual programmatic monitoring, we found additional areas for process improvements and operational efficiencies and we will coordinate with MDE and other resource agencies, as appropriate to discuss and implement these recommendations.

This first year monitoring report did not include compliance inspections for any completed compensatory mitigation sites probably due to this report covering only one year of permit implementation. We would expect more projects to be included as additional years are implemented. We recommend that future monitoring reports include more compliance inspections on projects having compensatory mitigation requirements using Corps national performance measure standards as a target. This could be done by creating a stratified random sample subset for those projects with required compensatory mitigation. In addition, we recommend that additional sampling and random compliance inspections for Category II stream activity cases are completed in future monitoring efforts to ensure Corps coordination is occurring and that stream impacts of 200 linear feet or more are getting full consideration by the Corps for compensatory mitigation as required by Federal law.

Endnotes:

- 1 Within the State of Maryland, the U.S. Army Corps of Engineers, Philadelphia District's regulatory boundaries include 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, including adjacent and contiguous jurisdictional wetlands to these tidal waterways.
- 2 Special Public Notice #07-37 identified the 2007 Nationwide Permits (NWP) that were suspended in the State of Maryland. The NWPs that were suspended in the State of Maryland include NWPs: 1, 2, 3 (except for repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire, or

- other discrete events), 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 24, 26, 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 49, and 50.
- 3 A Category II screening process is required for the following activities that would otherwise qualify as a MDSPGP-3 Category I activity:
 - a) Activities In or Near Federally Authorized Civil Works Projects;
 - b) The project proposes permanent impacts of 200 linear feet or greater to stream channels;
 - c) The project is grandfathered by the State from MDE's permit requirements;
 - d) The project is exempt from MDE's permit requirements or not regulated by MDE's Wetlands and Waterways Program;
 - e) Projects that have previously been denied a Corps or MDE authorization or is a violation of Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899;
 - f) The project requires an individual essential fish habitat (EFH) consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act.
 - 4 In contrast to the way MDE calculates evaluation times, the Corps calculates evaluation time as the time from when an application is determined to be federally complete until the Corps finalizes their verification letter. For the period October 1, 2006 through September 30, 2007, the Corps' national performance measure was met for all general permit decisions being made in 60 days or less.
 - 5 It is important to note that these are acres of mitigation required not acres of mitigation implemented.

Table 1: MDSPGP-3 Permit Applications Received from 10/01/06 – 09/30/07

County	# Tidal Applications Recd	# Nontidal Applications Rec'd	Total
Allegany		24	24
Anne Arundel	417	29	446
Baltimore	97	30	127
Baltimore City	7	3	10
Calvert	47	3	50
Caroline	17	16	33
Carroll	0	24	24
Cecil	56	8	64
Charles	25	20	45
Dorchester	87	11	98
Frederick	0	96	96
Garrett	0	35	35
Harford	18	22	40
Howard	0	34	34
Kent	41	6	47
Montgomery	0	42	42
Prince Georges	1	29	30
Queen Anne's	100	11	111
Somerset	33	5	38
St.Mary's	135	10	145
Statewide	1	0	1
Talbot	182	10	192
Washington	0	15	15
Wicomico	33	14	47
Worcester	227	15	242
Total	1524	512	2036

Table 2: MDSPGP-3 Authorizations Issued During 10/1/06 -- 09/30/07

County	# Tidal Authorizations	# Nontidal Authorizations	Total
Allegany	0	25	25
Anne Arundel	413	34	447
Baltimore	85	44	129
Baltimore City	12	3	15
Calvert	57	8	65
Caroline	19	9	28
Carroll	0	29	29
Cecil	51	15	66
Charles	22	21	43
Dorchester	87	17	104
Frederick	0	79	79
Garrett	0	36	36
Harford	15	42	57
Howard	0	45	45
Kent	38	11	49
Montgomery	0	41	41
Prince Georges	3	55	58
Queen Anne's	100	16	116
Somerset	40	6	46
St.Mary's	129	17	146
Statewide	1	0	1
Talbot	195	14	209
Washington	0	20	20
Wicomico	32	10	42
Worcester	230	21	251
Total	1529	618	2147

Table 3: MDSPGP-3 State Processing Times During 10/01/06 – 09/30/07

STATE PROCESSING TIMES FROM APP RECD TO FINAL PERMIT ISSUED

	0 - 30Days	31- 60Days	61 - 90 Days	91-120 Days	> 120 Days	Total
Tidal						
Category I	504	404	178	123	189	1398
Category III	5	5	21	19	83	133
Nontidal						
Cat I	92	102	67	41	261	563
Cat II	0	0	0	0	52	52
Total						2146

Table 4: Number of GIS application screening hits during 10/1/06 – 9/30/07

	# APPLICATION SCREENING HITS	
	Cultural Resources	Sensitive Species
Tidal	627	587
Nontidal	82	201
Total	709	788

Table 6: Summary of Impacts Requested, Approved, and Mitigation Required During 10/1/06 – 9/30/07

	Total Acres/Linear Feet		
	Requested	Approved	Mitigated
Tidal Wetlands	1.74	1.7	1.14
Nontidal Wetlands	27.23	21.78	26.01
Streams	41246	39003	9536

Table 5: MDSPGP-3 Category I and Category III Activities Verified, October 1, 2006 through September 30, 2007

County	A1	A3	A4	A5	A6	A9	A10	B1	B2	B3	B4	C	D	E1	E2	E3	E4	E7	E8	F1	F2	G	Total Cat I	Cat III	Total
Alleghany								10	2			4	4	5					1	3			29	2	31
Anne Arundel	1	222	2	2		2	4	42		11	1	4	10	13		1			5	105	21	1	447	60	507
Baltimore		68						20	2	14		5	11	3					1	20			144	7	151
Baltimore City								2					1						1				4	11	15
Calvert		25		1				10		1			2	1					1	17	3		61	7	68
Caroline		11				1				2			3	6						7	1		31	1	32
Carroll								14	1			2	5	2	1				1	1			27	3	30
Cecil		27						10	3	8		2	8						1	13			72	2	74
Charles		14		1				4		4		5	12	2					3	13	2		60		60
Dorchester		35	1	1		1		2		5		1	4	7					2	31	3		93	19	112
Frederick								56	7			5	5							5			78	3	81
Garrett				1				10	2	1		5	6	7						11			43	1	44
Harford		9		1				9		3		6	15	3		1		2	1	3			53	6	59
Howard								11	1			11	9	8	1	1		1		6			49	3	52
Kent		16	1	2				5		7			1	3					3	13	2		53	3	56
Montgomery								15	2			5	5	4				1	5	8			45	3	48
PG		1						10	2			12	16	4					15	1			61	7	68
QA		51		2				2		11			7	6			1		1	33	6		120	7	127
Somerset		20		2				2		5	9		2	3						7			50	1	51
St. Mary's		58		2				5	1	6		4	10	4					1	58	9		158	12	170
Talbot		92		1	1		1	7		9		1	4	3						83	20		380	17	397
Washington				2				9	2			3	2						1	2			21	2	23
Wicomico		19	1					3		5				6						10			44	5	49
Worcester	1	175	1			7		3		47		2	3	13					3	46	5		306	5	311
Total	2	843	6	18	1	11	5	261	25	139	10	77	145	103	2	3	1	4	46	496	72	1	2429	187	2616

APPENDICES: MDSPGP-3 COMPLIANCE MONITORING FORM

ORM Project Number: _____ Reviewer/Inspector: _____
RAMS Project Number: _____
Permittee: _____ Permit Expiration Date: _____
Authority (10/404): _____

Office Review:

1. Date of office review: _____
2. General Project Description and Location of Work: _____

3. If the resource agencies made recommendations, what are they? _____

4. Were the resource agency recommendations made a part of the permit? (Y/N). Why or Why not?: _____

5. Preliminary compliance status based on compliance timeline for any terms and conditions outlined in permit? _____

Field Review:

*Take a copy of any required deed restrictions, permit drawings, mitigation plans to the field for compliance inspections

1. Date of Field Inspection: _____

2. Permittee POC Notified of Inspection (Y/N): _____ Present During Inspection (Y/N): _____

3. Work Begun (Y/N): _____ Work complete (Y/N): _____ Project Abandoned (Y/N): _____

4. Was the project constructed as permitted? (Y/N): _____ (sketch of work, including deviations of authorized work should be clearly marked on copy of permit drawing)

5. Were the resource agency recommendations implemented correctly by the permittee?(Y/N): _____

6. What are the effects of the resource agency recommendations on the resource? _____

7. Project variations and Special Conditions: Describe whether variations were for authorized work, general conditions, and/or special conditions of permit. Identify condition number, requirement, description of completed work. Evaluator shall confirm and document work type, location, dimensions, volumes, and indicators of construction methods as well as confirm mitigation and note any unusual impacts to aquatic resources and additional unpermitted work on-site.

1. _____

2. _____

3. _____

8. Mitigation Monitoring Record: Was Corps-required mitigation constructed? (Y/N): _____ If yes, also please fill out the form, "Mitigation Monitoring Record".

9. Compliance Recommendations:

In compliance and complete; no further inspection (Y/N): _____

In compliance but work is still in progress; further inspection (Y/N): _____

Not in compliance; consider for further inspection and enforcement action (Y/N): _____

Unpermitted additional work observed on site (note whether planned, in progress, or complete): _____

Re-evaluate for Modification, Suspension or Revocation (Y/N): _____

10. Feedback & lessons learned on back of sheet, (e.g., special conditions clearly written and enforceable, mitigation element(s) missing from permit conditions)

APPENDICES: MDSPGP-3 MITIGATION MONITORING RECORD

ORM Number: _____ Inspector: _____
 RAMS Number: _____
 Permittee: _____ Date of Inspection: _____
 Permittee Notified of Inspection (Y/N): _____ In attendance (Y/N): _____
 Mitigation Location: _____

1. Acreage and type Aquatic Resources Impacted: _____ wetland, _____ stream

2. Approved Mitigation Description: _____

3. Project Status:

Mitigation Type: restoration _____, creation _____, enhancement _____, preservation _____

Out-of-kind mitigation: accepted? (Y/N): _____ complete? (Y/N): _____

Date mitigation site was commenced and/or completed: _____

Type of wetlands constructed (i.e., Cowardin or HGM class): _____

Does wetland type meet mitigation goals (Y/N, describe): _____

Length of monitoring period: _____;

Monitoring Reports Submitted as required in permit: (Y/N) _____

Do reports(s) comply with permit requirements (Y/N): _____.

Explain: _____ As-built report

submitted, including survey (Y/N): _____

Performance Criteria met (Y/N): Vegetation _____; Soils _____; Hydrology; _____: Other _____.

List specific criterion and describe status:

Vegetation (e.g., success of planted species, invasive species present, actual projected vegetation type, etc):

a. _____

b. _____

Soil (e.g., hydric soil?, redoximorphic features?, detritus?, organics?, limiting soil types?):

a. _____

b. _____

Hydrology (e.g., hydrology source, hydrologic connection, evidence of wetland hydrology, % too wet/dry/open water, etc):

a. _____

b. _____

Other (e.g., BPJ on functions being provided, deer browse, beaver, mowing, other stressors):

a. _____

b. _____

Does mitigation site meet 1987 Manual criteria of wetlands (Y/N): _____

Is sufficient acreage present to meet permit condition (Y/N): _____

4. Compliance Recommendations:

Is mitigation site acceptable and on an adequate trajectory for success (Y/N)?: _____

Recommendations by inspector to resolve perceived problems:

5. Additional Comments (on back) Include feedback and lessons learned (e.g., mitigation elements missing from permit condition, mitigation conditions clearly written and enforceable, etc.)