



U.S. Army Corps
of Engineers
Baltimore District
SPN-20-66

Public Notice

In Reply to Application Number
NAB-2020-00415 (Maryland State Programmatic General Permit-6)

Comment Period: 30 Days (November 23, 2020 to December 23, 2020)

THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM INTERESTED PARTIES OF THE PROPOSED ACTIVITY AND TO SOLICIT COMMENTS. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

SUBJECT: The U.S. Army Corps of Engineers, Baltimore District, is proposing to reissue with modifications, the Maryland State Programmatic General Permit-5 (MDSPGP-5) as the Maryland State Programmatic General Permit-6 (MDSPGP-6) for a five year period.

The purpose of this notice is to inform interested parties of the proposed reissuance of the MDSPGP-6 and to solicit comments on the proposed modifications that would be incorporated into a new MDSPGP-6. A copy of the proposed MDSPGP-6 is attached and can be viewed on our web page at <http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>.

The MDSPGP-5 went into effect on October 1, 2016 and will expire on September 30, 2021, unless a decision is made to suspend or revoke it by or before that date. A copy of the current version of the MDSPGP-5 can be viewed on our web page at <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Permits/MDSPGP-5.pdf>.

In accordance with 33 CFR 325.5(c), MDSPGP-6 would authorize the various proposed activities described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

On March 20, 2017, the Baltimore District issued Special Public Notice (SPN) #17-14 announcing the final regional conditions and suspensions of specific 2017 Nationwide Permits (NWP) in Maryland that are duplicated by the MDSPGP-5. The proposed modified MDSPGP-6 is designed to continue to authorize certain activities formerly covered by the NWP program. A copy of SPN #17-14 can be viewed on our web page at <https://www.nab.usace.army.mil/Portals/63/docs/Regulatory/PN/SPN17-14.pdf?ver=2017-06-09-111207-683>.

LOCATION OF AUTHORIZED ACTIVITIES: This MDSPGP-6 applies to activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland.

EXCLUDED WATERS: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal tributaries are excluded from the authority of this MDSPGP-6. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's Regulatory geographic boundaries.

PURPOSE: The modified MDSPGP-6 is proposed to provide a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and satisfy other public interest review factors. The State of Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a State-wide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the

granting of permits and licenses require Maryland Department of the Environment (MDE) to apply evaluation criteria consisting of alternatives analyses (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation for wetland impacts. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. If the MDSPGP-5 is reissued as MDSPGP-6, the Baltimore District Engineer will reevaluate the MDSPGP-6 within five years to determine if activities have been authorized in accordance with the requirements of the MDSPGP-6. Programmatic general permits are authorized for a five-year period at which time they must be re-evaluated for their impacts on the aquatic environment.

PROPOSED NOTABLE MODIFICATIONS TO THE MDSPGP-6:

The substantive proposed modifications consist of changes to overall thresholds for Category A and B Activities, (activity-specific thresholds are identified in Section IV.A.1 MDSPGP-6 Categories); the addition of a new activity for Aquatic Habitat Restoration, Enhancement, and Establishment Activities Conducted as Compensatory Mitigation for Losses Authorized under the MDSPGP-6; the proposal of additional terms and conditions for Living Shoreline Activities; the re-location of certain activity-specific conditions into general conditions due to their applicability across multiple activities; and the removal of repetitive language where appropriate.

The MDSPGP-6 proposes to eliminate activity specific eligibility thresholds for single and complete projects in order to propose limits for loss of Waters of the United States. The change to loss thresholds would result in unlimited acreage for temporary impacts for a single and complete project, provided no more than minimal adverse environmental impacts were proposed. Reporting thresholds (*i.e.* when an application is required to be reviewed by the corps) are calculated with impacts on the overall project as opposed to a single and complete project.

The specific proposed modifications are as follows:

I. Authorities

II. Scope of Activities

A. Activities Authorized by the MDSPGP-6

- Provides clarification on the activities that are authorized by the MDSPGP-6 and the conditions, both general and specific, that the project should comply with to ensure that adverse environmental effects are no more than minimal.
- Provides language to clarify Corps jurisdiction, specifically those applications containing a jurisdictional determination request.

B. MDSPGP-6 Verification Procedures (when an application is required): No substantial changes

A. General Permit Review Categories

- Clarifies eligibility requirements for authorization under Category A.
- Clarifies eligibility requirements for authorization under Category B.
- Clarifies Corps review procedures for Category B activities.

B. Triggers for Category B Review

- Provides clarification for applications that require Corps notification and review as a reporting Category B activity, *i.e.* projects that are in proximity to a federal navigation channel, adjacent to a federal civil works project, have the potential to

cause effect to historic properties, or might affect a federally listed threatened or endangered species.

III. Application Procedures

- Clarifies procedure when a project will result in impacts to SAV, specifically, the delineation of Submerged Aquatic Vegetation (SAV) boundaries shall be accomplished by utilizing the five (5) most recent years of mapping (preliminary data can be used to forecast presence of SAV Virginia Institute of Marine Science (VIMS).
- Clarifies application requirements, notably, a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site.

A. Federal, State and Local Approvals: No significant changes

B. MDSPGP-6 Verification Procedures

1. Category A (Corps Review Not Required)

- Provides clarification on MDE review procedures and basis for their Category A determination.

2. Category B (Corps Review Required)

- Provides clarification on review procedures for projects that are identified as Category B. Notably, the Corps will determine eligibility under the MDSPGP-6 based on impacts of each single and complete project, and will coordinate with appropriate federal and state agencies.
- Clarifies coordination procedure with resources agencies.
- Clarifies procedure if the Corps determines that mitigation is required to ensure no more than minimal adverse environmental effects.

4. Alternate Corps Permit Review

- Clarifies procedure if project is ineligible under the terms and conditions of the MDSPGP-6.

5. Corps Discretionary Authority

- Language was added to clarify that the Corps retains discretionary authority to require a Corps Individual Permit review.

IV. MDSPGP-6 Categories

- A new activity, e (11) Aquatic Habitat Restoration, Enhancement, and Establishment Activities Conducted as Compensatory Mitigation for Losses Authorized under the MDSPGP-6, was added to section e. Fill Activities.
- F (2) Tidal Marsh Creation/Beach Nourishment was changed to Living Shorelines/Beach Nourishment.

A. Description of proposed modifications to MDSPGP Authorized Activities

1. Category A and Category B Activities

a. Boating and Navigation Related Projects, Structures, and Activities

(3) Piers

- Proposes modification to authorize 1 pier, 6 mooring piles, up to 4 boat slips and up to 2 personal water crafts, exclusively for personal watercraft, per property.
- Activity will not authorize marina piers, community piers, publicly-owned piers, or governmental piers.
- Proposes modification to design requirements for the construction of fixed open pile piers.
- Proposes additional terms and conditions for piers that are to be located in waters containing mapped SAV.

(4) Marina/Community Pier Reconfiguration

- Activity will not authorize construction of more than two additional slips within the existing footprint.
- Language was added to clarify design requirements for the construction of access piers associated with construction of new boat ramps.

(5) Boat Ramp Construction, Repair, and Expansion

- Threshold for Category B boat ramp width was increased from 24 to 35 feet.

(6) Mooring Buoys

- Proposes additional terms and conditions for the placement of mooring buoys, *i.e.*, adherence to MD DNR restrictions and no placement in areas containing mapped SAV for Category A activities.

(8) Temporary Recreational Structures

- Clarifies installation requirements for temporary seasonal recreational structures, such as small floating docks.

(9) Maintenance Dredging of Previously Authorized Dredging in Tidal Waters

- All hydraulic dredging must be reviewed under Category B or alternate Corps permit review procedures.
- Category A will not authorize dredging within SAV beds or shellfish beds.
- Clarifies suitable placement of dredged material and approval for beneficial reuse.
- Proposes additional terms and conditions for dredging activities.
- Proposes additional application requirements for maintenance dredging projects.

(10) New Minor Dredging in Tidal Waters

- Clarifies suitable placement of dredged material and approval for beneficial reuse.

b. Repair and Maintenance Activities

(1) General Maintenance

- Provides clarification on activities that are authorized under general maintenance.
- Eliminates temporary and permanent impact thresholds on Category B activities provided the general conditions of the permit are followed to the full extent.

- Proposes additional terms and conditions for proposed activities located in the Maryland coastal plain and piedmont waters in Harford and Cecil Counties.
- (2) Armoring Bridges, Causeways, and Culverts
- Proposes that the total temporary and permanent impacts to all waters of the United States are not to exceed 10,000 square feet and/or 500 linear feet of stream, rivers, and other open waters for Category A activities.
 - Proposes that single and complete Category B projects will result in no more than a total ½ acre loss of tidal and nontidal waters of the United States, and the loss of stream channel may not to exceed 1000 linear feet.
 - Proposes additional terms and conditions for proposed activities located in the Maryland coastal plain and piedmont waters in Harford and Cecil Counties.
- (3) Bulkhead Repair or Replacement, including Stone Toe Protection
- Proposes additional terms and conditions under both Category A and Category B activities.
- (4) Maintenance of Tidal Roadside Ditches
- Proposes no impact threshold for Category B activities.
 - Proposes additional requirements applicable to both Category A and Category B activities.
- (6) Culvert Pipe Grouting/Sealing and Joint Repairs
- Category A will not authorize impacts to tidal streams or tidal wetlands.
 - Proposes that single and complete Category B projects will result in no more than a total ½ acre loss of tidal and nontidal waters of the United States, and the loss of stream channel may not exceed 1000 linear feet.
 - Proposes additional terms and conditions for proposed activities located in the Maryland coastal plain and piedmont waters in Harford and Cecil Counties.
 - Proposes additional requirements applicable to both Category A and Category B activities.
- c. Underground and Overhead Utility Line Activities
- Proposes for activities c (1-3) that all single and complete Category B projects will result in no more than a total ½ acre loss of tidal and nontidal waters of the US, and the loss of stream channel may not exceed 1000 linear feet.
 - Adds activity specific condition for DoD Military Siting coordination for both Category A and B activities
- d. Linear Transportation Activities
- Proposes that single and complete Category B projects will result in no more than a total ½ acre loss of tidal and nontidal waters of the United States, and the loss of stream channel may not exceed 1000 linear feet.
 - Proposes additional application requirements applicable to both Category A and B activities. Notably, if a preferred crossing option is not used, the applicant will be required to submit supplemental narrative.
- e. Fill Activities

- Proposes for Fill Activities (1-10), that single and complete Category B projects will result in no more than a total ½ acre loss of tidal and nontidal waters of the United States, and the loss of stream channel may not exceed 1000 linear feet.
- Adds to e(1) and e(9) activity specific condition for DoD Military Siting coordination for both Category A and B activities
- Repetitive language was eliminated where appropriate for clarity.

(7) Temporary Construction, Access, Stream Diversions, and Dewatering for Construction

- Proposes additional terms and conditions for proposed activities located in the Maryland coastal plain and piedmont waters in Harford and Cecil Counties.

(9) Residential, Commercial, and Institutional Development

- Proposes additional requirements for both Category B activities, notably, the applicant must furnish as-built drawings to appropriate agencies when an activity involves an aerial transmission line, submerged cable, or submerged pipeline across Section 10 waters.

(11) Aquatic Habitat Restoration Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized under the MDSPGP-6

- Proposes new activity under the MDSPGP-6

f. Shoreline and Stream Bank Stabilization Activities

(1) New Tidal Revetments and Tidal Shoreline Erosion Control Structures other than Revetments

- Proposes that the discharge associated with Category B activities cannot cause the loss of greater than ½ acre of waters of the United States.
- Clarifies review procedures for shoreline stabilization activities, notably, review based on an order of preference.

(2) Living Shorelines

- Language was added to clarify design criteria and standard requirements for the construction and maintenance of living shorelines.
- Proposes additional terms and conditions for Category A and Category B activities. Notably, overall thresholds were identified for the placement of fill material in or adjacent to SAV and vegetated wetlands.
- Proposes that the single and complete Category B project will result in no more than a total ½ acre loss to tidal waters of the United States.
- Proposes additional requirements to avoid and minimize impacts to SAV beds. Proposes additional terms and conditions applicable to both Category A and B activities. Notably, planting and monitoring requirements, in addition to grain size analyses for both the dredged material and placement site.

(4) Nontidal Bank Stabilization

- Proposes that the single and complete Category B project will result in no more than a total ½ acre loss to tidal waters of the United States and the loss of stream channel may not exceed 1,000 linear feet

- h. Private Landowner Oyster Gardening
 - Category A activity does not authorize activities within 50 feet of existing or mapped SAV beds and will not authorize installation of vertical lines.

2. Category B Activities Requiring Application Submittal

- Repetitive language was eliminated where appropriate for clarity.

d(2) Violations

- Category B review is only required for after-the-fact permit applications that exceed Category A thresholds or when specifically requested by the Corps.

V. Definitions: The following terms were defined and/or re-defined for clarity: Breakwater, Discharge of Fill Material, Enhancement, Indirect Impacts, Linear Projects, Loss of Waters of the United States, Navigable Waters of the United States, Nontidal Wetland, Open Water, Perennial Stream, Permanent Conversion, Permanent Impacts, Personal Watercraft, Previously Authorized, Single and Complete Project, Single and Complete Projects (Non-Linear Projects), Submerged Aquatic Vegetation, Temporary Impacts, and Waters of the United States and Navigable Waters of the United States.

VI. Alternate Corps Permit Review: Clarifies procedure if a project is ineligible under the terms and conditions of the MDSPGP-6.

VII. General Conditions

- Language was added to clarify the use of multiple MDSPGP-6 Activities.
- Clarifies coordination with the Maryland Historical Trust when an application submittal is not required for MDSPGP-6 authorization.
- Clarifies and proposes additional best management practices applicable to Category A and Category B activities within Tidal Waters and Wetlands, specifically as it relates to pile driving.
- Adds website references in order to aid applicants on locating various resources.
- Proposes “Critical Habitat”, “Activities Affecting Structures or Works Built by the United States”, “Coastal Barrier Resources Act (CBRA)”, “Designated Critical Resource Waters”, “Removal of Temporary Fill, Structures and Mats” and “Countersinking Pipes” “Beneficial Reuse of Dredge Material” as new general conditions.
- Adds additional clarification to removal of temporary fill, structures, and mats. States that temporary fills shall be removed in their entirety within 14 calendar days after structure or fill is no longer needed. Category B review will be required if temporary impacts are proposed to last longer than 12 months in length. A restoration plan is required to demonstrate how temporary fills and structures will be removed in order to restore the site to pre-project conditions.
- Provides clarity on Water Quality Certification and Coastal Zone Management Consistency.
- Provides clarity on mitigation requirements for impacts to waters of the United States and proposes mitigation standards for the conversion of aquatic resources.

LEAD FEDERAL AGENCY: The U.S. Army Corps of Engineers, as the lead federal agency, is responsible for all coordination pursuant to applicable federal authorities.

CORPS EVALUATION REQUIREMENTS: This proposed programmatic general permit will be

evaluated pursuant to Corps Regulatory Program Regulations (33 CFR Parts 320-332). The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the needs and welfare of the people. The evaluation of the impact of this proposed programmatic general permit will also include application of the Clean Water Act Section 404(b)(1) Guidelines promulgated by the Administrator, U.S. Environmental Protection Agency.

ENDANGERED SPECIES: The Endangered Species Act of 1973 (ESA), as amended, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS)/National Oceanic Atmospheric Administration (NOAA) and/or U.S. Fish and Wildlife Service (FWS), pursuant to Section 7 of the ESA, on any action, or proposed action, permitted, funded, or undertaken by the agency that may affect a species listed as threatened or endangered under the ESA, or its designated critical habitat. The Corps will be initiating consultation under the Endangered Species Act on this programmatic general permit and any conditions from that consultation will be inserted into the MDSPGP-6. A preliminary review indicates that the proposed activities will not affect Federal listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. If the project site lies in or adjacent to EFH as described under MSFCMA for managed species under the MSFCMA, the Corps will coordinate with NMFS. The Baltimore District has made a preliminary determination that the proposed programmatic general permit will have no effect on EFH. The Baltimore District has made a preliminary determination that mitigative measures are required to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise.

HISTORIC RESOURCES: Pursuant to Section 106 of the National Historic Preservation Act of 1966 and applicable guidance, the Corps has reviewed the latest published version of the National Register of Historic Places and initially determined that no registered properties listed as eligible for inclusion, therein, are located at the site of the proposed work. The Corps has made the preliminary determination that the proposed programmatic general permit has no potential to cause effectson historic properties. The Corps final eligibility and effect determination will be based on coordination with the State Historic Preservation Office as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps' identified permit area.

TRIBAL RESOURCES: Section 106 of the National Historic Preservation Act also requires federal agencies to consult with federally-recognized American Indian tribes that attach religious and cultural significance to historic properties that may be affected by the agency's undertaking. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The

policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408): All Section 408 proposals will be coordinated internally at USACE. The Section 408 decision will be issued along with the Section 404 and/or Section 10 decision. Please see the following link for more information regarding Section 408: <https://www.nab.usace.army.mil/section408/>.

WATER QUALITY CERTIFICATION: The Corps is required to obtain a water quality certification (WQC) in accordance with Section 401 of the Clean Water Act from Maryland Department of the Environment prior to issuance of the MDSPGP-6. By this public notice, the Corps is requesting the Maryland Department of the Environment to determine whether to issue, deny, to waive water quality Water Quality Verification for this regional general permit. Any written comments concerning the proposed MDSPGP-6 which relate to WQC must be received by MDE within the comment period as specified as above. In Maryland certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708. The Section 401 certifying agency has a statutory limit of sixty (60) days to make its decision.

COASTAL ZONE MANAGEMENT PROGRAMS: Where applicable, the Corps has certified in this application that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management (CZM) Program. By this public notice, we are requesting the State concurrence or objection to the applicant's consistency statement. Any written comments concerning the proposed MDSPGP-6 which relate to CZM must be received by the appropriate agencies within the comment period as specified as above. In Maryland certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708.

SUBMISSION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written comments must be received by the U.S. Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager email address below. Written comments should reference the Corps File Number NAB-2020-00415.

PUBLIC HEARING REQUESTS: Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received within the comment period as specified above to receive consideration.

Also it must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. The public hearing request may be submitted by electronic mail or mailed to the following address:

Donald Bole
Donald.R.Bole@usace.army.mil
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, MD 21201

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting process can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project, or would like to request a paper copy of this public notice, please contact Mr. Donald Bole at: 410-962-6079 or by email at Donald.R.Bole@usace.army.mil. This public notice is issued by the Chief, Regulatory Branch.