

REGIONAL CONDITIONS TO THE 2021 NATIONWIDE PERMITS FOR THE DISTRICT OF COLUMBIA

All regional conditions listed in Section I and II below are applicable for activities in the District of Columbia. Regional conditions applicable to the Commonwealth of Virginia, including Fort Belvoir, Fort Myer, and the Pentagon within the Baltimore District's area of responsibility, can be found at Norfolk District's website: <http://www.nao.usace.army.mil/Missions/Regulatory/>.

I. Regional Conditions Applicable to Specific Nationwide Permits within the District of Columbia

A. Nationwide Permit 12 Oil or Natural Gas Pipeline Activities, Nationwide Permit 57 Electric Utility Line and Telecommunications Activities, Nationwide Permit 58 Utility Line Activities for Water and Other Substances: Prior to doing the work, permittees shall submit a Pre-construction Notification (PCN) to the District Engineer (see General Condition 32 and Regional General Condition 32).

1. Wherever practicable, excavated material shall be placed on an upland site. However, when this is not practicable, temporary stockpiling is authorized provided that:
 - a. All temporary stockpiling or side-casting of excavated material in wetlands is completely removed from the wetlands within 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer.
2. The PCN shall include the following additional information:
 - a. For all submerged oil and gas pipelines, cables, and utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view drawing showing the pipeline, cable, and utility line crossing from bank to bank in relationship to the waterway bottom;
 - b. For oil and gas pipeline, cable, and utility line projects completed by horizontal directional drilling or boring methods: The PCN shall include a remediation plan to address, to the extent that a Department of the Army authorization is required, any anticipated temporary structures, fills or work within waters of the U.S. necessary for the remediation of inadvertent returns of drilling fluids to waters of the U.S. through sub-soil fissures or fractures. If an inadvertent return occurs, and the remediation requires work within waters of the U.S. that extends beyond the limits of work authorized by the originally approved remediation plan, then the permittee must notify the Corps immediately and submit a revised remediation plan as soon as possible.
3. Selection of an alignment shall avoid and minimize wetland and stream impacts to the maximum extent practicable. The oil and gas pipeline, cable, or utility line should

make a perpendicular crossing of a stream where feasible. Horizontal directional drilling shall be reviewed as an option where feasible.

4. For projects that cross federal navigation channels, all oil and gas pipelines, cables, and utility lines shall be buried the minimum depth below the authorized depth of the federal navigation channel consistent with the District's minimum setback requirements (see <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>). Section 408 permission will be required.
5. The top of any buried oil and gas pipeline, cable, or utility line shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the oil and gas pipeline, cable, or utility line is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. If this minimum cover over the oil and gas pipeline, cable, or utility line is not practicable, the applicant shall provide a narrative documenting measures evaluated, site conditions, and any other limitations that prohibit achieving these minimum cover criteria in the PCN. The documentation must include photographs documenting site conditions.
6. The Corps will coordinate review of the PCN with the National Marine Fisheries Service – Habitat and Ecosystem Services Division when:
 - a. An open-cut oil and gas pipeline, cable, or utility line affects a tidal tributary stream or a non-tidal stream; or
 - b. The oil and gas pipeline, cable, or utility line do not make a direct or perpendicular stream channel crossing; or
 - c. An open-cut oil and gas pipeline, cable, or utility line constructed in Waters of the U.S. runs parallel to a stream channel and the oil and gas pipeline, cable, or utility line is within 100 feet of the mean high water mark of a tidal stream; or 100 feet of the ordinary high water mark of a nontidal coastal plain stream.

B. Nationwide Permit 29 Residential Developments:

1. This Nationwide Permit (NWP) does not authorize the construction of in-stream impoundments.

C. Nationwide Permit 39 Commercial and Institutional Developments:

1. This Nationwide Permit (NWP) does not authorize the construction of in-stream impoundments.

D. Nationwide Permit 40 Agricultural Activities:

1. Pond construction must be of the minimum size required for the farming use.
2. In-stream ponds should be avoided to the maximum extent practicable.

E. Nationwide Permit 51 Land-Based Renewable Energy Generation Facilities:

1. This Nationwide Permit does not authorize the construction of in-stream ponds.

F. Nationwide Permit 52 Water-Based Renewable Energy Generation Pilot Projects:

1. The PCN must indicate the estimated life span of the proposed pilot project and a description of maintenance and planned decommissioning activities that require a Department of the Army permit.
2. For all activities, the Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service-Habitat and Ecosystem Services Division.

G. Nationwide Permit 57 Electric Utility Line and Telecommunications Activities: See Regional Conditions in I.A above.

H. Nationwide Permit 58 Utility Line Activities for Water and Other Substances: See Regional Conditions in I.A above.

II. Regional Conditions Applicable to Multiple and/or All 2021 Nationwide Permits within the District of Columbia

Note: To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any nationwide permit specific regional conditions identified above in Section I, all terms and conditions found in the issuance and reissuance of the NWPs published in the *Federal Register* on January 13, 2021 (86 FR 2744), and any activity-specific verification conditions imposed by the Corps.

A. Nationwide Permit Regional General Condition #2 Aquatic Life Movement:

1. **Anadromous Fish Time-of-Year Restriction:** This condition applies to NWP 12, 29, 39, 40, 42, 43, 52, 55, 56, 57, and 58: To ensure that activities do not impact spawning habitat or a migratory pathway for anadromous fish, work is prohibited during February 15 to June 15 each year to protect sensitive life stages of anadromous fish in all perennial and intermittent streams, unless specifically waived by the District Engineer in consultation with National Marine Fisheries Services-Habitat and Ecosystem Services Division.

2. Culverted road crossings of perennial and intermittent streams must meet the below depression criteria or a Pre-Construction Notification (PCN) is required to be submitted to the District Engineer for review. Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN.
 - a. Culverts measuring greater than 36 inches in diameter must be depressed 12 inches below the stream bottom; or
 - b. Culverts measuring 36 inches or less in diameter must be depressed 6 inches below the stream bottom.
3. If depression of the culvert is not practicable in accordance with this depression criteria, the applicant must submit a Pre-Constructive Notification (PCN), including a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The Corps shall provide a copy of the PCN, including the supporting documentation, to the NMFS-Habitat and Ecosystem Service Division for culverts which cannot be depressed as outlined in this Regional General Condition 2 for *Aquatic Life Movements*. The applicant may find it helpful to contact the National Marine Fisheries Service for recommendations about the measures to be taken to allow for fish passage.

B. Nationwide Permit Regional General Condition #18 *Endangered Species*:

1. **For the U.S. Fish and Wildlife Service (FWS) ESA species:** All permittees must use the FWS Chesapeake Bay Field Office Project Review website (IPaC) (<https://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>) to determine if any federally listed species or designated critical habitat may be present in the proposed project area. A complete application must contain one of the following:
 - a. If the FWS website shows that listed species or designated critical habitat may be present in the proposed project area, then, using the FWS website tool, the permittee must obtain and submit with the PCN a FWS Official Species List tailored for the proposed project area. An Official Species List is considered valid for 90 days.
 - b. If the FWS website shows that no listed species or designated critical habitat are determined to be present in the proposed project area, then, using the FWS

website tool: the permittee must generate and submit with the PCN a report that includes an online self-certification letter and a map of action area.

2. **Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species:** Any interaction between sturgeon, sea turtles, or any species listed now or in the future under Federal law as a threatened or endangered species (“listed species”) and the vessels associated with the project must be reported to the National Marine Fisheries Service as follows:
 - a. If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the National Marine Fisheries Service Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery;
 - b. If the animal requires assistance, the call to the hotline must be made immediately;
 - c. If the animal appears to be injured (i.e. bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify the District Engineer of all communications and coordination with the National Marine Fisheries Service within two calendar days. Additional information about any federally threatened or endangered species may be obtained online at:
<https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>. An interaction is defined as an entanglement or capture of a listed species or a strike/direct contact between vessels or equipment used for the project and a listed species.
3. **Vessel Buffer:** When listed species are sighted, vessels must attempt to maintain 50-yards (150 feet) or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500-yard (1,500 foot) buffer zone. Any vessel finding itself within the 500-yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100-yards (300 feet) of the animal must be avoided. Dredge vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported as described above in condition #2, *Interactions with NMFS Federally Threatened or Endangered Species*.

4. **Conditions for Pile Driving Activities Applicable Within Tidal Waters in the District of Columbia:**
 - a. A Pre-Construction Notification (PCN) must be submitted to District Engineer if a minimum of one of the following conditions cannot be met:
 - i. Plastic or concrete piles must be less than 12-inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
 - ii. Timber piles must be 12 inches or less when a vibratory hammer is utilized for installation.
 - iii. 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.
 - iv. Pile driving activities are located within freshwater tributaries or within tidal or nontidal wetlands.
 - v. 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.
 - vi. Piles of any size/type with any hammer method must be installed between November 30 and March 15.
 - b. 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 fish and other wildlife to leave the area.
5. **Sediment Disturbing Activities Time-of-Year Restriction:** Within all tidal waters with salinity levels <6 parts per thousand, sediment disturbing activities, which include pile driving activities, are prohibited during the period April 1 through June 30 for the protection of shortnose sturgeon during early life stages unless a waiver is received from the District Engineer (see attached Figure 1).
6. **Critical Habitat:** Any work proposed in designated or proposed critical habitat requires a Pre-Construction Notification (PCN) to the Corps. Current designated Critical Habitat within the District of Columbia includes:
 - a. Potomac River from the mouth of the Chesapeake Bay to the Little Falls Dam.

C. Nationwide Permit Regional General Condition #32 Pre-Construction Notification:

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *Pre-Construction Notification*. These regional general

conditions are applicable to all NWPs where a PCN is submitted to the District Engineer. This includes the following: (a) those NWPs that require a PCN, (b) those NWPs requiring notification to the District Engineer pursuant to the NWP General Conditions 18 and 22, (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition, and (d) any other pre-constriction notifications to the District Engineer where an applicant has requested verification of an NWP authorization.

1. A PCN shall be submitted to the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary as identified by: <http://www.nab.usace.army.mil/Missions/Civil-Works/Nav-Maps>. In addition, a PCN is required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>. As part of any PCN for an activity adjacent to a federally authorized channel, the permittee must provide the latitude and longitude of the channelward most point of the proposed structure.
2. **Waters Containing Submerged Aquatic Vegetation (SAV) Beds:** A PCN is required for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. When a PCN is required, the District Engineer will provide a copy of the complete PCN to the NMFS-Habitat and Ecosystem Services Division for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. The PCN shall include plans depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of verified SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys or locations of SAV otherwise identified from actual SAV surveys conducted during the growing season). Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions may be required to reduce impacts to SAV habitat. The Virginia Institute of Marine Science aerial surveys may be obtained at: <http://web.vims.edu/bio/sav/index.html>.
3. All PCNs to the District Engineer shall be completed using the established District Engineer permit application procedures for that locality (<https://www.nab.usace.army.mil/Missions/Regulatory/Permits-DC/>). Preferably all PCN information can be submitted electronically or alternatively a hard copy may be sent to the Corps. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the NWP conditions, including General Condition 32:

- a. For projects along and/or within 150 feet of the horizontal limits of a federally authorized channel, the location and depth of any Federal navigation channel shall be shown in relation to the proposed project.
- b. Copy of response from the FWS concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. Completion of the required screening identified in Regional General Condition 18 and submission of the documents required by the PCN serves as compliance with this condition.
- c. Copy of response from the State Historic Preservation Officer concerning historic properties that may be affected by the proposed activity.
- d. Documentation from the appropriate state agency indicating whether the proposed project is located within a State Natural Heritage site (District of Columbia Department of Energy and Environment), Outstanding National Resource Water (District of Columbia Department of Energy and Environment), or National Estuarine Research Reserve (<https://coast.noaa.gov/nerrs/>). For further information, reference NWP General Condition 22.

D. Nationwide Permit Regional General Condition A for *Certain Activities in Navigable Waters:*

1. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

Nominal System Voltage (kV)	Minimum additional clearance (ft.) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

- a. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;
 - b. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and
 - c. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
 - d. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>.
2. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the District Engineer and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.
 3. Aids to Navigation: If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, the permittee must prepare and provide for USCG approval, a Private Aids to Navigation Application (CG-2554), and the approval must be received prior to commencement of the authorized work. The form can be found at: https://www.navcen.uscg.gov/pdf/AIS/CG_2554_Paton.pdf. Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the Corps.

E. Nationwide Permit Regional General Condition B *Poured Concrete into Forms*:

1. Any activity that involves the discharge of poured concrete must be contained within cells or watertight forms until the concrete is set.

F. Nationwide Permit Regional General Condition C *Temporary Impacts to Streams:*

1. Following completion of construction, temporarily affected stream beds shall have bottom contours restored using clean native materials, where practicable.

G. Section 401 Water Quality Certification Condition:

1. Before proceeding under the NWP, an applicant is required to obtain an individual Section 401 Water Quality Certification or waiver thereof from the Department of Energy and Environment for the following NWPs: 12, 29, 39, 40, 42, 43, 44, 51, 52, 57, and 58.

SPECIAL NOTES:

1. As required, the District Engineer shall coordinate a PCN with the following Federal and State agencies:

Environmental Protection Agency, Region 3
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

District of Columbia
Office of Planning Historic Preservation Office
1100 4th Street, SW Suite E 650
Washington, DC 20024

Department of Energy and Environment
Water Quality Division
1200 First Street NE, 5th floor
Washington, DC 20002

Department of Energy and Environment
Regulatory Review Division
1200 First Street NE, 5th floor
Washington, DC 20002

U.S. Fish & Wildlife Service
District of Columbia
1849 C Street NW, Room 3331
Washington, DC 20240-0001

NOAA/National Marine Fisheries Service
Habitat Conservation and Ecosystem Services Division
200 Harry S. Truman Pkwy, Ste 460
Annapolis, Maryland 21401

NOAA Fisheries Greater Atlantic Regional Fisheries Office
Protected Resources Division
55 Great Republic Drive
Gloucester, MA 01930
Nmfs.gar.esa.section7@noaa.gov

Figure 1 - Low Salinity Waters of the Chesapeake Bay in Maryland

2021 Nationwide Permits (NWP)
Low Salinity (<6 ppt) Waters Figure
Maryland Chesapeake Bay

Sediment disturbing activities (pile driving, discharges of dredged or fill material, and dredging) are subject to a time-of-year restriction prohibiting in-water work during the period April 1 - June 30 within low salinity waters upstream of the delineated lines on the figure. Please see regional general conditions of the NWPs for more information.

