

VIII. GENERAL CONDITIONS: Activities do not qualify for this TMDL RGP unless they satisfy all of the general conditions listed below:

1. The applicant must submit the appropriate permit application, plans, and supporting documentation according to the permit application procedure in Section VI and VII before initiating work in WOTUS.
2. Vegetation Protection and Restoration: Riparian and wetland vegetation in the authorized project area shall be protected from unnecessary clearing and disturbance to the maximum extent practicable through:
 - i. Minimization of project and impact footprint;
 - ii. Designation of staging areas and access points in open, upland areas;
 - iii. Fencing or other barriers demarking construction areas; or
 - iv. Use of alternative equipment (*e.g., crane, portable bridges*).
3. Tidal Waters: No activity, fill or discharge shall occur channelward of the high tide line.
4. Self-sustaining Design: The project must be self-sustaining, meaning that a project must be designed in a way which does not require routine work to maintain the as-built integrity.
5. Year 1 Post Construction Report: For all activities, the permittee must electronically provide a post-construction report (*PDF format preferred*) to the Corps (NAB-Regulatory@usace.army.mil) by December 31 of project completion year. The post-construction report shall include:
 - i. The Corps application tracking number & State permit number (*NAB-YYYY-#####*);
 - ii. Location of the completed work (*latitude and longitude in decimal degrees*);
 - iii. Dates during which the work occurred;
 - iv. A point of contact name and contact information (*email and phone*);
 - v. A set of geo-referenced photographs that show the pre-construction and post-construction conditions for the project using consistent photo stations;
 - vi. A narrative describing how the project purpose and objectives were met;
 - vii. Surveyed as-built drawings, to scale, with control (*latitude/longitude*) depicting the final work including the restoration of the temporary impacts. As-built drawings must be completed within 90 days of completion of work in WOTUS. Additional as-built monitoring is required for Activity C projects (*See VIII.6.xiii*).

6. Three Year Monitoring Requirements: For Activity C) Stream and Wetland Restoration Activities, the permittee must electronically provide an annual monitoring report to the Corps (NAB-Regulatory@usace.army.mil) by December 31 of each respective year. (*Note: Three year post construction monitoring reports are in addition to Year 1 Post Construction Monitoring Requirements noted in Section VIII General Condition 5. Monitoring requirements listed below apply to all three years, unless otherwise specified*). The monitoring reports must include:
- i. The Corps application tracking number & State permit number (NAB-YYYY-#####);
 - ii. Location of the completed work (*latitude and longitude in decimal degrees*);
 - iii. Dates during which the work occurred;
 - iv. A point of contact name and contact information (*email and phone*);
 - v. A set of geo-referenced photographs that show post-construction conditions for the project using consistent photo stations across monitoring years;
 - vi. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction functions and conditions using an FCAM. References to scientific literature may be used;
 - vii. Documentation of achievement of design objectives as compared to baseline values;
 - viii. Documentation of at least 85% coverage of the riparian vegetation, including volunteers. Of these, invasive species coverage may not exceed baseline (*Year 3 only*);
 - ix. Documentation of the reestablishment of impacted or relocated wetlands and streams (*Years 1 and 3 only*);
 - x. A waters and wetland delineation of the project site to ensure that there has been no additional loss or conversion. If additional loss or conversion is determined, the applicant may need to provide compensatory mitigation (*Year 3 only*);
 - xi. A detailed description of any necessary corrective measures, including maintenance and repair, or alteration in any way, of the permitted work. (*Note: permittees must notify the Corps of proposed corrective measures at least 15 days prior to performance of such corrective measures for review and approval. In addition, a summary of corrective measures must be included in the monitoring report for the respective year*);
 - xii. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction ecological functions

and conditions using an FCAM for three (3) years following construction completion.

xiii. Required Surveying and Figures:

- a. Plan view graphic showing channel alignment and aquatic resources onsite (*Years 1 and 3 only*).
- b. Surveyed cross-sections at a minimum of 300 foot intervals. Cross-sections must be monumented and graphically displayed to compare changes from previous years (*For Self-Verified Activities, Year 1 only, For Corps Verified Activities, Years 1 and 3 only*)
- c. Surveyed longitudinal profile capturing the water surface and bed elevation along the thalweg (*For Self-Verified Activities, Year 1 only, For Corps Verified Activities, Years 1 and 3 only*).
- d. Red-line construction drawings of the As-built condition may substitute for items a, b, and c above if they include the elements described in those respective items.
- e. Surveying specific to Year 1 listed above must reflect the As-built condition, and must be completed within 90 days of completion of project activity in WOTUS;

xiv. If monitoring shows that a project is not trending towards success in meeting the project goals and objectives, monitoring may be extended on a case by case basis. Projects not meeting documented functional lift and stability by year three may result in noncompliance or enforcement actions by the Corps.

7. Compliance Certification: Each permittee must provide a completed and signed Certificate of Compliance documenting completion of the authorized activity. The Corps will provide the permittee the certification document with the TMDL RGP verification letter. Each permittee should retain a copy for their records. The original Certificate of Compliance shall be emailed to: (*NAB-Regulatory@usace.army.mil*).
8. Other Permits: Authorization under the TMDL RGP does not obviate the need to obtain other Federal, state or local authorizations required by law or to comply with all Federal, state, or local laws.
9. Single and Complete Project: This TMDL RGP shall only be applied to single and complete projects. For purposes of this TMDL RGP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project.

10. Use of Multiple TMDL RGP Activities: More than one TMDL RGP activity may be used to authorize a single and complete project. However, the specific requirements, including all activity-specific requirements and impact thresholds, must be met for each TMDL RGP activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the TMDL RGP activity with the highest specified acreage and/or linear foot limit.
11. Multiple General Permit Authorizations: An activity can be authorized by more than one general permit (*e.g., TMDL RGP in combination with Maryland Statewide Programmatic General Permit or Nationwide Permit*), if the activity is a single and complete project (*33 CFR 330.2(i)*), that will result in no more than minimal adverse environmental effects, and that will satisfy the terms and conditions of the applicable general permits. However, the project must meet the specific requirements of each general permit and the total extent of project impacts must not exceed the acreage limit of the general permit with the highest specified acreage limit.
12. Water Quality: Permittees must satisfy any conditions imposed by the States and EPA, where applicable, in their Water Quality Certifications (WQC) for this TMDL RGP pursuant to Section 401 of the Clean Water Act. Project-specific WQC must be obtained for activities under the TMDL RGP that have not been given a programmatic WQC by the State. The Corps or State may require additional best management practices to ensure that the authorized activity does not result in degradation of water quality. For information on obtaining an individual water quality certification contact the appropriate state agency:

Maryland: A conditional Water Quality Certification has been issued for all permittees applying for the TMDL RGP within the State of Maryland (*Appendix 4*). For additional information contact the Wetlands and Waterways Program below:

MDE/Water and Science Administration
Wetlands and Waterways Program - ATTN: WQC
Montgomery Business Center – STE 430
1800 Washington Blvd
Baltimore, MD 21230-1708
<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/WQC.aspx>

Virginia: A general Water Quality Certification has been issued for all permittees applying for the TMDL RGP within the State of Virginia (*Appendix 4*). For additional information contact the Water Quality Division below:

Virginia Department of Environmental Quality
Water Quality Division
P.O. Box 1105

Richmond, Virginia 23218

<https://www.deq.virginia.gov/Programs/Water/WetlandsStreams.aspx>

District of Columbia: All applicants applying for the TMDL RGP for proposed work within the District of Columbia are required to obtain a permit-specific WQC's from DOEE. The joint permit application form for proposed work in the District of Columbia should indicate that the application form and all supporting documents must also be submitted to Regulatory Review Division:

Electronic Submittal: Jennifer.Dietzen@dc.gov or

Ms. Jennifer Dietzen

Water Resources Plan Review and Flood Control Branch

Regulatory Review Division

1200 First Street NE, 5th Floor

Washington, DC 20002

<https://doee.dc.gov/service/environmental-applications-licenses-and-permits>

13. Coastal Zone Management Consistency (CZM): All activities authorized by the TMDL RGP will be carried out in a manner consistent with the Maryland Coastal Zone Management Program or the Virginia Coastal Zone Management Program pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Permittees must satisfy any additional conditions imposed by the States in their CZM consistency concurrences for this TMDL RGP.

Per the letter dated July 10, 2020, the Maryland Department of Environment has concurred that the TMDL RGP is consistent with the Maryland's CZM Program, provided all applicable permits and approval are obtained (*Appendix 4*).

Per the letter dated June 8, 2020, the Virginia Department of Environmental Quality concurred that the TMDL RGP is consistent with the Virginia's CZM Program, provided all applicable permits and approval are obtained (*Appendix 4*).

14. Minimal Effects: Projects authorized shall have no more than minimal individual or cumulative impacts, as determined by the Baltimore District.
15. Discretionary Authority: The Corps retains discretionary authority to require processing of an individual permit for any project based on concerns for the aquatic environment or for any other factor of the public interest (*33 CFR 320.4(a)*). This authority is exercised on a case-by-case basis.
16. Contractor Compliance: The prospective permittee shall ensure that a copy of the TMDL RGP and Corps verification letter or signed self-verification form are available and visible for reference at the project site and that all personnel

with operational control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization. No contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

17. Historic Properties.

- i. Prior to initiating the work, prospective permittees shall coordinate with and receive written notification/comments (i.e., letter, email, etc.) from the appropriate SHPO:
 - a. Virginia State Historic Preservation Office, Review and Compliance Division, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, Phone: 804-482-6103, Website: <http://www.dhr.virginia.gov/> (utilization of the ePIX – Electronic Project Information Exchange is also recommended: <http://epix.dhr.virginia.gov/>);
 - b. Maryland Historical Trust, 100 Community Place, Crownsville, MD 21032, Phone: 410-514-7600, Website: <https://mht.maryland.gov/>; or
 - c. DC State Historic Preservation Office, Office of Planning, 1100 4th Street, SW, Suite E650, Washington, DC 20024, Phone: 202-442-7600, Website: <http://planning.dc.gov/historicpreservation>.
- ii. Prospective permittees must submit an application to the Corps, regardless of the activity-specific limits, if the authorized activity may have the potential to affect any historic properties listed in, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places, including previously unidentified properties. For such activities, the application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.
- iii. In cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied.

18. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. Discovery of Previously Unknown Artifacts: Upon discovery of any previously unknown historic, cultural, or archeological resources or remains while

accomplishing the activity authorized by this permit, the permittee must immediately notify this office by calling (410)962-3670 and also sending an email notification to the Corps (*NAB-Regulatory@usace.army.mil*) of what has been found, and avoid construction activities that may affect the resources or remains until the required coordination has been completed. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

20. National Lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.

21. Endangered Species:

- i. No activity is authorized under this TMDL RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the proposed or designated critical habitat of such species. No activity is authorized under this TMDL RGP that “may affect” a proposed or listed species or proposed or designated critical habitat, unless project-specific Section 7 consultation addressing the effects of the proposed activity has been completed.
- ii. Applicants must submit an application if any listed species or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. The application must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilizes the designated critical habitat that might be affected by the proposed work. The Corps shall determine if consultation with FWS is required under Section 7 of the ESA. If consultation is required, the prospective permittee shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization.
- iii. Authorization of an activity by this TMDL RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The ESA prohibits any person from taking a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct in the absence of an authorization (e.g., an ESA Section 10 permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS. FWS regulations extend the definition of “harm” to include significant habitat modification or degradation (*50 CFR 17.3*).
- iv. Information on Federally listed or proposed threatened and endangered species and designated or proposed critical habitat can be

obtained from the FWS. Prior to initiating the work, applicants in Maryland and the District of Columbia must review ESA resources at the Endangered Species Project Review website to determine if listed species and designated or proposed critical habitat may be affected: <http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>. applicants in Virginia must review ESA resources at this website: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

22. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any “take” permits required under the FWS’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the FWS to determine if such “take” permits are required for a particular activity.
23. Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act: The Corps completed EFH coordination and received a no effect determination. NMFS does not need project-specific coordination under the Fish and Wildlife Coordination Act if the applicant adheres to the terms and conditions of the permit.
24. Coldwater and Tier II Streams: No activity may increase water temperatures in excess of the water quality standard in Code of Maryland Regulations (COMAR 26.08.02.03-3D(3)). To avoid adverse effects to native aquatic species from increased water temperatures, Corps Verification is required for any work proposed in coldwater streams (Use III and Use IV waters, and other cold water resources identified in mapped waterways (COMAR 26.08.02.02; <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>) or work proposed in Tier II watersheds (COMAR 26.08.02.04-1).
25. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study River (e.g., *National Park Service, U.S. Forest Service, Bureau of Land Management, and FWS*).
26. Federal Projects: Engineer Circular (EC1165-2-216) provides policy and procedural guidance for processing requests by private, public, tribal, or other federal entities, to make alterations to, or temporarily or permanently occupy or use, any US Army Corps of Engineers (USACE) federally authorized civil works project, pursuant to 33 USC 408 (Section 408). Proposed alterations

- must not be injurious to the public interest or affect the USACE project's ability to meet its authorized purpose. The decision on a Department of the Army permit application pursuant to Section 10/404/103 cannot and will not be rendered prior to the decision on the Section 408 request. An activity that requires Section 408 permission is not authorized by the TMDL RGP until the Corps issues the Section 408 permission to alter, occupy, or use the USACE project, and the Corps issues a written TMDL RGP verification.
27. **Fills Within Floodplains:** The authorized activity must comply with applicable requirements of any Federal Emergency Management Agency-approved state or local floodplain management requirements.
 28. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require applicants to demonstrate that the structures comply with established State dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
 29. **Federal Liability:** In issuing this TMDL RGP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this TMDL RGP; (d) design or construction deficiencies associated with the permitted work; or (e) damage claims associated with any future modification, suspension, or revocation of this permit.
 30. **Avoidance and Minimization:** The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to WOTUS to the maximum extent practicable at the project site.
 31. **Compensatory Mitigation:** All authorized activities under this RGP require avoiding, minimizing, or compensating for resource losses. Compensatory mitigation may be required to ensure the adverse effects to the aquatic environment are minimal. The Corps will perform compliance inspections of projects authorized under the TMDL RGP. If a compliance inspection indicates that an authorized project resulted in a loss or temporary impacts were not restored to pre-construction contours, elevations, and re-vegetated, the Corps may require compensatory mitigation to assure adverse effects to the aquatic environment are minimal.
 32. **Heavy Equipment in Wetlands:** Heavy equipment (*e.g., excavators*) working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance. The use of mats is considered to be a discharge of fill material and must be included in the quantification of impact area authorized by the TMDL RGP.

33. **Soil Erosion and Sediment Controls:** Appropriate soil erosion and sediment control measures, practices, and devices must be used and maintained in effective operating condition during construction, to reduce erosion and retain sediment on-site during and after construction. These devices and methods must be capable of: (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil or other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted “in the dry” unless otherwise approved. This should be accomplished using stream diversion devices. The stream length affected by stream diversion devices must be included in the temporary impact area authorized by this TMDL RGP. Stream base flow must be maintained in downstream areas during construction.
34. **Temporary Impacts:** Temporary fill and the use of mats are both considered to be a discharge of fill material. Temporary fill (*e.g., access roads, cofferdams, etc.*) in WOTUS authorized by this TMDL RGP shall be properly stabilized during use to prevent erosion. Temporary fills in streams shall be removed within 3 days after work is completed. Temporary fill in wetlands shall be placed on geotextile fabric and laid on the existing wetland grade. Upon completion of the work, all temporary fill must be removed in its entirety and the affected areas restored to pre-construction contours and elevations and stabilized within 30 days following completion of the work (or the timeframe identified in the Water Quality Certification, whichever is less). Temporarily disturbed wetlands and stream banks must be re-vegetated with native wetland species by the end of the first growing season following completion of the work. Temporary fills within the impact area must be quantified but do not count toward activity specific limits authorized by the TMDL RGP. Restoration of Temporary impacts shall be documented in the as-built report as outlined in General Condition 5.
35. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through, or spawn/nursery within the area (*e.g., anadromous/catadromous fish*). A low-flow channel must be maintained through any discharges placed across the stream channel so as to maintain low flows to sustain the movement of aquatic species, including anadromous and resident fish.
36. **Water Crossings:** All temporary crossings of waterbodies shall be suitably bridged, culverted, or otherwise designed and constructed to withstand and prevent the restriction of high flows; to maintain low flows; and to sustain the movement of aquatic species indigenous to the waterbody. The permittee shall apply any appropriate time-of-year restrictions to protect aquatic resources present within the project area and downstream of the project site.