

**ATTACHMENT 1**  
**2017 NATIONWIDE PERMIT #48 - ACTIVITY SPECIFIC**  
**CONDITIONS**

**I. SPECIAL CONDITIONS:**

1. All authorized work must be performed and maintained in accordance with approved project plans
2. The permittee must notify the Baltimore District if any changes in the aquaculture method (bottom culture, floating structures, or structures on bottom or suspended in the water column) or modifications of structures or gear, including anchoring devices, are being proposed, including any changes in the number or positioning of any vertical and horizontal lines including any changes in their deployment or orientation from that as shown by plans approved by the Corps, and buoys; and any other alteration from which is authorized by the Corps.
3. This authorization is not valid without all required State Shellfish Lease Approvals.
  - a. Prior to commencement of the work verified herein, the permittee must provide the Corps with a copy of the State aquaculture water column and or bottom lease and the approved lease plans as confirmatory evidence that the permittee has acquired the necessary State approval for the in-water aquaculture work as authorized.
  - b. The State approved lease plans hereby supplement the Corps approved plan. The permittee must comply with any conditions of the State lease that apply to work in Waters of the United States. The permittee must comply with condition #2 above if the State lease plans include modifications or additional work not considered in the Corps review and approval of the authorized plans
  - c. The permittee must obtain the appropriate licenses and certifications from the Maryland Department of Health and Mental Hygiene prior to harvesting, selling, or marketing of shellfish for human consumption, including approval from the Maryland Department of the Environment as required.
4. The permittee assumes all liability for accomplishing any corrective work as directed by the Baltimore District, Corps of Engineers, to ensure compliance with the terms and conditions of the work as authorized.
5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized

representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

6. The permittee must inform the Corps, in writing within 10 days of initiating the approved work, the date that project construction commenced. A Permit Compliance, Self-Certification Form is attached for that purpose.

7. Establishment and Continued Operation:

- a. The permittee must keep this Corps authorization valid in order to allow for the continued operation of this authorized aquaculture activity involving on-going removal and replacement of structures (floats, cages, lines, anchors, etceteras).
- b. The permittee must clearly mark all in-water structures and equipment with the permittee's name, address, phone number, and the aquaculture permit number issued by the MD DNR. These markings must be maintained to ensure they are readable and visible at all times for identification purposes.
- c. The permittee acknowledges the possibility that the structures permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity and maintenance of the structures permitted herein from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for any such damage.
- d. All permitted aquaculture projects must be available for inspection by the Corps for compliance with the provisions of this permit.

8. Obstruction Lights:

Prior to commencement of the authorized work, the permittee must contact the USCG, address below, to ascertain the need for obstruction lights as may be required pursuant to U.S. Code of Federal Regulations, Title 33, Subpart 64, which stipulates that all structures erected in navigable waters, require obstruction lights, unless the applicant is advised to the contrary by the USCG District Commander.

Commander (dpw) | Fifth Coast Guard District | 431 Crawford Street | Portsmouth, Virginia, 23704

Email address: CGD5Waterways@uscg.mil | Fax Number: (757) 398-6303

The permittee must provide the Corps with a copy (within 30 days of receipt) of the determination issued by the USCG.

9. Maintenance and Monitoring:

- a. All permitted aquaculture projects must be available for inspection by the Corps for compliance with the provisions of this permit.
- b. The permittee must ensure that, at all times, the aquaculture operation and all associated structures, including all approved aids to navigation that mark the perimeter corners of the approved lease area, are maintained in accordance with the terms and conditions of this permit, and within the boundaries of the authorized work area, and also within the boundaries of the aquaculture lease. The permittee must frequently inspect the condition of the structures (floats, cages, lines, anchors, approved aids to navigation, etc.) associated with this aquaculture facility/operation as authorized herein, to assure that structures are intact or recovered. The permittee must retrieve any dislodged or relocated materials or structures used to support the aquaculture operation/facility and restore their location within the permitted area as approved herein.
- c. Within 48 hours after a substantial storm event (e.g. nor'easter, tropical storm, hurricane), the permittee must visually inspect the aquaculture operation and aids to navigation to assess any storm damaged structures and/or equipment. Any damage noted and the number of lost and/or unrecoverable gear/structures must be reported, in writing, to the Corps of Engineers within 48 hours of inspection. The permittee is required to search for and retrieve any missing structures/gear (floats, cages, lines, anchors, aids to navigation, etc.) to ensure that any structures/gear (floats, cages, lines, anchors, aids to navigation, etc.) do not affect safety on the waterway or interfere with general navigation. Any wayward structures and/or equipment, including aids to navigation, that are found outside the approved permit area/lease boundaries as authorized, must either be re-located as authorized or, if structures/equipment are so damaged that they are no longer usable, be disposed of in accordance with the State and local ordinances. The MD DNR is the appropriate agency to manage compliance with Submerged Land Lease/Aquaculture/Water Column Lease contract and derelict gear. MD DNR can be contacted at the following:

Maryland Department of Natural Resources | 580 Taylor Avenue | Annapolis,  
Maryland 21401  
1-877-620-8DNR (8367) | <http://www.dnr.state.md.us>

- d. The permittee must maintain the work authorized herein, including aids to navigation, in good condition and in conformance with the terms and conditions of this permit.

## II. GENERAL CONDITIONS:

Commercial Shellfish Aquaculture Activities. Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish aquaculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish aquaculture activities, as identified through a lease or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator. A “new commercial shellfish aquaculture operation” is an operation in a project area where commercial shellfish aquaculture activities have not been conducted during the past 100 years.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

- (a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;
- (b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990;
- (c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste; or
- (d) Activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in project areas that have not been used for commercial shellfish aquaculture activities during the past 100 years.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) the activity will include a species that has never been cultivated in the waterbody; or (2) the activity occurs in a project area that has not been used for commercial shellfish aquaculture activities during the past 100 years. If the operator will be conducting commercial shellfish aquaculture activities in multiple contiguous project areas, he or she can either submit one PCN for those contiguous project areas or submit a separate PCN for each project area. (See general condition 32.)

In addition to the information required by paragraph (b) of general condition 32, the preconstruction notification must also include the following information: (1) a map showing the boundaries of the project area(s), with latitude and longitude coordinates for each corner of each project area; (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; (3) whether canopy predator nets will be used; (4) whether suspended cultivation techniques will be used; and (5) general water depths in the project area(s) (a

detailed survey is not required). No more than one pre-construction notification per project area or group of contiguous project areas should be submitted for the commercial shellfish operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake in the project area or group of contiguous project areas during the effective period of this NWP. If an operator intends to undertake unanticipated changes to the commercial shellfish aquaculture operation during the effective period of this NWP, and those changes require Department of the Army authorization, the operator must contact the district engineer to request a modification of the NWP verification; a new pre-construction notification does not need to be submitted. (Authorities: Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquaculture, or recreational activities dependent on such waters."

### III. **REGIONAL GENERAL CONDITIONS:**

- A. This Nationwide Permit (NWP) **does not** authorize the following activities:
1. Activities located in mapped anadromous fish spawning habitat. The applicant may refer to MERLIN or other reliable sources for this information.  
<http://dnrweb.dnr.state.md.us/MERLIN/>
  2. Activities associated with the cultivation and/or introduction into tidal waters of shellfish species that are not indigenous to the Chesapeake Bay and its tributaries, or the Maryland coastal bays.
  3. Activities associated with the mining of subtidal fossil shell deposits in waters of the Chesapeake Bay and its tributaries for use as cultch for a shellfish cultivation operation.
  4. No work may extend into anchorage areas; customary boating channels; navigation fairways; marked, lighted, or charted channels; or State or Federal Navigation Channels.
  5. Activities that adversely affect ingress to and egress from neighboring properties.
  6. Commercial aquaculture activities for crustaceans or finfish.

7. Shellfish habitat restoration activities, including shellfish seeding which are conducted to restore populations of shellfish in navigable waters of the United States. Shellfish habitat restoration activities may be authorized by another form of Department of the Army permit (e.g., Nationwide Permit #27 or individual permit).
  8. Activity or vehicular access to the project site that has more than a minimal adverse impact on coastal or wetland vegetation.
  9. Oyster gardening activities.
  10. The establishment of Aquaculture Enterprise Zones or preapproved areas of the Atlantic Coastal Bays.
  11. Activities that impound water.
  12. Predator control devices (i.e., mesh fences, mesh nets, mesh tents) suspended or erected vertically or obliquely in the water column used to surround or enclose shellfish/containment gear. This condition does not preclude the use of cages for shellfish containment.
  13. Activities that use unsuitable materials for shellfish seeding (e.g., asphalt, bituminous concrete, slag, tires, wallboard, plastic, wood, metal, crushed glass, trash, and garbage).
  14. Activities that will have more than minimal adverse effects on existing or naturally occurring beds or populations of shellfish, marine worms, or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.
  15. Activities that result in the physical destruction (e.g., through excavation, dredging, mining, fill or significant downstream sedimentation by substantial turbidity) of an important spawning/nursery habitat.
- B. The prospective permittee must submit a Pre-construction Notification (PCN) to the District Engineer using the Joint State/Federal Application for a Commercial Shellfish Aquaculture Lease and Federal Permit (<http://dnr2.maryland.gov/fisheries/Documents/Commercial-Shellfish-Lease-Application.pdf> and <http://dnr2.maryland.gov/fisheries/Documents/Shellfish-Lease-Application-Instructions.pdf>) when:
1. The project does not have a valid authorization from the Corps in effect as of August 15, 2016, or
  2. The activity involves any change in the aquaculture type (bottom culture, floating structures, or structures suspended in the water column) from which was previously authorized by the Corps.

The Maryland Department of Natural Resources will forward the Joint Application to the Corps. Alternatively, the applicant may submit the application directly to the Corps. The

Corps' review period shall commence with the receipt of a completed PCN at the Corps District Office.

C. In addition to the information required by NWP 48, General Conditions and Regional General Condition 32, the PCN must include:

1. A copy of the lease or permit issued by the appropriate state government agency if a lease or permit has been issued at the time of PCN submittal;
2. Legible project vicinity map (black line on white background), to scale, and depicting the footprint of project area relative to prominent land/water geographic features, including approximate latitude/longitude coordinates of the project footprint;
3. Legible overview plans (black line on white background), to scale (100':1", or 50':1"), depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys), and showing local water depths (bathymetry) of the project area, and other important ecological features of the site (e.g., native tidal marsh) that may be affected by project activities.

D. Detailed project description, with the following information:

1. Description of proposed activities, including site preparation and-harvest activities (e.g., dredging, harrowing and dragging of bottom substrate, tonging), and a description of how structures and vertical and horizontal lines would be arranged throughout the project area, spacing of rows and spacing between structures;
2. Types of aquaculture gear to be used, including anchoring devices, maximum number of vertical and horizontal lines, and buoys;
3. Acreage of project footprint affecting bottom and water column;
4. Impacts (temporary and/or permanent) to aquatic areas required for access to the aquaculture facility/gear, and remedial measures proposed to restore temporarily affected aquatic areas;
5. Substrate type of bottom affected by proposed activities (particularly for on-bottom activities) (e.g., soft sand, hard sand, mud, shell.).
6. Cross-sectional view of proposed aquaculture structures and all associated apparatus that represents the proposed operations of the activity (on-bottom, suspended, or floating).
7. If the applicant proposes work in waters adjacent to property owned by others, the applicant must provide proof of notification to adjacent property

owners via certified mail, return receipt requested. In addition, the applicant may include any statement of no objection or comments from the adjacent property owner(s).

8. The PCN must include details that clearly identify how adverse effects to navigation and ingress to and egress from neighboring properties has been avoided.
- E. **Shellfish Certification:** Shellfish introduced into tidal waters of the Chesapeake Bay and its tributaries, or in the Maryland coastal bays and their tributaries, must be certified (under Maryland standards) as being disease and parasite free.
- F. **Vertical and Horizontal Lines:** The total number of vertical and horizontal lines must be minimized to the maximum extent practicable.
- G. **Local Notice to Mariners:** Prior to the proposed project start/placement date, the permittee must provide coordinates (latitude and longitude) for all perimeter corners of the approved lease area, including minimum depth and other pertinent facility information to the U.S. Coast Guard (USCG), and request that a Local Notice to Mariners (LNM) be issued regarding the authorized work. This written request can be done either by e-mail, letter or fax to: Commander (dpw), Fifth Coast Guard District, 431 Crawford Street, Room 100, Portsmouth, VA 23704-5504, Attn: LNM, Fax Number: (757)398-6303.

No authorized work may commence until this required USCG LNM has been issued by the USCG, identifying the location and schedule for commencement of the approved aquaculture work. No authorized aquaculture work may commence until the permittee informs the District Engineer in writing, with the date that the USCG publishes the LNM.
- H. **Navigation Charts:** The permittee must submit a copy of the Corps permit and plans for the aquaculture operation to the National Oceanic and Atmospheric Administration (NOAA) for charting the location of the authorized operation on navigation charts. Their address is NOAA-Marine Chart Division, Nautical Data Branch-N/CS26, 1315 East West Highway-Station 7350, Silver Spring, MD 20910-3282.
- I. **Equipment Anchoring and Lease Marking:** All authorized equipment, gear, and manmade material must be securely anchored. The permittee must clearly and permanently mark all in-water structures and equipment with the permittee's name and the lease number issued by the Department Natural Resource. These markings must be maintained to ensure that they are readable and visible at all times for identification purposes.
- J. **Inspection of Aquaculture Operation:** The permittee must regularly inspect the condition of the structures (e.g., floats, cages, lines, anchors, etc.) associated with this aquaculture operation as authorized herein, to ensure that any structures/gear do not affect safety on the waterway or interfere with general navigation. The permittee shall recover all storm-damaged, accident-damaged, or dislodged equipment within 10 days after it is dislodged and shall either restore its location within the permitted areas as authorized or dispose of



such equipment in accordance with state and local ordinances and lease agreements issued by the State of Maryland.

- K. **Disposal of Structures, Gear, or Waste:** Disposal of structures, gear or waste products on-site or into waters of the United States is prohibited. All structures, gear and waste products, including dead or dying culture animals, shall be disposed of in an approved upland disposal site in accordance with any Federal, State, and local regulations
- L. **Reporting:** The permittee must maintain accurate records and submit annual reports to the Corps (U.S. Army Corps of Engineers, Baltimore District , ATTN: Regulatory Branch, 10 South Howard Street, Baltimore, MD 21201) before January 31 of each year, covering the previous year's aquaculture activities, see the following link for information that must be provided: (<http://www.nab.usace.army.mil/Missions/Regulatory/Aquaculture/>)
- M. **Abandonment:** The permittee must provide the Baltimore District with thirty (30) day advance written notification of the intent to abandon the activity authorized under this NWP. Upon abandonment of the activity authorized by this permit, all structures and equipment used to support the aquaculture operation must be completely removed. In addition, any fill material, other than shells/shell fragments that were authorized and were deposited to improve bottom conditions/facilitate the aquaculture operation, must be completely removed and the entire area restored to pre-construction elevation and conditions to the satisfaction of the District Engineer. Live oysters growing on the bottom need not be removed.

## ATTACHMENT 2 2017 NATIONWIDE PERMITS - REGIONAL GENERAL CONDITIONS

### Applicable to ALL 2017 Nationwide Permits within the State of Maryland

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any specific NWP regional conditions identified above, the general conditions found in the 2017 NWPs published in the Federal Register on January 6, 2017 (82 FR 1860), and any case-specific special conditions imposed by the District Engineer.

#### **A. Regional General Condition #2 Aquatic Life Movement:**

1. Work is prohibited during February 15 to June 15 each year to protect sensitive life stages of anadromous fish in all tidal and nontidal coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, unless specifically waived by the District Engineer in consultation with NMFS for NWPs 3a, 3b, 12, 13, 14, 18, 19, 22, 25, 28, 29, 33, 35, 36, 38, 39, 42, 45, and 53 activities.
2. For culverted road crossings of perennial and intermittent streams culverts must meet the below depression criteria or a PCN is required to be submitted to the District Engineer for coordination with the National Marine Fisheries Service. Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN.
  - a. Culverts measuring greater than 24 inches in diameter must be depressed 12 inches below the stream bottom; or
  - b. Culverts measuring 24 inches or less in diameter must be depressed 6 inches below the stream bottom.
3. 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); unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions as stated above. A low flow channel must be maintained through any discharges placed for armoring across the channel so as to not impede flow in the waterway and/or not to block or impede the movements of anadromous, estuarine, and resident fish. Permanent culverts or pipes placed in streams must be depressed in accordance with the State of Maryland regulations. If depression of the culvert is not practicable, the applicant must submit a narrative, along with the PCN is applicable, documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions and limitations on depressing the culvert, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the

movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact National Marine Fisheries Service for recommendations about the measures to be taken to allow for fish passage.

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

1. For U.S. Fish and Wildlife Service (FWS) ESA species: All permittees must use the FWS Chesapeake Bay Field Office Project Review website (IPaC) (<https://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>) to determine if any Federally listed species or designated critical habitat may be present in the proposed project area. A complete application must contain one of the following:
  - a. If the FWS website shows that listed species or designated critical habitat may be present in the proposed project area, then, using the FWS website tool, the permittee must obtain and submit with the PCN a FWS Official Species List tailored for the proposed project area. An Official Species List is considered valid for 90 days.
  - b. If the FWS website shows that no listed species or designated critical habitat are determined to be present in the proposed project area, then, using the FWS website tool: the permittee must generate and submit with the PCN a report that includes an online self-certification letter and a map of action area.
2. Interactions with NMFS Federally Threatened or Endangered Species: Any interaction between sturgeon, sea turtles, or any species listed now or in the future under Federal law as a threatened or endangered species (“listed species”) and the vessels associated with the project must be reported to the NMFS as follows:
  - a. If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the NMFS Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery;
  - b. If the animal requires assistance, the call to the hotline must be made immediately;
  - c. If the animal appears to be injured (i.e. bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify District Engineer of all communications and coordination with the NMFS within two calendar days. Additional information about any federally threatened or endangered species may be obtained online at: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>. An interaction is defined as an entanglement or capture of a listed species or a

strike/direct contact between vessels or equipment used for the project and a listed species.

3. Vessel Buffer: When listed species are sighted, vessels must attempt to maintain a distance of 50 yards (150 feet) or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500 yard (1,500 foot) buffer zone. Any vessel finding itself within the 500 yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100 yards (300 feet) of the animal must be avoided. Vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the NMFS.
4. Best Management Practices Applicable Within Tidal Waters of the Chesapeake Bay in Maryland:
  - a. For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 150dB sound exposure level (SEL) re 1 $\mu$ Pa or 206dB peak re 1 $\mu$ Pa and for any pile driving activity that exceeds the peak sound level. A PCN must be submitted to District Engineer if one of the following conditions cannot be met :
    - i. Plastic or concrete piles must be less than 12 inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
    - ii. Timber piles must be 10 inches or less when a vibratory hammer is utilized for installation.
    - iii. Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
    - iv. Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
    - v. Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
    - vi. Piles of any size/type with any hammer method must be installed between November 30 and March 15.
  - b. Pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20 minute period to allow fish and other wildlife to leave the area.

5. Sediment Disturbing Activities Time-of-Year Restriction: Within all tidal waters of the Chesapeake Bay and its tidal tributaries in Maryland with salinity levels <6 ppt, sediment disturbing activities, which include pile driving activities, are prohibited during the period April 1 through June 30 for the protection of shortnose sturgeon during early life stages in these waters unless a waiver is received from the District Engineer.

**C. Regional General Condition #22 Designated Critical Resource Waters:**

1. Within the State of Maryland, the designated National Estuarine Research Reserves applicable to this regional general condition are:
  - a. Jug Bay
  - b. Otter Point Creek
  - c. Monie Bay
2. Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7 and 31 for any activity within, or directly affecting the above-listed designated National Estuarine Research Reserves, including wetlands adjacent to those waters.
3. For NWPs 3, 8, 22, 25, 27, 30, 37, and 38, a PCN must be submitted to the District Engineer for any activity proposed in the above-listed designated National Estuarine Research Reserves, including wetlands adjacent to those waters.

**D. Regional General Condition #32 Pre-Construction Notification:**

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *Pre-Construction Notification*. These regional general conditions are applicable to all NWPs where a PCN is submitted to the District Engineer. This includes the following: (a) those NWPs that require a PCN, (b) those NWPs requiring notification to the District Engineer pursuant to NWP General Conditions 18 and 22, (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition, and (d) any other pre-construction notifications to the District Engineer where an applicant has requested verification of an NWP authorization.

1. A PCN shall be submitted the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary as identified by: <http://www.nab.usace.army.mil/Missions/Civil-Works/Nav-Maps/>. In addition, a PCN is required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at:

<http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>. As part of any PCN adjacent to a federally authorized channel, the permittee must provide the latitude and longitude of the channelward most point of the proposed structure.

2. When a PCN is required, the District Engineer will provide a copy of the complete PCN to the NMFS-Chesapeake Bay Office for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. The PCN shall include plans depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys or locations of SAV otherwise identified from actual SAV surveys conducted during the growing season). The NMFS will have a 30 calendar day review and comment period from the date of their receipt of the EFH assessment, as provided by the Magnuson-Stevens Fishery Conservation and Management Act. The Virginia Institute of Marine Science aerial surveys may be obtained at: <http://web.vims.edu/bio/sav/index.html>.
3. All PCNs to the District Engineer shall be completed using the established Corps of Engineers permit application procedures for that locality (see <http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx>). The PCN shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions, including General Condition 32:
  - a. Work description: A narrative describing the proposed work and associated impacts. If excavation is part of the proposed work, a detailed description of the method, sequence, and equipment to be used to conduct the work.
  - b. Plan(s) of the proposed work (if provided by hard copy no larger than 8-1/2 by 11 inch paper) which includes a location map; longitude and latitude; and plan view drawings clearly depicting the location, size, and dimensions of the proposed activity as well as the location of the delineated waters and/or wetlands, for the entire project area. The drawings shall contain the amount (in cubic yards) and the area (square feet) of dredged and/or fill material to be discharged in District Engineer jurisdiction, including both permanent and temporary structures. Plans should depict all proposed work, including areas proposed for filling, grading, excavation, drainage, and/or inundation and shall identify all delineated waters and wetlands. All drawings shall include the OHWM, or if in tidal waters, the mean high water mark and high tide line; existing water depths; cross-sectional plan; depth of any structure(s) below mean low water; height of any structure(s) above mean high water; the maximum distance that the structure(s) or fill will extend channelward of the existing shoreline; the width of the waterway at the project site; the location of any dredged material disposal area; the distance from the edge of any federal navigation channel and the location of any temporary work; structures, vessels, or fills required for construction; a copy of any previous federal or

state approvals; and the location and nature of any SAV (e.g., eel grass, *Zostera marina*). In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information. <http://web.vims.edu/bio/sav/index.html>.

- c. At the discretion of the District Engineer, the PCN may be determined to be incomplete if field verification of the wetland and/or stream delineation is required.
  - d. Numbered and dated pre-project color photographs showing all aquatic resources proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan view drawing.
  - e. Evidence that the prospective permittee has already contacted and received a response from the FWS concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. Completion of the required screening identified in Regional General Conditions 18 and submission of the documents required by the PCN serves as compliance with this condition.
  - f. Evidence that the prospective permittee has already contacted and received a response from the State Historic Preservation Officer concerning historic properties that may be affected by the proposed activity.
  - g. Documentation from the Maryland Historical Trust indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. For further information, reference NWP General Condition 22.
  - h. A PCN shall include a written statement documenting the steps taken to avoid and minimize adverse impacts to waters of the United States, including jurisdictional wetlands.
4. When a PCN is required, the District Engineer's review period shall commence with the receipt of a complete permit application by the District Engineer. The prospective permittee shall not begin the activity until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed, if applicable.
  5. Applicable to all perennial and intermittent streams, the Corps shall provide a copy of the PCN, including the supporting documentation, to the NMFS in accordance with the Magnuson Stevens Fisheries Conservation and Management Act for any culvert which cannot be depressed as outlined in Regional General Condition 2 for Aquatic Life Movements for NWP 3 and any other applicable NWP. The NMFS will have a 30 calendar day review and comment period from the date of their receipt of the Essential Fish Habitat Assessment, as provided by the Magnuson-Stevens Act.

6. Any compensatory mitigation required by special conditions of the NWP verification shall be completed before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the District Engineer. If the applicant is proposing to use a mitigation bank or in lieu fee program, the PCN shall include identification of the bank/in lieu fee site and amount and type of credits to be purchased. If approved, proof of payment to the approved mitigation bank or in-lieu-fee program shall be submitted to the District Engineer prior to commencement of construction of the authorized activity. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions and services. A watershed approach to compensatory mitigation, which considers the importance of landscape position, resource type, and compensatory mitigation projects that address the sustainability of aquatic resource functions within the watershed should be used.

**E. Regional General Condition A for Certain Activities in Navigable Waters:**

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

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

- a. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;
- b. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances



where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and

- c. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
2. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the District Engineer and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910, with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.
3. Aids to Navigation: If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, The permittee must prepare and provide for USCG approval (address below), a Private Aids to Navigation Application (CG-2554), which and the approval must be received prior to commencement of the authorized work. The form can be found at: [http://www.uscg.mil/forms/cg/CG\\_2554.pdf](http://www.uscg.mil/forms/cg/CG_2554.pdf). Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the Corps

**F. Regional General Condition B Poured Concrete into Forms:**

1. Activities that involve the discharge of poured concrete must be contained within cells or watertight forms until the concrete is set.

**SPECIAL NOTES:**

1. Where the State has denied 401 WQC and/or not concurred with the District Engineer' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required PCN to the District Engineer of Engineers.
2. The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer.

Maryland Department of Natural Resources  
Environmental Review, B-3  
Tawes State Office Building  
580 Taylor Avenue  
Annapolis, Maryland 21401

State Historic Preservation Officer:  
Maryland Historical Trust  
Division of Historical & Cultural Programs  
100 Community Place  
Crownsville, Maryland 21032-2023

Maryland Department of the Environment  
Water Resources Administration  
Tidal Wetlands Division  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 430  
Baltimore, Maryland 21230-1708

Maryland Department of the Environment  
Non-tidal Wetlands and Waterways  
Division/CZC Unit  
Montgomery Park Business Center, Suite 430  
Baltimore, Maryland 21230-1708

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

U.S. Department of the Interior  
Fish and Wildlife Service  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

National Marine Fisheries Service-Chesapeake Bay Office  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

## ATTACHMENT 3 2017 NATIONWIDE PERMITS – GENERAL CONDITIONS

### The following General Conditions are applicable to the 2017 Nationwide Permits:

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/ or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. *Navigation.* (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *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 the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. *Spawning Areas.* Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds.* No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. *Suitable Material*. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. *Water Supply Intakes*. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. *Adverse Effects From Impoundments*. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows*. To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains*. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment*. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. *Soil Erosion and Sediment Controls*. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. *Removal of Temporary Fills*. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. *Proper Maintenance*. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. *Single and Complete Project*. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. *Wild and Scenic Rivers*. (a) No NWP 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.

(b) If a proposed NWP activity will 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, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic

River designation or study status. (c) 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, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. *Tribal Rights*. No NWP activity may cause more than minimal adverse effects on tribal rights including treaty rights), protected tribal resources, or tribal lands.

18. *Endangered Species*. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If preconstruction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the

Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species specific permit conditions to the NWP. (e) Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take 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. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required. (g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties.* (a) In cases where the district engineer determines that the activity may have the potential to cause effects to 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 (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The

respective federal agency is responsible for fulfilling its obligation to comply with section 106. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. (d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. *Discovery of Previously Unknown Remains and Artifacts.* If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer 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.

22. *Designated Critical Resource Waters.* Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment. (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. (b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. *Mitigation.* The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal: (a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (*i.e.*, on site). (b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal. (c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to-replace resources (see 33 CFR 332.3(e)(3)). (e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (*e.g.*, conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas



should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses. (f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332. (1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWP, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation. (2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)). (3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation. (4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). (5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided. (6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)). (g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2- acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the

framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management. (i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. *Safety of Impoundment Structures.* To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. *Water Quality.* Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. *Coastal Zone Management.* In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. *Regional and Case-By-Case Conditions.* The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. *Use of Multiple Nationwide Permits.* The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. *Transfer of Nationwide Permit Verifications.* If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to

validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature: When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below. \_\_\_\_\_ (Transferee) \_\_\_\_\_ (Date)

30. *Compliance Certification.* Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include: (a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions; (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and (c) The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. *Activities Affecting Structures or Works Built by the United States.* If an 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 U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a preconstruction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *Pre-Construction Notification.* (a) *Timing.* Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received

written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee’s right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed activity; (3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity; (4) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (5) The PCN must include 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. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why

compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act; (8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act; (9) For an activity that will 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, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and (10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal. (2) Agency coordination is required for: (i) All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes. (3) When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the

preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.