



Public Notice

**U.S. Army Corps
of Engineers**

Baltimore District
ATTN: CENAB-OP-R
P.O. Box 1715
Baltimore, MD 21203-1715

Date: May 16, 2014
Comment Period Ends: July 7, 2014
Action ID: NAB-2014-00602-B02
Special Public Notice# 14-28

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC AND ANNOUNCE THE SCHEDULING OF A U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT PUBLIC HEARING REGARDING THE PROPOSED TOTAL MAXIMUM DAILY LOAD REGIONAL GENERAL PERMIT. THE PUBLIC HEARING WILL BE HELD AT THE FOLLOWING TIME AND LOCATION:

June 19, 2014
Anne Arundel County Library
Meeting Rooms A and B
Crofton Community Library
1681 Riedel Road
Crofton, MD 21114
(410) 222-7915
6:00 PM – 8:30 PM

PURPOSE: The U.S. Army Corps of Engineers, Baltimore District, is proposing to issue a Total Maximum Daily Load Regional General Permit (TMDL RGP) authorizing activities in waters of the U.S., including jurisdictional wetlands, that are part of an overall watershed strategy (e.g., Chesapeake Bay TMDL Watershed Implementation Plan (WIP)) whose purpose is to meet nutrient and sediment load reduction targets under the Chesapeake Bay TMDL mandates. This TMDL RGP is proposed to provide a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and satisfy other public interest review factors. Regional general permits are authorized for a five-year period at which time they must be re-evaluated for their impacts on the aquatic environment.

In accordance with 33 CFR 325.5(c), this proposed TMDL Regional General Permit would authorize the work described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The purpose of this notice is to inform interested parties of the proposed issuance and to solicit comments. A copy of this public notice and the proposed TMDL RGP is available at: <http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

LOCATION OF AUTHORIZED ACTIVITIES: This proposed TMDL RGP is applicable to nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, the District of Columbia, and military installations in northern Virginia within the geographic boundaries of the Baltimore District Corps of Engineers Regulatory Branch.

EXCLUDED WATERS: This proposed TMDL RGP does not authorize discharges or work into waters of the U.S. channelward of the high tide line within the geographic

boundaries of the Baltimore District Corps of Engineers Regulatory Branch. Additional excluded waters of Maryland within the regulatory geographic boundary of the Corps Philadelphia District regulatory include adjacent and contiguous jurisdictional wetlands to Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north.

IMPACT AREA THRESHOLDS FOR TMDL RGP: The total temporary and permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) for the overall project must not exceed 1.0 acre (43,560 square feet). Of this, no more than 2,000 linear feet of streams, rivers, open waters, and/or a combination thereof may be impacted. In addition, the following conversion thresholds must not be exceeded:

- A. **Wetland Conversion:** The conversion of jurisdictional wetlands to uplands or other aquatic habitat type (e.g., streams, rivers, open water, etc.) must not exceed 5,000 square feet.
- B. **Converting non-wetland aquatic resources to uplands:** The conversion of other waters (excluding wetlands) to uplands must not exceed 5,000 square feet or 200 linear feet of streams, rivers, and/or open waters.
- C. **Converting non-wetland aquatic resources to open water or other aquatic habitat type:** The conversion of other waters (excluding wetlands) to open water or other aquatic habitat type must not exceed 10,000 square feet or 500 linear feet of streams and rivers.

This TMDL RGP applies to the discharge of dredged or fill material and/or the placement of structures that are components of a single and complete project, including all attendant features both temporary and/or permanent, which individually and/or cumulatively result in direct or indirect impacts as regulated by Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act of 1899. Authorization under the TMDL RGP requires compliance with all of the terms and conditions of the TMDL RGP and that the activities authorized have only minimal individual and cumulative adverse effects on the environment. All individual impacts for a single and complete project will be added cumulatively to determine eligibility for authorization under the TMDL RGP.

FEDERAL EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments provided will become part of the public record for this action. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the District Engineer, U.S. Army Corps of Engineers, Baltimore District (ATTN: CENAB-OP-R), P.O. Box 1715, Baltimore, Maryland 21203-1715 within the comment period specified above.

The applicant must obtain any State or local government permits which may be required.

The evaluation of the impact of this project on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

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

CULTURAL RESOURCES: Activities authorized by this TMDL RGP must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. The locations of activities that might be authorized by the proposed TMDL RGP are not known and, therefore, the Baltimore District cannot determine at this time whether any of the activities that would be authorized by the proposed TMDL RGP may affect an historic property listed, or eligible for listing, in the National Register of Historic Places (NRHP). However, if issued, the proposed TMDL RGP would not authorize any activity that may affect historic properties listed, or eligible for listing, in the NRHP until the requirements of Section 106 of the NHPA have been satisfied. The Corps will be coordinating with the appropriate State Historic Preservation Offices on this regional general permit and any conditions from that consultation to protect historic properties will be inserted into the TMDL RGP. Currently unknown archeological, scientific, prehistoric,

or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

ESSENTIAL FISH HABITAT AND FISH AND WILDLIFE COORDINATION ACT: The Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect Essential Fish Habitat (EFH). This consultation will also accommodate non-EFH species pursuant to the Fish and Wildlife Coordination Act. The Baltimore District will be initiating consultation under these authorities on this regional general permit and any conditions from that consultation to protect National Oceanic and Atmospheric Administration (NOAA) trust resources will be inserted into this TMDL RGP.

The EFH designated waterways made by the Federal fishery management councils include the Maryland waters of the Chesapeake Bay, Chester River, Chincoteague Bay, Choptank River, Patuxent River, Potomac River, and Tangier/Pocomoke Sound. The proposed action site lies in or adjacent to EFH as described under MSA for Atlantic butterfish (*Peprilus triancanthus*) all stages; Atlantic sea herring (*Clupea harengus*) adults; Black sea bass (*Centropristis striata*) juveniles and adults; Bluefish (*Potatomus salatrix*) juveniles and adults; Red drum (*Sciaenops ocellatus*) larvae, juveniles, and adults; Red hake (*Urophycis chuss*) juveniles and adults; Scup- porgy (*Stenotomus chryops*) juveniles and adults; Summer flounder (*Paralichthys dentatus*) larvae, juveniles, and adults; Windowpane flounder (*Scophthalmus aquosus*) juveniles and adults; Winter flounder (*Pleuronectes americanus*) juveniles and adults; Cobia (*Rachycentron canadum*) all stages; King mackerel (*Scomberomorus cavella*) all stages; Spanish mackerel (*Scomberomorus maculates*) all stages; all managed species under the MSA.

The project has the potential to adversely affect EFH or the species of concern by loss of spawning, nursery, forage and/or shelter habitat as described under the MSA for the species and life stages identified above. The Baltimore District has made a preliminary determination that the TMDL RGP activities would have minimal adverse effect on EFH or the managed species of concern. No mitigative measures are recommended to minimize adverse effects on EFH at this time. This determination may be modified if additional information indicates otherwise and would change the preliminary determination.

WATER QUALITY CERTIFICATION: Water Quality Certification is required in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment, District Department of the Environment, and Virginia Department of Environmental Quality prior to the issuance of the TMDL RGP. By this public notice, the Corps is requesting the Maryland Department of the Environment, the District Department of the Environment, and Virginia Department of Environmental Quality to determine whether to issue, deny, or waive Water Quality Certification for this regional general permit. Any written comments concerning the proposed TMDL RGP which relate to Water Quality Certification must be received by the appropriate agencies within the comment period as specified above to receive consideration. In Maryland, Water Quality Certification comments must be sent to the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard,

Suite 430, Baltimore, Maryland 21230-1708. In the District of Columbia, water quality certification comments must be sent to the Water Quality Division, District Department of the Environment, 1200 First Street, N.E., 5th Floor, Washington, DC 20002. In Virginia, Water Quality Certification comments must be sent to the Department of Environmental

Quality, P.O. Box 1105, Richmond, Virginia, 23218. The Section 401 certifying agency has a statutory limit of one year from the date of this public notice to make its decision.

COASTAL ZONE MANAGEMENT PROGRAMS: By this public notice, we are requesting that the Maryland Department of the Environment, District Department of the Environment, and Virginia Department of Environmental Quality to determine whether to issue, deny, or waive Coastal Zone Management (CZM) Consistency for this regional general permit. Any written comments concerning the proposed TMDL RGP which relate to CZM consistency must be received by the appropriate agencies within the comment period as specified above to receive consideration. In Maryland, CZM consistency comments must be sent to the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708. In Virginia, CZM comments must be sent to the Coastal Zone Management Program, Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia, 23218. It should be noted that the CZM Program has a statutory limit of 6 months to make its consistency determination.

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

COMMENTS: Written comments on this proposal must reference Special **Public Notice #14-28** and be addressed to the District Engineer, U.S. Army Corps of Engineers, Baltimore District (ATTN: CENAB-OP-R), Baltimore, Maryland 21203-1715. Comments must be received by the close of business on **July 7, 2014**. If you have any questions concerning this matter, please contact Ms. Beth E. Bachur of this office at 410-962-4336 or email at beth.bachur@usace.army.mil.



WILLIAM P. SEIB
Chief, Regulatory Branch