Norfolk District Final Regional Conditions for the *2021 Nationwide Permits (NWPs) Applicable in Virginia (Including Northern Virginia Military Installations within Baltimore District's Area of Responsibility)

*The following Regional Conditions apply only to the 16 NWPs published in the January 13, 2021, Federal Register (86 FR 2744). The following 16 NWPs are effective March 15, 2021 and expire on March 14, 2026:

NWP 12 – Oil or Natural Gas Pipeline Activities
NWP 21 – Surface Coal Mining Activities
NWP 29 – Residential Developments
NWP 39 – Commercial and Institutional Developments
NWP 40 – Agricultural Activities
NWP 42 – Recreational Facilities
NWP 43 – Stormwater Management Facilities
NWP 44 – Mining Activities
NWP 48 – Commercial Shellfish Mariculture Activities
NWP 50 – Underground Coal Mining Activities
NWP 51 – Land-Based Renewable Energy Generation Facilities
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
NWP 55 – Seaweed Mariculture Activities
NWP 56 – Finfish Mariculture Activities
NWP 57 – Electric Utility Line and Telecommunications Activities
NWP 58 – Utility Line Activities for Water and Other Substances

I. REGIONAL CONDITIONS APPLICABLE TO ALL NWPS UNLESS OTHERWISE STATED:

1. Waters Containing Submerged Aquatic Vegetation (SAV) Beds:

This condition applies to NWPs 12, 29, 39, 48, 52, 55, 56, 57 and 58.

A pre-construction notification (PCN) is required if work will occur in areas that contain submerged aquatic vegetation (SAV). Information about SAV habitat can be found at the Virginia Institute of Marine Science's website http://mobjack.vims.edu/sav/savwabmap/. Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions (TOYR), may be required to reduce impacts to SAV habitat.

2. Anadromous Fish Use Areas:

Authorizations associated with the NWPs shall not adversely affect spawning habitat or a migratory pathway for anadromous fish. Areas of anadromous fish use are indicated on the Virginia Department of Wildlife Resources (DWR) information system at: http://vafwis.org/fwis/ . If a project is located within an area documented as an

anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the DWR and/or the Virginia Marine Resources Commission (VMRC). Should the Norfolk District determine that the work is minimal and no TOYR is needed, the District will initiate consultation with NOAA Fisheries Service for their concurrence. A TOYR is not required for dredging activities in the Elizabeth River upstream of the Mid-Town Tunnel on the main-stem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River.

3. **Designated Critical Resource Waters, which include National Estuarine Research Reserves:**

   NWPs 12, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, and 58 cannot be used to authorize the discharge of dredged or fill material in the Chesapeake Bay National Estuarine Research Reserve in Virginia. This multi-site system along a salinity gradient of the York River includes Sweet Hall Marsh, Taskinas Creek, Catlett Islands, and Goodwin Islands. More information can be found at: http://www.vims.edu/cbnerr/ .

4. **Federally Listed Threatened or Endangered Species and Designated Critical Habitat for Non-Federal Permittees**

   For ALL NWPs, a PCN is required for any project that may affect a federally listed threatened or endangered species or designated critical habitat. The U.S. Fish and Wildlife Service (Service) has developed an online system that allows users to find information about sensitive resources that may occur within the vicinity of a proposed project. This system named “Information, Planning and Conservation System” (IPaC), is located at: http://ecos.fws.gov/ipac/ . The applicant may use IPaC to determine if any federally listed threatened or endangered species or designated critical habitat may be affected by their proposed project. If your Official Species List from IPaC identifies any federally listed threatened or endangered species, you are required to submit a PCN for the proposed activity, unless the project clearly does not impact a listed species or suitable habitat for the listed species. If you are unsure about whether your project will impact federally listed threatened or endangered species, please submit a PCN, so the Norfolk District may review the action. Further information about the Virginia Field Office “Project Review Process” may be found at: http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html.

   Additional consultation may also be required with National Marine Fisheries Service (NMFS) for species or critical habitat under their jurisdiction, including sea turtles, marine mammals, shortnose sturgeon, and Atlantic sturgeon. For additional information about their jurisdiction in Virginia, please see https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region .

Additional resources to assist in determining compliance with this condition can be found on our webpage:
http://www.nao.usace.army.mil/Missions/Regulatory/USFWS.aspx

5. Conditions for Designated Trout Waters

A PCN is required for work in Designated Trout Waters, as defined by the Virginia State Water Control Board and the DWR. The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

1) Potomac-Shenandoah River Basins
2) James River Basin
3) Roanoke River Basin
4) New River Basin
5) Tennessee and Big Sandy River Basins
6) Rappahannock River Basin

Information on designated trout streams can be obtained via DWR's Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. Basic access to the VAFWIS is available via http://vafwis.org/fwis/.

DWR recommends the following time-of-year restrictions (TOYRs) for any in-stream work within streams identified as wild trout waters in its Cold Water Stream Survey database. The recommended TOYRs for trout species are:

- Brook Trout: October 1 through March 31
- Brown Trout: October 1 through March 31
- Rainbow Trout: March 15 through May 15

This condition applies to the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

Any discharge of dredged and/or fill material authorized by the NWPs, which would occur in the designated waterways or adjacent wetlands of the specified counties, requires a PCN to the appropriate Corps of Engineers field office, and written approval from that office prior to performing the work. The Norfolk District recommends that permittees first contact the applicable Norfolk District Field Office, found at this web link: http://www.nao.usace.army.mil/Missions/Regulatory/Contacts.aspx, to determine if the PCN procedures would apply.

6. Invasive Species

Plant species listed in the most current Virginia Department of Conservation and Recreation's (DCR*) Invasive Alien Plant List* shall not be used for re-vegetation for activities authorized by any NWP. The list of invasive plants in Virginia is found at: https://www.dcr.virginia.gov/natural-heritage/invsppdflist. DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure also see the DCR native plant finder: https://www.dcr.virginia.gov/natural-heritage/native-plants-finder.

7. Countersinking Pipes and Culverts

This condition applies to NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58.

NOTE FOR WORK IN TIDAL WATERS: New and replacement pipes/culverts in tidal waters must be installed with the inverts no higher than the prevailing stream/channel bottom elevation. If the permittee determines that matching existing elevations is not practicable, then a PCN is required. This condition does not apply to pipe extensions in tidal waters.

Based on consultation with DWR, the Norfolk District has determined that fish and other aquatic organisms are most likely present in any nontidal stream being crossed, in the absence of site-specific evidence to the contrary. The following conditions will apply in nontidal waters:

a. All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

b. When countersinking culverts, permittees must ensure reestablishment of a surface water channel (within 15 days post construction) that allows for the movement of aquatic organisms and maintains the same hydrologic regime that was present pre-construction (i.e. the depth of surface water through the permit area should match the upstream and downstream depths). This may require the addition of finer materials to choke the larger stone and/or placement of riprap to allow for a low flow channel.

c. The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).

d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).

e. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.

f. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:

    i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.

    ii. A pipe/culvert is being placed in a new location: If the permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that neither a bottomless structure nor an alternative location is practicable, then a PCN is required. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. PCN must also include photographs documenting site conditions. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in

most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the permittee not want to countersink the pipe/culvert for other reasons, they must submit a PCN. The permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals.

h. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, a utility line, or other documentable obstacle, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for a NWP.

i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the

permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.

8. Repair of Pipes

This condition applies to NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58.

NOTE FOR WORK IN TIDAL WATERS: New and replacement pipes/culverts in tidal waters must be installed with the inverts no higher than the prevailing stream/channel bottom elevation. If the permittee determines that matching existing elevations is not practicable, then a PCN is required. This condition does not apply to pipe extensions in tidal waters.

For Nontidal Waters: If any discharge of fill material will occur in conjunction with pipe maintenance, such as concrete being pumped over rebar into an existing deteriorated pipe for stabilization, then the following conditions apply:

a. If the existing pipe or multi-barrel array of pipes are NOT currently countersunk:

i. As long as the inlet and outlet invert elevations of at least one pipe located in the low flow channel are not being altered, and provided that no concrete apron is being constructed, then the work may proceed under the NWP for the other pipes, provided it complies with all other NWP General Conditions. In such cases, a PCN is not required, unless specified in the Regional Conditions for other reasons, and the permittee may proceed with the work.

ii. Otherwise, the permittee must submit a PCN prior to commencing the activity. For all such projects, the following information should be provided:

1) Photographs of the existing inlet and outlet;
2) A measurement of the degree to which the work will raise the invert elevations of both the inlet and outlet of the existing pipe;
3) The reasons why other methods of pipe maintenance are not practicable (such as metal sleeves or a countersunk pipe replacement);
4) A vicinity map showing the pipe locations.

The Norfolk District will assess all such pipe repair proposals in accordance with guidelines that can be found under “Pipe Repair Guidelines” at:

http://www.nao.usace.army.mil/Missions/Regulatory/GuidanceDocuments.aspx

iii. If the Norfolk District determines that the work qualifies for the NWP, additional conditions will be placed on the verification. Those conditions can be found at the web link above (in item ii).

iv. If the Norfolk District determines that the work does NOT qualify for the NWP, the applicant will be directed to apply for either Regional Permit 01, applicable only for Virginia Department of Transportation (VDOT) projects or an Individual Permit. However, it is anticipated that the applicant will still be required to perform the work such that the waterway is not blocked or restricted to a greater degree than its current conditions.

b. If the existing pipe or at least one pipe in the multi-barrel array of pipes IS countersunk and at least one pipe located in the low flow channel will continue to be countersunk, and no concrete aprons are proposed:

   No PCN to the Norfolk District is required, unless specified in the Regional Conditions for other reasons, and the permittee may proceed with the work.

c. If the existing pipe or at least one pipe in the multi-barrel array of pipes IS countersunk and no pipe will continue to be countersunk in the low flow channel:

   This work cannot be performed under the NWPs. The permittee must apply for either a Regional Permit 01 (applicable only for VDOT projects) or an Individual Permit. However, it is anticipated that the permittee will still be required to perform the work such that the waterway is not blocked or restricted more so than its current conditions.

d. In emergency situations, if conditions or timeframes do not allow for compliance with the procedure outlined herein, then the pipe can be temporarily repaired to the condition before the washout. If the temporary repair would require a PCN by the above procedures, the permittee must submit the PCN at the earliest practicable date, but no longer than 15 days after the temporary repair.

9. Impacts Requiring a Compensatory Mitigation Plan

When a PCN is required, a compensatory mitigation plan must be submitted if the permanent loss exceeds 0.1 acre of wetlands and/or 0.03 acre of stream bed or 300 linear feet of stream bed unless otherwise stated in the regional conditions (see Regional Condition 11 for Transportation Projects). The stream channel loss must be reported in acreage and linear feet.

10. Removal of Temporary Fills and Impacts

The soils of any temporarily impacted areas located in wetlands that are cleared, grubbed, and/or filled, must be restored once these areas are no longer needed for their authorized purpose, no later than completion of project construction, and not to exceed twelve (12) months after commencing the temporary impacts. To restore, temporary fill must be removed in its entirety and the affected areas returned to preconstruction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12”, and then seeded using native wetland species. See Regional Condition 6: Invasive Species for more information on vegetation recommendations.

Fill or dredged material in waters of the U.S. that is not removed within the 12-month period will be considered a permanent impact, unless otherwise determined by the Corps. This additional impact to waters of the U.S. may result in the Corps initiating a permit non-compliance action, which may include a restoration order, after-the-fact permitting, and/or compensatory mitigation.

11. Transportation Projects Funded in Part or in Total by Local, State or Federal Funds

For all impacts associated with transportation projects funded in part or in total by local, state or federal funds and requiring a PCN, compensatory mitigation will generally be required for all permanent wetland impacts (including impacts less than 1/10 acre). Therefore, the PCN must include a compensatory mitigation plan.

12. Activities Affecting Structures or Works Built by the United States

If the NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a Corps Federally authorized Civil Works project, the activity that requires section 408 permission is not authorized by the NWP until the appropriate Corps District office issues the section 408 permission to alter, occupy, or use the Corps Civil Works project, and the District Engineer issues a written NWP verification.

Contact a Norfolk District Regulatory Project Manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps of Engineers Civil Works project.

Locations of Norfolk District Civil Works projects can be found at: http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17_Corps_Project_Maps.pdf

For projects located within the Civil Works boundary of the Baltimore, Huntington, Nashville or Wilmington District, please contact a Norfolk District Project Manager for assistance.

13. Clean Water Act Section 401 Water Quality Certification

As a condition of the Virginia Department of Environmental Quality's (VADEQ) 401 Water Quality Certification for NWPs 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58, applicants are required to obtain either a Virginia Water Protection (VWP) permit, an individual Section 401 Water Quality Certification or waiver from the Virginia Department of Environmental Quality (VADEQ).

14.Federal Consistency under the Coastal Zone Management Act (CZMA)

As a condition of the VADEQ's concurrence with the CZMA consistency determination, applicants are required, for proposed activities located within Virginia's designated coastal zone, to access the Virginia Department of Wildlife Resources' (DWR) Virginia Fish and Wildlife Information Service (VAFWIS) at https://vafwis.dgif.virginia.gov/fwis/ to determine if a state-listed species or designated resource is known within 2 miles of the proposed activity being permitted. Should a state-listed species and/or designated resource be identified within 2 miles of the proposed activity, the applicant must coordinate with the DWR's Environmental Services Section (ESS) by submitting information on permit applications via email to: ESSProjects@dwr.virginia.gov. Applicant shall allow at least 30 days for review and comment by the DWR ESS.

II. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC 2021 NWPS:

NWP 12 - Oil or Natural Gas Pipeline Activities
Conditions Specific to NWP 12:

1. Construction of access roads may not cause the loss of more than 1/3 acre of waters of the United States.

2. A PCN is required when the activity involves greater than 0.10 acre of mechanized landclearing in a forested wetland for the utility line right-of-way.

3. For utility activities requiring a PCN the permittee shall provide the following information:

    a. A map of the entire utility corridor to assist with our completeness determination. The map should include a delineation of all wetlands and waters of the United States within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, POW, etc.).

    b. An analysis of onsite minimization, which specifically addresses the following:

        i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.

        ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on

the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia http://www.dcr.virginia.gov/natural-heritage/vaconvision or the Virginia Natural Heritage Data Explorer (http://vanhde.org/content/map).

iii. Minimizing clearing of wetlands. Grubbing shall be limited to the permanent easement for underground utility lines. Outside of the permanent easement, wetland vegetation shall only be removed at or above the ground surface unless written justification is provided, and the impacts are reviewed and approved by the Corps.

iv. For buried utility lines, allowance of natural succession to restore the wetland area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent practicable.

c. Compensatory mitigation may be required for permanent conversion of wetlands within the utility line corridor.

4. For all submerged utility lines across navigable waters of the United States, a location map and cross-sectional view showing the utility line crossing from bank to bank is required. In addition, the location and depth of any Federal Navigation Channels shall be shown in relation to the proposed utility line. In general, all utility lines shall be buried at least six (6) feet below the authorized bottom depth of Federal Navigation Channel and at least three (3) feet below the bottom depth in all subaqueous areas. When circumstances prevent the placement of at least three feet of cover over the line (outside of the Federal Navigation Channel), then written justification and an alternative method must be provided with the PCN and the deviation must be reviewed and approved by the Norfolk District. Section 408 permission may be required (see Regional Condition 12 under Section I).

5. Whenever practicable, excavated material shall be placed on a Corps confirmed upland site, scow or barge. However, when this is not practicable, temporary stockpiling is authorized provided that:

a. All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into any waterway.

b. All excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the pipeline has been laid through the wetland areas. Permission must be granted by the Norfolk District if the material is to be stockpiled longer than 30 days.

6. The applicant must receive written verification before performing the work when open-cut trenching, temporary stockpiling dredge material, or hydrostatic testing of a pipeline involving water withdrawals in designated anadromous fish use areas is proposed. The Norfolk District will coordinate with NOAA and/or the DWR. In most cases, the following time-of-year restrictions (TOYRs) will apply:

    - James River, below Rt. 17 bridge: No TOYR.
    - James River, at Jamestown Island (Gray's Creek) downstream to Rt. 17 bridge: TOYR from February 15 through June 15 of any given year.
    - James River, at Jamestown Island upstream to Bosher's Dam: TOYR from February 15 through June 30 of any given year.
    - James River, above Bosher's Dam (including Rivanna River): TOYR from March 15 through June 30 of any given year.
    - Rappahannock River, below Route 360 bridge: TOYR from February 15 through June 15 of any given year.
    - York River, below Route 33 bridge: TOYR from February 15 through June 15 of any given year.
    - Nansemond River: TOYR from February 15 through June 15 of any given year.
    - Elizabeth River: If dredging upstream of the Mid-Town Tunnel on the mainstem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River, then a TOYR is not required.
    - Unless otherwise noted: TOYR from February 15 through June 30 of any given year.

7. For utility lines landing in Virginia, from the Outer Continental Shelf (OCS), the applicant shall send the PCN to the following federal agencies:

    Director, Naval Seafloor Cable Protection Office
    Naval Facilities Engineering Command
    1322 Patterson Ave SE, Suite 1000
    Washington DC 20374

    Bureau of Ocean Energy Management (BOEM)
    Atlantic OCS Region
    1201 Elmwood Park Blvd.
    New Orleans, LA 70123-2394.

8. For utility line projects completed by horizontal directional drilling or other boring methods, include a plan to address the prevention, containment, and cleanup of sediment or other materials caused by inadvertent returns of drilling fluids to waters of the U.S. through sub-soil fissures or fractures with the PCN (if a PCN is required). If an inadvertent return of drilling fluids to waters of the U.S. occurs, and the remediation requires work within waters of the U.S., then the applicant must notify

the Corps immediately and submit a remediation plan as soon as possible, regardless of whether a PCN was required for the original work.

9. When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish:

    a. Screening over the mouth of the intake with mesh size that does not exceed 1mm;
    b. Intake velocities that do not exceed 0.25 feet per second
    c. Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.

10. Section 401 Water Quality Certification

    a. An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for any applicant to the Federal Energy Regulatory Commission (FERC) for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 USC § 717f(c)) to construct any natural gas transmission pipeline greater than 36 inches in diameter.
    b. For all other proposed NWP 12 activities, project proponents are required to obtain either a Virginia Water Protection (VWP) permit, an individual Section 401 Water Quality Certification or waiver from the Virginia Department of Environmental Quality.

NWP 21 – Surface Coal Mining Activities

An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 21 that impact more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

NWP 29-Residential Developments

Restricted use of NWP 29 for Multiple Unit Residential Developments and Residential Subdivisions: NWP 29 overlaps with the current State Program General Permit (SPGP-01); therefore, NWP 29 may not be used to authorize multiple unit residential developments and residential subdivisions, unless the Norfolk District determines that the SPGP-01 is not applicable. NWP 29 may still be used for a single residence and attendant features and in the Northern Virginia Military Installations within Baltimore District's Area of Responsibility.

Clean Water Act Section 401 Water Quality Certification:

An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 29 that cumulatively impact more than 1/10 of an

acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

NWP 39-Commercial and Institutional Developments

Restricted use of NWP 29 for Multiple Unit Residential Developments and Residential Subdivisions: NWP 39 overlaps with the current State Program General Permit (SPGP-01); therefore, NWP 39 may not be used, unless the Norfolk District determines that the SPGP-01 is not applicable. NWP 39 may still be used in the Northern Virginia Military Installations within Baltimore District's Area of Responsibility.

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 39 that cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 40 – Agricultural Activities

Clean Water Act Section 401 Water Quality Certification:

a. Discharges conducted under NWP 40 shall not increase the capacity of an impoundment or reduce instream flows unless otherwise authorized by a VADEQ VWP Permit.

b. An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 40 that cumulatively impact more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 42 – Recreational Facilities

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 42 that cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 43 – Stormwater Management Facilities

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 43 that cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 44- Mining Activities

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 44 that impact more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 48-Commercial Shellfish Mariculture Activities

1. No aquaculture activity shall occur within beds of submerged aquatic vegetation (SAV) or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by SAV or saltmarsh after an authorized aquaculture activity is installed in the same area, the activity shall be allowed to remain; however, no expansion of the aquaculture operation into newly colonized areas is authorized by this NWP. Information on the location of SAV beds can be found at: http://mobjack.vims.edu/sav/savwabmap/ .

2. An aquaculture activity will not meet the terms for this NWP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or waterfowl. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.

3. An aquaculture activity will not qualify for this NWP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or fish. Feeding and harvesting plans, including the use of a hydraulic dredge, should be included in the application to evaluate impacts.

4. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.

5. As-built drawings must be submitted with the certificate of compliance for all aquaculture projects.

6. The District Engineer will require an Individual Department of the Army permit for any project which they determine to have greater than minimal individual or cumulative impacts.

7. If the permittee decides to abandon the activity authorized under this NWP (unless such abandonment is merely the transfer of property to a third party), the permittee must notify the Corps and may be required to remove the structures and restore the area to the satisfaction of the Corps.

NWP 50 – Underground Coal Mining Activities

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under

NWP 50 that impact more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 51-Land-Based Renewable Energy Generation Facilities

If aerial transmission lines crossing navigable waters are proposed, please see NWP C Regional Condition 7.

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 51 that cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 52-Water-Based Renewable Energy Generation Pilot Projects

If aerial transmission lines crossing navigable waters are proposed, please see NWP C Regional Condition 7.

Clean Water Act Section 401 Water Quality Certification: An individual Section 401 Water Quality Certification (or waiver) from the VADEQ is required for activities under NWP 52 that cumulatively impact more than 1/10 of an acre of wetlands or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

NWP 55- Seaweed Mariculture Activities

In addition to the information required under NWP B, the followings should be included in the PCN:

1. General water depths, sediment characteristics of the bottom substrate, and benthic species present (including submerged aquatic vegetation) in the project area(s) (a detailed survey is not required).

2. A description of the quantity and dimensions of all proposed structure(s), including: culture gear (lines, cages pens, etc.), anchors, and site markers.

3. A vicinity map showing the project location(s), including the longitude and latitude of the site boundaries.

4. A schematic or drawing showing how the gear will be deployed on the site (a formal engineered schematic is not required).

5. The name(s), including sub-species if applicable, and quantities of the species that will be cultivated.

NWP 56- Finfish Mariculture Activities

In addition to the information required under NWP B, the followings should be included in the PCN:

1. General water depths, sediment characteristics of the bottom substrate, and benthic species present (including submerged aquatic vegetation) in the project area(s) (a detailed survey is not required).

2. A description of the quantity and dimensions of all proposed structure(s), including: culture gear (lines, cages pens, etc.), anchors, and site markers.

3. A vicinity map showing the project location(s), including the longitude and latitude of the site boundaries.

4. A schematic or drawing showing how the gear will be deployed on the site (a formal engineered schematic is not required).

5. The name(s), including sub-species if applicable, and quantities of the species that will be cultivated.

NWP 57- Electric Utility Line and Telecommunications Activities

1. Construction of access roads may not result in more than 1/3 acre of impacts to waters of the United States.

2. A PCN is required when the activity involves greater than 0.10 acres of mechanized landclearing in a forested wetland for the utility line right-of-way.

3. For utility activities requiring a PCN the permittee shall provide the following information:

    a. A map of the entire utility corridor to assist with our completeness determination. The map should include a delineation of all wetlands and waters of the United States within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, POW, etc.).

    b. An analysis of onsite minimization, which specifically addresses the following:

        i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.

ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia http://www.dcr.virginia.gov/natural-heritage/vaconvision.

iii. Minimizing clearing of wetlands. Grubbing shall be limited to the permanent easement for underground utility lines. Outside of the permanent easement, wetland vegetation shall only be removed at or above the ground surface unless written justification is provided, and the impacts are reviewed and approved by the Corps.

iv. For overhead utility lines, allowance of natural succession to restore and maintain the corridor in scrub-shrub wetlands except for a minimum corridor needed for access, to the maximum extent practicable.

v. For buried utility lines, allowance of natural succession to restore the wetland area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent practicable.

c. Compensatory mitigation may be required for permanent conversion of wetlands within the utility line corridor.

4. For all submerged utility lines across navigable waters of the United States, a location map and cross-sectional view showing the utility line crossing from bank to bank is required. In addition, the location and depth of any Federal Navigation Channels shall be shown in relation to the proposed utility line. In general, all utility lines shall be buried at least six (6) feet below the authorized bottom depth of Federal Navigation Channel and at least three (3) feet below the bottom depth in all subaqueous areas. When circumstances prevent the placement of at least three feet of cover over the line (outside of the Federal Navigation Channel), then written justification and an alternative method must be provided with the PCN and the deviation must be reviewed and approved by the Corps. Section 408 permission may be required (see Regional Condition 13 under Section I).

5. Whenever practicable, excavated material shall be placed on a Corps confirmed upland site, scow or barge. However, when this is not practicable, temporary stockpiling is hereby authorized provided that:

a. All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into any waterway.

b. All excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the pipeline has been laid through the wetland

areas. Permission must be granted by the Norfolk District if the material is to be stockpiled longer than 30 days.

6. The applicant must receive written verification before performing the work when open-cut trenching, temporary stockpiling dredge material, or hydrostatic testing of a pipeline involving water withdrawals in designated anadromous fish use areas is proposed. The Norfolk District will coordinate with NOAA and/or the DWR. In most cases, the following time-of-year restrictions (TOYRs) will apply:

    - James River, below Rt. 17 bridge: No TOYR.
    - James River, at Jamestown Island (Gray's Creek) downstream to Rt. 17 bridge: TOYR from February 15 through June 15 of any given year.
    - James River, at Jamestown Island upstream to Bosher's Dam: TOYR from February 15 through June 30 of any given year.
    - James River, above Bosher's Dam (including Rivanna River): TOYR from March 15 through June 30 of any given year.
    - Rappahannock River, below Route 360 bridge: TOYR from February 15 through June 15 of any given year.
    - York River, below Route 33 bridge: TOYR from February 15 through June 15 of any given year.
    - Nansemond River: TOYR from February 15 through June 15 of any given year.
    - Elizabeth River: If dredging upstream of the Mid-Town Tunnel on the mainstem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River, then a TOYR is not required.
    - Unless otherwise noted: TOYR from February 15 through June 30 of any given year.

7. Aerial Transmission Lines Crossing Navigable Waters:

    a. 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

b. 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 otherwise specifically authorized by the District Engineer.

c. 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.

8. For utility lines landing in Virginia, from the Outer Continental Shelf (OCS), the applicant shall send the PCN to the following federal agencies:

   Director, Naval Seafloor Cable Protection Office
   Naval Facilities Engineering Command
   1322 Patterson Ave SE, Suite 1000
   Washington DC 20374

   Bureau of Ocean Energy Management (BOEM)
   Atlantic OCS Region
   1201 Elmwood Park Blvd.
   New Orleans, LA 70123-2394.

9. For utility line projects completed by horizontal directional drilling or other boring methods, a plan to address the prevention, containment, and cleanup of sediment or other materials caused by inadvertent returns of drilling fluids to waters of the U.S. through sub-soil fissures or fractures needs to be included with the PCN (if a PCN is required). If an inadvertent return of drilling fluids to waters of the U.S. occurs, and the remediation requires work within waters of the U.S., then the applicant must notify the Corps immediately and submit a remediation plan as soon as possible, regardless of whether a PCN was required for the original work.

10. When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish:

a. Screening over the mouth of the intake with mesh size that does not exceed 1mm;
b. Intake velocities that do not exceed 0.25 feet per second;
c. Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.

NWP 58- Utility Line Activities for Water and Other Substances

1. Construction of access roads may not result in more than 1/3 acre of impacts to waters of the United States.

2. A PCN is required when the activity involves greater than 0.10 acres of mechanized landclearing in a forested wetland for the utility line right-of-way.

3. For utility activities requiring a PCN the permittee shall provide the following information:

   a. A map of the entire utility corridor to assist with our completeness determination. The map should include a delineation of all wetlands and waters of the United States within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, POW, etc.).

   b. An analysis of onsite minimization, which specifically addresses the following:

      i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.

      ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia http://www.dcr.virginia.gov/natural-heritage/vaconvision.

      iii. Minimizing clearing of wetlands. Grubbing shall be limited to the permanent easement for underground utility lines. Outside of the permanent easement, wetland vegetation shall only be removed at or above the ground surface unless written justification is provided and the impacts are reviewed and approved by the Corps.

iv. For overhead utility lines, allowance of natural succession to restore and maintain the corridor in scrub-shrub wetlands except for a minimum corridor needed for access, to the maximum extent practicable.

v. For buried utility lines, allowance of natural succession to restore the wetland area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent practicable.

c. Compensatory mitigation may be required for permanent conversion of wetlands within the utility line corridor.

4. For all submerged utility lines across navigable waters of the United States, a location map and cross-sectional view showing the utility line crossing from bank to bank is required. In addition, the location and depth of any Federal Navigation Channels shall be shown in relation to the proposed utility line. In general, all utility lines shall be buried at least six (6) feet below the authorized bottom depth of Federal Navigation Channel and at least three (3) feet below the bottom depth in all subaqueous areas. When circumstances prevent the placement of at least three feet of cover over the line (outside of the Federal Navigation Channel), then written justification and an alternative method must be provided with the PCN and the deviation must be reviewed and approved by the Corps. Section 408 permission may be required (see Regional Condition 13 under Section I).

5. Whenever practicable, excavated material shall be placed on a Corps confirmed upland site, scow or barge. However, when this is not practicable, temporary stockpiling is hereby authorized provided that:

   a. All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into any waterway.

   b. All excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the pipeline has been laid through the wetland areas. Permission must be granted by the Norfolk District Commander if the material is to be stockpiled longer than 30 days.

6. The applicant must receive written verification before performing the work when open-cut trenching, temporary stockpiling dredge material, or hydrostatic testing of a pipeline involving water withdrawals in designated anadromous fish use areas is proposed. The Norfolk District will coordinate with NOAA and/or the DWR. In most cases, the following time-of-year restrictions (TOYRs) will apply:

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7. For utility lines landing in Virginia, from the Outer Continental Shelf (OCS), the applicant shall send the PCN to the following federal agencies:

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   Naval Facilities Engineering Command
   1322 Patterson Ave SE, Suite 1000
   Washington DC 20374

   Bureau of Ocean Energy Management (BOEM)
   Atlantic OCS Region
   1201 Elmwood Park Blvd.
   New Orleans, LA 70123-2394.

8. For utility line projects completed by horizontal directional drilling or other boring methods, a plan to address the prevention, containment, and cleanup of sediment or other materials caused by inadvertent returns of drilling fluids to waters of the U.S. through sub-soil fissures or fractures needs to be included with the PCN (if a PCN is required). If an inadvertent return of drilling fluids to waters of the U.S. occurs, and the remediation requires work within waters of the U.S., then the applicant must notify the Corps immediately and submit a remediation plan as soon as possible, regardless of whether a PCN was required for the original work.

9. When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish:

   a. Screening over the mouth of the intake with mesh size that does not exceed 1mm;
   b. Intake velocities that do not exceed 0.25 feet per second;

c. Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.