Public Notice

U.S. Army Corps of Engineers
Pittsburgh District

In Reply Refer to Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No.

Date: March 19, 2012

Notice No. 12-17

Closing Date: March 18, 2017

NATIONWIDE PERMITS FOR THE COMMONWEALTH OF PENNSYLVANIA

CORPS OF ENGINEERS REGULATORY PROGRAM
ISSUANCE OF NATIONWIDE PERMITS

The purpose of this special public notice is to inform the general public of the issuance of final regional conditions as well as the suspension of applicable for Nationwide Permit (NWP) activities in Commonwealth of Pennsylvania.
These NWPs, including the general and regional conditions, are effective as of March 19, 2012.

Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will also help ensure protection of high value waters within the District. The regional conditions reflect a finalization of that effort in conjunction with the NWPs published in the Federal Register on February 21, 2012. An enclosure for this special public notice (Enclosure A) lists the final regional conditions for the Baltimore District. These final regional conditions are also posted on the Baltimore District Internet home page. The URL address for these regional conditions is:
http://www.nab.usace.army.mil/Wetlands%20Permits/public_notices.htm.

Publication of the Federal Register notice also began a 60-day Clean Water Act Section 401 water quality certification (WQC) and the 90-day Coastal Zone Management Act (CZMA) consistency determination processes. After the 60-day period, the latest version of any written position taken by a state, Indian tribe, or EPA on its WQC for any of the NWPs will be accepted as the state's, Indian tribe's, or EPA's final position on those NWPs. If the state, Indian tribe, or EPA takes no action by April 20, 2012, WQC will be considered waived for those NWPs. While the states, Indian tribes, and EPA complete their WQC processes and the states complete their CZMA consistency determination processes, the use of the NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver.

The Baltimore District has implemented a State Programmatic General Permits (SPGP) in the Commonwealth of Pennsylvania, known as the PASPGP-4. This SPGP is designed to continue to authorize certain activities previously covered by the NWP program and institute a streamlined Corps regulatory process that has been integrated with state processes. Suspension of various

NWPs will avoid confusion over SPGP use and eliminate redundancy since State and Federal regulatory programs are administered jointly in these states. If the SPGP become void, enjoined, suspended, revoked, or removed from effect for any reason, the Corps will consider reissuance of some or all of the suspended NWPs for the purpose of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

A. Applicability:
1. Part III.A.4 of the PASPGP-4 lists certain ineligible waterways for which SPGP authorization is not available. Therefore, consistent with the processes outlined in Part V.D of the PASPGP-4 (or its successor) and the NWPs, NWP authorization may be available for activities that include activities located channelward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following water bodies in Pennsylvania):

a. The Delaware River, downstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania;
b. The Schuylkill River downstream of the Fairmount Dam in Philadelphia, Pennsylvania;
c. All of the Ohio River;
d. All of the Beaver River;
e. All of the Little Beaver River;
f. All of the Manoning River;
g. All of the Monongahela River;
h. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania;
i. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania;
j. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania;
k. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7; and
l. Activities within Lake Erie which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP.

2. Activities whereby the regulated activity or area of indirect impact (secondary impact) is not wholly located within the Commonwealth of Pennsylvania, i.e. the regulated activity extends across state boundaries.

3. Activities within federally regulated waters and wetlands that are not regulated as waters of the Commonwealth of Pennsylvania may be eligible for verification under NWPs.

4. Activities performed by federal agencies that do not require authorization by the Commonwealth of Pennsylvania pursuant to 25 PA 105 et seq. may be eligible for verification under NWPs.

B. The following NWPs are suspended in the Susquehanna and Delaware River watersheds of the Commonwealth of Pennsylvania within the Baltimore and Philadelphia District's regulatory geographic boundaries, except in those areas and activities enumerated in Section I.B. of this Special Public Notice:

NWP 1: Aids to Navigation
NWP 4: Fish and Wildlife Harvesting, Enhancement, & Attraction Devices and Activities
NWP 5: Scientific Measurement Devices
NWP 7: Outfall Structures and Associated Intake Structures
NWP 10: Mooring Buoys
NWP 11: Temporary Recreational Structures
NWP 12: Utility Line Activities
NWP 13: Bank Stabilization
NWP 14: Linear Transportation Projects
NWP 15: U.S. Coast Guard Approved Bridges
NWP 18: Minor Discharges
NWP 19: Minor Dredging
NWP 20: Response Operations for Oil and Hazardous Substances
NWP 25: Structural Discharges
NWP 26: [Reserved]
NWP 29: Residential Developments
NWP 33: Temporary Construction, Access, and Dewatering
NWP 36: Boat Ramps
NWP 37: Emergency Watershed Protection and Rehabilitation
NWP 39: Commercial and Institutional Developments
NWP 40: Agricultural Activities
NWP 41: Reshaping Existing Drainage Ditches
NWP 42: Recreational Facilities
NWP 43: Stormwater Management Facilities
NWP 45: Repair of Uplands Damaged by Discrete Events
NWP 46: Discharges in Ditches
NWP 47: [Reserved]

C. This suspension terminates the Corps' ability to verify any new projects under one of the suspended NWPs unless and until the Chief of Engineers or the appropriate District or Division Engineer makes a determination to the contrary pursuant to 33 C.F.R. § 330.4 or § 330.5. Activities that have commenced or been under contract to commence construction between March 19, 2012, and the date of this public notice and that meet the terms and conditions of the NWP activities are authorized provided the activity has received an individual water quality certification (WQC) or a case-specific WQC waiver and/or an individual Coastal Zone Management Act (CZMA) consistency determination or a case-specific presumption of CZMA concurrence. This authorized work must be completed within twelve months of the date of the public notice announcing the NWP suspensions under the terms and conditions of the appropriate

NWP(s). Activities completed under the authorization of a NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

For more information regarding the final regional conditions and the suspension of Nationwide Permits, contact Ms. Beth E. Bachur, CENAB-OP-R, at (410) 962-4336, or email at Beth.Bachur@usace.army.mil.

FOR THE DISTRICT ENGINEER:

/signed/

Beth E. Bachur
Acting Chief, Regulatory Branch
Baltimore District

ENCLOSURE A

2012 Nationwide Permit Regional Conditions for Maryland, Pennsylvania, the District of Columbia, and certain military installations in Northern Virginia

I. Nationwide Permit Specific Regional Conditions:

Note: see "II. Nationwide Permit General Conditions" for additional regional conditions that may apply. Unless otherwise noted, all regional conditions listed in this enclosure are applicable for activities in Maryland, Pennsylvania, the District of Columbia, and certain military installations in Northern Virginia.

Nationwide Permit #1 *Aids to Navigation*

Permit Specific Regional Conditions - none

Nationwide Permit #2 *Structures in Artificial Canals*

Permit Specific Regional Conditions - none

Nationwide Permit #3 *Maintenance*

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a) for this Nationwide Permit (NWP), as specified below. The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office. A PCN to the District Engineer is required for:

    a. For NWP 3(a), any regulated discharge of dredged and/or fill material which involves the proposed use of equipment to remove material from or move material across a stream channel as part of the proposed activity for repair, rehabilitation, or replacement. The PCN must clearly describe any activity proposing the use of equipment to move material from or across a stream channel;

    b. For NWP 3(a), 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 Boundaryhttp://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017;

    c. For work associated with NWP 3(a), regarding the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, that occurs along federally authorized channels. 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/Wetlands%20Permits/ ; or

d. Any proposed activity, which would result in impacts, temporary or permanent, to Section 10 waters as defined in 33 CFR 329 in the District of Columbia.

2. The following terms of this authorization apply under NWP 3(b):

   a. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 50 feet in any direction from the structure, unless specifically authorized by the District Engineer.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

4. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. **NWP 3(a)-Repair, Rehabilitation, or Replacement Activities:**

      i. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer (See general condition 31 and regional general conditions 31a) for any proposed activity, where the project affects more than 10,000 square feet of tidal wetlands and/or tidal waters.

      ii. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer (See general condition 31 and regional general conditions 31a) for any proposed activity, where:

         a. The work involves the repair, rehabilitation, or replacement of a permanent culvert within a perennial and/or intermittent coastal plain streams in the above referenced areas; or a perennial and/or intermittent piedmont stream in Harford and/or Cecil Counties, Maryland, and the work does not result in:

            1. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

2. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.
3. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN under this Regional Condition.

iii. A PCN required under 4. a. ii, above shall:

a. include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, or engineering factors that prohibit depressing the culvert. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage; and

b. be forwarded by the Corps (a copy of the PCN, including any provided supporting documentation) to National Marine Fisheries Service (NMFS) for review and comment pursuant to the Magnuson Stevens Act;

iv. For culvert replacement and repair activities, work in tidal and nontidal coastal plain streams and nontidal piedmont streams in Harford and Cecil Counties, Maryland, shall be prohibited during the period February 15 through June 15, each year to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS.

b. **NWP 3(b)-Removal of Accumulated Sediments and Debris in the Vicinity of and Within Existing Structures and the Placement of New or Additional Riprap to Protect the Structure:**

i. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer for any proposed activity affecting more than 10,000 square feet of tidal wetlands and/or tidal waters or more than 500 linear feet of tidal tributary stream or nontidal stream in the coastal plain region (See general condition 31 and regional general conditions 31a). The Corps shall provide this PCN to NMFS for individual EFH consultation and coordination;

ii. Work in tidal tributary streams and nontidal coastal plain streams shall be prohibited during the period of February 15 through June 15, each year, to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS; and

iii. A low flow channel that permits passage of migratory fish species shall be incorporated into all activities involving the placement of new or additional riprap in tidal tributary streams and nontidal coastal plain streams.

Nationwide Permit #4 *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities*

Permit Specific Regional Condition –

This nationwide permit does not authorize activities that cause interference with navigation. No structure can extend into anchorage areas; customary boating channels; navigation fairways; marked, lighted, or charted channels; or State or Federal Navigation Channels.

Nationwide Permit #5 *Scientific Measurement Devices*

Permit Specific Regional Condition –

1. The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

2. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer for any activity, proposing the discharge of greater than 10 cubic yards of dredged and/or fill material for the construction of small weirs and flumes, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #6 *Survey Activities*

Permit Specific Regional Condition –

1. Use of in-water explosives is not authorized under this NWP.

2. The permittee shall ensure that all in-stream exploratory trenching is conducted under dry conditions.

3. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a) for any activity proposing the discharge of greater than 25 cubic yards of dredge and/or fill material. The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #7 *Outfall Structures and Associated Intake Structures*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Conditions (Applicable to tidal and nontidal waters of the Potomac River mainstem from the Governor Harry W. Nice Memorial Bridge (U.S. 301 over the Potomac River) upstream to Great Falls, tidal streams and nontidal coastal plain streams that are tributary to the Potomac River, and the Delaware River in Pennsylvania):**

   a. Screening over the mouth of associated intake structures shall have a mesh size no larger than 2 mm;

   b. Intake structure velocities shall not exceed 0.5 feet per second; and

   c. The intake structure shall be positioned to minimize impingement/entrainment of sensitive life stages of aquatic species (e.g., recessed away from the waterway, positioned perpendicular to the predominant direction of flow).

Nationwide Permit #8 *Oil and Gas Structures on the Outer Continental Shelf*

Permit Specific Regional Conditions - none

Nationwide Permit #9 *Structures in Fleeting and Anchorage Areas*

Permit Specific Regional Conditions - none

Nationwide Permit #10 *Mooring Buoys*

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.
2. Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat. 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 The applicant should also refer to other reliable sources to comply with this condition.

Nationwide Permit #11 *Temporary Recreational Structures*

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.

2. For the **Delaware River in Pennsylvania**, this NWP is applicable only to structures associated with discrete or specific events.

3. This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV). 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 The applicant should also refer to other reliable sources to comply with this condition.

4. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a). The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #12 *Utility Line Activities*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize the following activities:

   a. Any work on the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania;

   b. The stockpiling or side-casting of excavated material in wetlands in excess of 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer. Further, all excess or suitable dredged and/or excavated material not used as backfill over any cable or pipeline shall be disposed of in an upland area and shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland;

   c. The permanent loss of more than 300 linear feet of stream bed at a single crossing, unless for intermittent and ephemeral stream beds the District Engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects;

   d. The placement of manholes in wetlands unless demonstrated to the satisfaction of the Corps that the placement is unavoidable; and

   e. The permanent discharge of any drilling muds that may be generated through such methods as directional boring or drilling.

2. For the installation of utility lines, the following applies:

   a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable;

   b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters;

   c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to Waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer;

   d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of ten feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained; and

   e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to ensure that the trench does not drain the water and/or wetland through which the utility line was installed. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submitted "self-certification form."

3. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

The PCN shall include the following additional information:

   a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view drawing showing the utility line crossing from bank to bank in relationship to the waterway bottom. In

addition, the location and depth of any Federal navigation channel shall be shown in relation to the proposed utility line;

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area;

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable;

d. Where water or sewer line installation is proposed in an existing subdivision and the purpose is to extend service to new or expanded commercial, institutional, and residential lots containing waterways and wetlands which would be filled for construction, the PCN shall include information regarding the waterways/wetlands within those lots and potential impacts to those aquatic resources;

e. Any PCN to the District Engineer that proposes construction of a permanent access road must also justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable;

f. When any directional drilling or boring activities are proposed under a Section 10 waterway, the PCN must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frack out".

4. For Aerial Transmission Lines Across Navigable Waters:

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

Safety Code:

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

b. 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;

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and

d. 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.

5. 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 Corps 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.

6. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable; and

b. If a proposed activity would involve impacts to submerged aquatic vegetation (SAV) in the Delaware River, the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas.

7. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

a. For open-cut installation of a pipeline and/or hydrostatic testing of a pipeline which involves water withdrawal and the activity will affect tidal and/or nontidal coastal plain streams referenced above, or nontidal piedmont streams in Harford and Cecil Counties, Maryland, the work shall be prohibited during the period February 15 through June 15, each year, to protect sensitive life stages of anadromous fish, unless specifically waived by the District Engineer in consultation with NMFS.

b. Proposed permanent culverts in perennial and intermittent coastal plain streams in the above referenced areas, or piedmont streams in Harford and Cecil Counties, Maryland, should be depressed as defined below. If not depressed as defined below, the PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit:

i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom are exempt from the requirement of submitting this documentation as part of the PCN.

This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

The Corps shall provide a copy of the PCN to National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act where:

i. The culvert is not depressed, as indicated in this regional condition;

ii. Foundations for overhead utility line towers, poles, and anchors are located below the mean high water line in tidal waters, or the ordinary high water line of nontidal coastal plain streams within the above referenced areas; or piedmont nontidal streams in Harford and Cecil Counties, Maryland; or

iii. Any proposed open-cut pipeline (i.e., pipes carrying gaseous, liquid, liquescent, or slurry substance) affecting a tidal tributary stream and/or nontidal coastal plain stream that:

a) Impacts more than 500 linear feet of a tidal tributary stream and/or nontidal coastal plain stream; or

b) Does not make a direct or perpendicular stream channel crossing; or

iv. An open-cut pipe constructed in waters of the Unites States, which runs parallel to a stream and the pipeline is within 100 feet of the mean high water mark of a tidal stream; or 100 feet of the ordinary high water mark of a nontidal coastal plain stream.

Nationwide Permit #13 *Bank Stabilization*

Permit Specific Regional Condition –

1. To the maximum extent practicable, bank stabilization activities shall be accomplished using natural stabilization techniques and/or natural channel design. Riparian plantings shall be included in project designs to the extent practicable.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

3. **Essential Fish Habitat Regional Condition (Applicable in the District of Columbia, Maryland, and the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within all tidal and nontidal coastal plain streams within the areas referenced

above; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

Nationwide Permit #14 *Linear Transportation Projects*

Permit specific Regional Conditions –

1. The activity must not be used as a berm for a permanent impoundment or in-stream management of storm water.

2. Any activity proposing a crossing of a stream or open water shall be designed to sufficiently maintain: a continuous waterway substrate; continuity of existing benthic habitats; and existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. An on-site inspection by the potential permittee and/or engineer designing the crossing of the particular stream or waterbody is required to determine if the waterway is experiencing erosion, sedimentation, or accretion rates that would alter the bottom elevation for purposes of engineering a design that would address the requirements of this regional condition. Where a series of culverts are used, only those cells or culverts which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

3. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a) if any of the following criteria is met.

    a. A Section 10 permit is required;

    b. Impacts to waters of the United States exceeds 200 linear feet of stream channel (perennial, intermittent, and ephemeral); or

    c. Low flow or multi-culvert crossings is proposed.

4. The PCN shall include the following additional information:

    a. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable; and

    b. For public linear transportation projects where the prospective permittee is proposing a new crossing, proposing the replacement of an existing bridge structure with a culvert, or proposing the expansion of an existing facility, the permittee shall include as part of any required PCN an on-site alternatives

analysis that considers the impact of various size and type structures (i.e. bridges, culverts, pipes, and bottomless culverts) on the following:

i. Wetland services and functions, values, acreage;

ii. Wildlife corridor;

iii. Floodplain functions, including, but not limited to, flood storage and nutrient uptake;

iv. Existing or proposed hiker/biker trails and equestrian trails;

v. Recreational water activities (e.g. boating, fishing);

vi. Fish passage;

vii. Fisheries habitat and food chain support;

viii. Threatened and Endangered Species;

ix. Stream morphology;

x. Hydraulic analysis;

xi. Cost;

xii. Consistency with Master Plans; and

xiii. Movement of debris.

5. Compensatory mitigation, focusing on functional replacement, will be determined on a case-by-case basis, but is required, at a minimum, for discharges causing the loss of greater than 1/10 acre of wetlands and/or greater than 200 linear feet of stream channel, unless the applicant demonstrates to the satisfaction of the District Engineer, that the adverse effects are minimal without mitigation. In such cases, the applicant must submit justification explaining why compensatory mitigation should not be required by the Corps. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace the loss of aquatic resource services and functions. A watershed approach to compensatory mitigation should be used that considers the importance of landscape position and resource type for the sustainability of aquatic resource services and functions within the watershed. In addition, the PCN shall include the rationale for the proposed compensatory mitigation. Where appropriate functional or conditional assessment methods are available and practicable, these methods may be used to determine how much compensatory mitigation is required.

6. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity in the Delaware River, a complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act; and

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

7. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the areas referenced above; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

   b. Prior to doing the work, the prospective permittee shall submit a PCN to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a), where:

      i. A proposed activity affects more than 5,000 square feet of tidal wetlands or tidal waters; and/or 200 linear feet or more of nontidal coastal plain streams within the areas referenced above; and/or 200 linear feet or more of Piedmont streams in Harford and Cecil Counties, Maryland; or

      ii. A proposed activity is within a perennial and/or intermittent coastal plain stream within the areas referenced above; or piedmont streams in Harford and Cecil Counties, Maryland, and the work does not result in:

         a) A culvert measuring greater than 24 inches in diameter being be depressed 12 inches below the stream bottom; or

         b) A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

c) Note: Extensions of existing pipes or culverts that are not depressed below the stream bottom do not require a PCN under this Regional Condition.

The PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit meeting culvert depression requirements. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

The Corps shall provide a copy of the PCN, including any provided supporting documentation, to National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act.

Nationwide Permit #15 *U.S. Coast Guard Approved Bridges*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Prior to doing the work, the prospective permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional general condition 31a), for any proposed activity affecting more than 10,000 square feet of tidal waters, including tidal wetlands and/or more than 500 linear feet of non-tidal coastal plain streams. The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office. The Corps shall provide this PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #16 *Return Water From Upland Contained Disposal Areas*

Permit Specific Regional Condition – none

Nationwide Permit #17 *Hydropower Projects*

Permit Specific Regional Condition – none

Nationwide Permit #18 *Minor Discharges*

Permit Specific Regional Conditions –

1. The discharges of dredged and/or fill material into waters of the United States cannot be placed for the purpose of impounding water.

2. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity in the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

   b. For any activity in the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

4. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. For any activity associated with a proposed discharge into tidal waters, including tidal wetlands that does not require access or proximity to or siting within tidal waters and wetlands to fulfill its basic purpose (i.e., is not "water-dependent"), the Corps shall provide the PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #19 *Minor Dredging*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application

procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #20 *Response Operations for Oil and Hazardous Substances*

Permit Specific Regional Condition – none

Nationwide Permit #21 *Surface Coal Mining Operations*

Permit Specific Regional Condition –

1. **NWP 21 (b)-Other Surface Coal Mining Activities:**

   a. This nationwide permit does not authorize activities that would result in the loss of more than of 1000 linear feet of stream bed.

Nationwide Permit #22 *Removal of Vessels*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #23 *Approved Categorical Exclusions*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #24 *Indian Tribe or State Administered Section 404 Programs*

Permit Specific Regional Condition – none

Nationwide Permit #25 *Structural Discharges*

1. For any activity which includes the pouring of concrete, the sealed forms shall remain in place until the concrete is set.

2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #26 *[Reserved]*

Permit Specific Regional Condition – none

Nationwide Permit #27 *Aquatic Habitat Restoration, Establishment, and Enhancement Activities*

Permit Specific Regional Condition –

1. Any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.

2. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 31 and regional condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania)**:

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

4. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. For activities in all tidal and nontidal coastal plain streams within the areas referenced above, or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, the Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. For activities involving the restoration and/or establishment of tidal marsh in mesohaline waters (i.e., salinity of 5-18 ppt) of the mid and upper Chesapeake Bay, the PCN should include information concerning the distribution of horned pondweed (*Zannichellia palustris)* within the project site. Distribution information of horned pondweed may require recent ground-truth survey of the area by the applicant (i.e., employing a survey crew with relevant experience) during the period of May 1 through June 15, of any year.

Nationwide Permit #28 *Modifications of Existing Marinas*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a complete permit application at the Corps District Office. The application must also include plans showing the configuration of existing structures. For projects located on a waterway containing an authorized Federal Navigation Channel, the permittee must also include the distance of the project from the edge of the authorized channel. The District Engineer will add special conditions, where necessary, to ensure those adverse navigation impacts are minimal.

2. **Applicable to the Delaware River in Pennsylvania:** This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the Individual Permit process.

3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #29 *Residential Developments*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream impoundments.

2. Under the terms of this NWP, wetlands, which are located within the platted lot lines of any residential subdivision, will be considered adversely affected, unless the wetlands are protected by a protective covenant, (e.g., conservation easement or deed restriction), or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity. Those wetlands considered adversely

affected may require additional project-specific compensatory mitigation or review under other Federal permitting procedures.

3. **Individual Lots (Applicable in Pennsylvania)**

a. The total area of non-tidal waters of the United States, including wetlands, lost as a result of the discharge shall not exceed 40% of the total lot area, except for those lots which are less than 0.25 acres in size, in which case the loss of non-tidal waters of the United States, including wetlands, shall not exceed 0.10 acres. In no circumstances may the loss of non-tidal waters of the United States, including wetlands, resulting from a discharge authorized by this NWP or a combination of this and other NWPs exceed 0.25 acres. For purposes of this regional condition, loss is defined to include any filled area previously permitted, the fill area currently being authorized, and any other waters of the United States, including wetlands, that are adversely affected by flooding, excavation, or drainage as a result of the project. The following table provides examples of the permit authorization acreage limitations in effect where the lot size is equal to or greater than 0.25 acres.

Total Acreage Of Lot	40% of Lot	Maximum Loss Area Authorized
0.25 acre	X 0.40	= 0.10 acre
0.33 acre	X 0.40	= 0.13 acre
0.50 acre	X 0.40	= 0.20 acre
>0.50 acre	X 0.40	= 0.25acre

b. This NWP may be used only once by an individual.

c. This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.

d. This NWP may only be used on residential lots with access to a central sewage system which is in place and operational at the time of notification, except in cases where the discharge is for the expansion of an existing residence.

e. This NWP does not authorize the discharge of dredged and/or fill in waters of the United States, including wetlands, for the installation or expansion of on-lot septic systems.

f. This NWP does not authorize the loss of waters of the United States, including wetlands, located within a 100-year floodplain. Absent any established maps or other information to the contrary, the 100-year floodplain is assumed to extend fifty (50) feet landward from the top of the stream bank.

g. The PCN to the District Engineer shall include a sketch plan depicting the proposed footprint of fill. The sketch plan shall also include the property dimensions; building setbacks; wetland boundaries; acreage of the proposed wetland loss; location and acreage of any previously permitted wetland fills; location(s) of any streams, drainage courses, and floodplain limits; location of proposed house, driveway, and utilities; and a compensatory mitigation proposal. The wetland boundary will be determined by a trained wetland delineator.

h. Individuals who wish to use this NWP must compensate for the loss of waters of the United States, including wetlands, where the loss would be greater than 0.05 acre, unless the applicant demonstrates, to the satisfaction of the District Engineer, that the adverse effects are minimal without mitigation. In such cases, the applicant must submit justification explaining why compensatory mitigation should not be required by the Corps. A functional or condition assessment on the aquatic resources should be incorporated as a component of this document.

4. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, the State of Maryland, and Potomac River watershed within appropriate military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore):**

a. Instream work within tidal and nontidal coastal plain streams within the areas referenced above, or nontidal piedmont streams in Harford and Cecil Counties, Maryland is prohibited during the period February 15 through June 15 for the protection of anadromous fish spawning.

b. Applicable to all perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the Corps shall provide a copy of the PCN, including any supporting documentation, to the National Marine Fisheries Service in accordance with the Magnuson Stevens Act where the work does not result in:

i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

The PCN shall include a narrative documenting measures evaluated to minimize disruption of the movement of aquatic life, as well as specific documentation concerning site conditions, limitations, and/or engineering factors that prohibit meeting culvert depression requirements. This

documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

Nationwide Permit #30 *Moist Soil Management for Wildlife*

Permit Specific Regional Condition –

1. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general conditions 31a). The Corps review period shall commence with the receipt of a complete permit application at the Corps District Office.

Nationwide Permit #31 *Maintenance of Existing Flood Control Facilities*

Permit Specific Regional Condition – none

Nationwide Permit #32 *Completed Enforcement Actions*

Permit Specific Regional Condition – none

Nationwide Permit #33 *Temporary Construction, Access and Dewatering*

Permit specific Regional Conditions –

1. For causeways and cofferdams constructed under this NWP, the following applies:

    a. Earthen cofferdams and cofferdams of dredged and/or fill material shall not be used due to problems with sedimentation of the waterway during installation and removal of the earthen (fine material) component. Causeways shall consist of only clean rock; and

    b. Causeways and cofferdams shall extend no more than 1/2 the width of the waterway, and sufficient conveyance of the waterways shall be provided to preclude damage to property or the environment resulting from increased water surface elevations.

2. Temporary crossings of wetlands shall be avoided if an alternate location is possible. Where wetland impacts cannot be avoided, timber mats, construction pads, geotextiles or other similar devices shall be used to avoid consolidation of temporary road materials into the wetland substrate.

3. The restoration plan for disturbed wetlands and stream banks shall include a planting plan identifying specific species to be planted. Re-vegetation with species similar to those that

pre-existed should be used, unless site specific conditions justify a change, e.g. replacing reed canary grass with a more varied seed mix of palustrine emergent species. The type of re-vegetation should be in-kind, e.g., herbaceous species replaced with same, shrub species replaced with same, and tree species replaced with same.

4. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

5. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. The Corps shall provide the required PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination when:

      i. The activity affects more than 0.5 acre of tidal waters, including jurisdictional tidal wetlands; or

      ii. The activity affects more than 500 linear feet of a nontidal coastal plain stream.

   b. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the above referenced areas; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

Nationwide Permit #34 *Cranberry Production Activities*

Permit Specific Regional Condition – none

Nationwide Permit #35 *Maintenance Dredging of Existing Basins*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize activities on the Delaware River downstream of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

2. The maintenance dredging area must have been previously authorized by the Corps and prior maintenance dredging had to be completed no more than five years prior to the current proposal.

3. Maintenance dredging authorized by this nationwide permit shall be limited to the dimensions (width and depth) of previously authorized dredging.

4. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office. The application must also include a drawing indicating existing depths for the project site and nearby channel, and a survey of submerged aquatic vegetation in the vicinity of the dredge site, and plans indicating the dimensions (width and depth) and the approximate date of previous dredging, and identifying the location of the upland disposal site(s).

5. **Essential Fish Habitat Regional Condition (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District and the Delaware River in Pennsylvania):**

   a. The Corps shall provide the required PCN to National Marine Fisheries Service for individual Essential Fish Habitat consultation and coordination.

Nationwide Permit #36 *Boat Ramps*

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize activities on the Delaware River south of the Penn Central Railroad Bridge in Trenton, New Jersey, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.

2. Construction material must be clean rock or stone free of fine materials such as silt, clay or sand to preclude more than minimal detrimental impacts to the waterway from turbidity and sedimentation effects.

3. For any activity which includes the pouring of concrete, the sealed forms shall remain in place until the concrete is set.

4. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and

Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

5. **Applicable in Maryland and the District of Columbia:**

   a. The length of boat ramps authorized by this nationwide permit shall not exceed 30 feet channelward of the mean high water line, nor 25% of the width of the waterway.

   b. Where the water depth at the proposed ramp is less than two feet at mean low water line, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

Nationwide Permit #37 *Emergency Watershed Protection and Rehabilitation*

Permit Specific Regional Condition – none

Nationwide Permit #38 *Cleanup of Hazardous and Toxic Waste*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

   b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #39 *Commercial and Institutional Developments*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream impoundments.

2. Under the terms of this NWP, wetlands, which are located within the platted lot lines of any commercial or institutional subdivision, will be considered adversely affected, unless

the wetlands are protected by a protective covenant, (e.g., conservation easement or deed restriction), or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity. Those wetlands considered adversely affected may require additional project-specific compensatory mitigation or review under other Federal permitting procedures.

3. **Essential Fish Habitat Regional Condition (Applicable in the District of Columbia, Maryland, and the Potomac River watershed within military installation of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the above referenced areas; and nontidal piedmont streams in Harford and Cecil Counties, Maryland for the protection of anadromous fish spawning.

   b. Applicable to all perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland; the Corps shall provide a copy of the PCN, including any supporting documentation, to the NMFS in accordance with the Magnuson Stevens Act, where the work does not result in:

      i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

      ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

      iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

Nationwide Permit #40 *Agricultural Activities*

Permit Specific Regional Conditions –

1. Pond construction must be of the minimum size required for the farming use.

2. In-stream ponds should be avoided to the maximum extent practicable.

Nationwide Permit #41 *Reshaping Existing Drainage Ditches*

1. Prior to doing the work, the permittee must submit a PCN to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a). The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

Nationwide Permit #42 *Recreational Facilities*

Permit Specific Regional Condition –

1. **Essential Fish Habitat Regional Condition (Applicable the District of Columbia, Maryland, and the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. Instream work is prohibited during the period of February 15 through June 15, each year, within tidal and nontidal coastal plain streams within the areas referenced above, and nontidal piedmont streams in Harford and Cecil Counties, Maryland, for the protection of anadromous fish spawning.

   b. For culverted road crossings of perennial and intermittent coastal plain streams within the areas referenced above, and perennial and intermittent piedmont streams in Harford and Cecil Counties, Maryland, the Corps shall provide a copy of the PCN, including any provided supporting information, to the National Marine Fisheries Service for review and comment pursuant to the Magnuson Stevens Act, if the work does not result in:

      i. A culvert measuring greater than 24 inches in diameter being depressed 12 inches below the stream bottom; or

      ii. A culvert measuring 24 inches or less in diameter being depressed 6 inches below the stream bottom.

      iii. NOTE: Extensions of existing culverts that are not depressed below the stream bottom do not require submission of the requested information as part of the PCN.

The PCN shall include a narrative 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, and engineering factors that prohibit depressing the culvert. This documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact their regional fishery agency for recommendations about the measures to be taken to allow for migratory fish passage.

Nationwide Permit #43 *Stormwater Management Facilities*

Permit Specific Regional Condition –

1. This NWP does not authorize the construction of recreational ponds, or the construction of any new stormwater management facilities in aquatic resources, including waterways or wetlands.

Nationwide Permit #44 *Mining Activities*

Permit Specific Regional Condition – none

Nationwide Permit #45 *Repair of Uplands Damaged by Discrete Events*

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

   a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

Nationwide Permit #46 *Discharges in Ditches*

Permit Specific Regional Condition – none

Nationwide Permit #47 *[Reserved]*

Nationwide Permit #48 *Commercial Shellfish Aquaculture Activities*

Permit Specific Regional Conditions –

1. This NWP does not authorize the following activities:

   a. Activities located in any areas mapped as submerged aquatic vegetation. 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
   The applicant should also refer to other reliable sources to comply with this condition;

   b. 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, the Maryland coastal bays, and the Delaware River; or

   c. 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.

2. **Essential Fish Habitat Regional Conditions (Applicable in Maryland):**

This NWP does not authorize the following activities:

a. Commercial shellfish aquaculture activities in new project areas in waters within the Chesapeake Bay and its tidal tributaries upstream of the geographic exclusion lines defined in Enclosure 1.

b. Commercial shellfish aquaculture activities in new project areas authorized under individual on-bottom, submerged land leases administered by the Maryland Department of Natural Resources (DNR) (including bags on bottom, shellfish seed, and other suitable substrate (e.g., shell, shell fragments, concrete no larger than 3-inches in diameter on bottom) that are more than 50 acres in total coverage.

c. Commercial shellfish aquaculture activities in new project areas authorized under individual water column leases administered by DNR utilizing on-bottom cages that are more than five acres in total coverage.

d. Commercial shellfish aquaculture activities in new project areas authorized under individual water column leases administered by DNR utilizing off-bottom suspended culture (e.g., floats/mesh cages) of no more than three acres in total coverage.

e. Oyster gardening activities.

f. The establishment of Aquaculture Enterprise Zones or preapproved areas of the Atlantic Coastal Bays.

g. Activities that impound water.

h. Predator control devices (i.e., mesh fences, mesh nets, mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear.

i. Existing or proposed activities associated with an ongoing Corps or Environmental Protection Agency enforcement action until such time as the enforcement action is resolved, or the Corps determines that the activity may proceed independently without compromising the enforcement action.

j. Activities that have more than minimal individual and/or cumulative adverse impact on navigation.

k. Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete, slag, tires, wallboard, plastic, wood, metal, crushed glass, trash, and garbage).

l. 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.

3. All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

4. Shellfish introduced into tidal waters of the Chesapeake Bay and its tributaries, or in the Maryland coastal bays, must be certified (under Maryland standards) as being disease and parasite free. Any introduced shellfish introduced to the Delaware River and its tributaries must be certified under Delaware standards as being disease and parasite free.

5. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

   a. A PCN must be submitted to the Corps for all activities in waters of the United States.

   b. A complete copy of any PCN to the Corps shall be forwarded directly to NMFS, Habitat Conservation District, 74 Magruder Road, Sandy Hook, Highlands, New Jersey, 07732. The applicant must provide evidence that this has been accomplished. The Corps will coordinate review of the PCN with the NMFS pursuant to MSA.

6. **Essential Fish Habitat Regional Conditions (Applicable to the District of Columbia, Maryland, and activities affecting the Potomac River watershed within military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District):**

   a. The prospective permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a), prior to doing the work, if the project includes the initial development of a commercial shellfish aquaculture site or the permittee does not have a valid lease from the State. The Corps' review period shall commence with the receipt of a completed permit application at the Corps District Office.

   b. In addition to the information required by NWP 48 and regional condition 31a, the PCN must include:

      i. A copy of the lease or permit issued by the appropriate state government agency;

ii. 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;

iii. 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 submerged aquatic vegetation (SAV) data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys), and showing local 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.

iv. 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);

2. Types of aquaculture gear to be used, including anchoring devices;

3. Acreage of project footprint affecting bottom and water column;

4. Impacts (temporary and/or permanent) 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).

v. Cross-sectional view of proposed aquaculture structures and all associated apparatus that represents the proposed operations of the activity (on-bottom, suspended, or floating).

c. The Corps shall provide the PCN to National Marines Fisheries for all activities proposing to relocate existing operations into portions of the project area not previously used for aquaculture activities.

<u>Nationwide Permit 49 *Coal Remining Activities*</u>

Permit Specific Regional Condition –

1. The pre-construction notification to the District Engineer shall include detailed site development, mining, and reclamation plans (as required by other regulatory agencies) for any proposed activity.

Nationwide Permit 50 *Underground Coal Mining Activities*

Permit Specific Regional Condition –

1. The pre-construction notification to the District Engineer shall include detailed site development, mining, and reclamation plans (as required by other regulatory agencies) for any proposed activity.

Nationwide Permit 51 *Land-Based Renewable Energy Generation Facilities*

Permit Specific Regional Conditions –

1. This NWP does not authorize the construction of in-stream ponds or stormwater management facilities.

2. For the installation of utility lines, the following applies:

   a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

   b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

   c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

   d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot, from the lowest point in the natural contour of the streambed, shall be maintained. A minimum vertical clearance of ten feet shall be maintained from the top of any cable, encasement, utility, or pipeline below the authorized depth of an authorized Federal navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.

e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to reduce drainage through the backfill material. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submission of the "self-certification form."

3. For Aerial Transmission Lines Across Navigable Waters:

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

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

b. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless otherwise specifically authorized by the District Engineer.

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required.

4. The PCN shall include the following:

a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of any Federal Project Channel shall be shown in relation to the proposed utility line.

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area.

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

d. 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.

5. 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 Corps 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.

Nationwide Permit 52 *Water-Based Renewable Energy Generation Pilot Projects*

Permit Specific Regional Conditions –

1. This NWP does not authorize work or discharges associated with wind generation projects within Lake Erie.

2. This NWP does not authorize the construction of in-stream ponds or stormwater management facilities.

3. For the installation of utility lines, the following applies:

   a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

   b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. A minimum vertical clearance of ten feet shall be maintained from the top of any cable, encasement, utility, or pipeline below the authorized depth of a Federal navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.

e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to reduce drainage through the backfill material. Photo-documentation of clay plugs or impervious material at each crossing must be included with the "self-certification form."

4. For Aerial Transmission Lines Across Navigable Waters:

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

Safety Code:

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

b. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless otherwise specifically authorized by the District Engineer.

c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required.

5. The PCN shall include the following:

a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of the Federal Project Channel shall be shown in relation to the proposed utility line.

b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area.

c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.

d. 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.

6. The Corps shall provide a copy of the required PCN to NMFS for individual EFH consultation and coordination pursuant to the Magnuson Stevens Act.

7. 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 Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7350, 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.

II. Nationwide Permit General Regional Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any nationwide permit specific regional conditions identified above in Section I, the general conditions found in the 2012 NWPs published in the *Federal Register* on February 21, 2012 (77 FR 10282), and any case-specific conditions imposed by the Corps.

Nationwide Permit General Condition #2 *Aquatic Life Movement*

Regional General Condition 2a - The permittee shall apply any appropriate time-of -year restrictions to protect the aquatic resources present within the project area and downstream of the project site. See attached addresses of agencies for information on state imposed time-of-year restrictions (see "List of Agencies", numbers 7, 8 & 9 for contact information in Pennsylvania; numbers 10, 12, & 13 for contact information in Maryland; number 15 & 21 for contact information in Washington, DC; and number 17, 18, 19, and 20 for Virginia).

Nationwide Permit General Condition #18 *Endangered Species*

Regional Condition 18a – For all work in Pennsylvania associated with any of the NWPs, the applicant is required to complete a Pennsylvania Natural Diversity Inventory (PNDI) project screening for federally listed threatened and endangered species. The PNDI Environmental Review Tool is located at: http://www.naturalheritage.state.pa.us. The prospective permittee must submit a PCN to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 31 and regional general condition 31a), prior to doing the work, if the PNDI receipt identifies a "Potential Impact", or "Avoidance Measures", in association with the U.S. Fish and Wildlife Service.

Regional Condition 18b - Interactions with National Marine Fisheries Service Federally Threatened or Endangered Species (Applicable to the District of Columbia, Maryland, and certain military installations of Northern Virginia in the regulatory geographic boundaries of the Baltimore District): Any interaction between a sea turtle or any species listed now or in the future under Federal law as a threatened or endangered species ("listed species") (e.g., North Atlantic right whale, humpback whale, shortnose sturgeon) and the vessels associated with the project must be reported to the National Marine Fisheries Service as follows: (1) 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 National Marine Fisheries Service 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; (2) If the animal requires assistance, the call to the hotline must be made immediately; (3) 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 the Corps of all correspondence and coordination with the National Marine Fisheries Service within two calendar days. Additional information about any Federally threatened or endangered species may be obtained from the attached fact sheet or online at:
http://www.nero.noaa.gov/prot_res/stranding/SpeciesOverview.html and at:
http://www.nero.noaa.gov/prot_res/esp/. 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.

Regional Condition 18c - Vessel Buffer (Applicable to the District of Columbia, Maryland, and certain military installation of Northern Virginia in the regulatory geographic boundaries of the Baltimore District): 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 National Marine Fisheries Service.

Regional Condition 18d - Best Management Practices Applicable Within Tidal Waters of the Chesapeake Bay in Maryland, District of Columbia, and certain military installations of northern Virginia having Salinity Levels Less Than 6 Parts Per Thousand (ppt) (See Enclosure 1):

1. **Pile Driving:** For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 187dB sound exposure level (SEL) re 1μPa or 206dB peak re 1μPa at a distance of >10m from the pile being installed; and levels >155dB peak re 1μPa must not exceed 12 consecutive hours on any given day and a 12 hour recovery period (i.e., in-water noise levels below 155dB peak re 1μPa) must be provided between work days. Pile driving construction must adhere to one of the following methods: (a) piles must be installed in-the-dry during low water; (b) piles must be drilled and pinned to ledge; (c) vibratory hammers must be used to install any size and quantity of wood, concrete, or steel pilings; (d) impact hammers must be limited to one hammer and <50 piles installed per day with the following: (1) wood piles of any size; (2) concrete piles <18-inches diameter; (3) steel piles <12-inch diameter if the hammer is <3,000 pounds

and a wood cushion is used between the hammer and steel pile; or (e) approved pile driving methods that will allow noise level thresholds to be met.

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

Nationwide Permit General Condition #31 *Pre-Construction Notification*

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 31, *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 requiring notification to the district engineer pursuant to the NWP general conditions 18, 22 and 31, (b) those NWPs requiring notification to the district engineer pursuant to a regional condition, and (c) any other pre-constriction notifications to the district engineer where an applicant has requested verification of an NWP authorization. Those NWPs that require a PCN include NWPs 1*, 2*, 3*, 4*, 5*, 6*, 7, 8, 9*, 10*, 11, 12, 13*, 14*, 15*, 16*, 17, 18, 19, 20*, 21*, 22*, 23, 24*, 25*, 27, 28, 29, 30, 31, 32*, 33, 34, 35, 36*, 37*, 38, 39, 40, 41, 42, 43*, 44, 45, 46, 48*, 49, 50, 51, and 52.

**These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions 18, 22 & 31, and the regional conditions to identify these circumstances.*

Regional General Conditions 31a

1. A PCN shall be submitted to the District Engineer for any proposed activity, which would result in impacts, temporary or permanent, to jurisdictional wetlands in the following Counties in Pennsylvania: Adams, Berks, Bucks, Carbon (Aquashicola Creek Watershed), Chester, Cumberland, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (Swatara Creek Watershed), and York.

2. For a PCN required in Pennsylvania under Regional Nationwide Permit General Condition 18a, a copy of the PCN must also be concurrently forwarded to the U.S. Fish and Wildlife Service if the PNDI receipt identifies a "Potential Impact" related to the U.S. Fish and Wildlife Service, or if the applicant cannot implement, or does not agree to implement one or more U. S. Fish and Wildlife Service issued "Avoidance Measures" detailed on the PNDI receipt.

3. 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 http://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017. 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/Wetlands%20Permits/

4. All pre-construction notifications (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/Wetlands%20Permits/permits.htm). 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 31:

   a) Plan(s) of the proposed work on 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 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 Corps jurisdiction, including both permanent and temporary structures. Plans should depict all proposed work, including areas proposed for filling, grading, excavation, drainage, and/or inundation. All drawings shall include the ordinary high water mark, 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 submerged aquatic vegetation (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 The applicant should also refer to other reliable sources to comply with this condition.

   b) The PCN shall include a wetland and stream delineation for the entire project area, including latitude and longitude, identified on a scaled plan of the project site. All existing or proposed work in aquatic resources shall be identified on the same-scaled plan. Further, at the discretion of the District Engineer, the Corps may determine that a PCN is incomplete if it is determined that field verification of the wetland and/or stream delineation is required.

   c) 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.

d) Evidence that the prospective permittee has already contacted and received a response from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service concerning any Federally listed Threatened and Endangered Species that may be affected by the proposed activity. (see "List of Agencies", numbers 2 & 4 for contact information in Pennsylvania; numbers 3, & 5 for contact information in Maryland and Washington, DC; and Numbers 5, 19 & 20 for contact information in Virginia).

In Pennsylvania, a PNDI receipt or U.S. Fish and Wildlife Service letter (issued pursuant to the ESA) serves as evidence that the prospective permittee has contacted and received a response from the U.S. Fish and Wildlife Service.

e) Evidence that the prospective permittee has already contacted and received a response from the State Historic Preservation Office concerning historic properties that may be affected by the proposed activity. (see "List of Agencies", number 6 for contact information in Pennsylvania; number 11 for contact information in Maryland; number 14 for contact information in Washington, DC; and number 16 for contact information in Virginia).

f) Documentation from the appropriate State agency 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. (see "List of Agencies", numbers 2, 4, & 7 for contact information in Pennsylvania; numbers 3, 5, 10, 12, & 13 for contact information in Maryland; numbers 3, 5, 15, & 21 for contact information in Washington, DC; and numbers 17, 18, 19, & 20 for contact information in Virginia).

g) A written statement describing the following:

i. what measures have been taken to avoid impacts to aquatic resources;

ii. what measures have been taken to minimize unavoidable impacts to aquatic resources;

iii. what measures have been developed to compensate for the loss of aquatic resources. Where compensatory mitigation is required, approval of a mitigation plan (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)) is required prior to initiating any authorized work.

5. When a PCN is required, the Corps review period shall commence with the receipt of a complete permit application at the Corps District Office. The prospective permittee shall not begin the activity until notified in writing by the District Engineer (normally within

60 days) that the activity may proceed under the nationwide permit with any special conditions imposed, if applicable.

6. Where required by the regional conditions of the NWP, the prospective permittee must submit a PCN to the District Engineer for any activity that may adversely affect Essential Fish Habitat within the District of Columbia, Maryland, and certain military installations of Northern Virginia within the Potomac River watershed in the regulatory geographic boundaries of the Baltimore District. The District Engineer will immediately provide (e.g., via email, facsimile transmission, or other expeditious manner) a copy of the PCN, including project description, site location map, project plans, and any ancillary information relevant to the National Marine Fisheries Service's jurisdiction for an Essential Fish Habitat assessment, or where appropriate, an individual Essential Fish Habitat consultation and coordination. The National Marine Fisheries Service-Chesapeake Bay Office shall then have a 30 day review and comment period from the date of their receipt of the EFH assessment, as provided by the Magnuson-Stevens Act.

7. Any requests to waive the 300 linear foot limitation for the intermittent and ephemeral streams for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, or to waive the 20 foot width limitation for NWP 36, must include:

   a) A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with the Ordinary High Water Mark (e.g., bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community, including a statement as to if the area is upland or wetland; surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.

   b) An analysis of the proposed impacts to the waterbody in accordance with General Condition 31.

   c) Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and

   d) A mitigation plan describing how the unavoidable losses are proposed to be compensated (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)).

8. 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 Corps. When compensatory mitigation involves use of a mitigation bank or in-lieu-fee program, the special conditions of the permit must identify the specific mitigation bank or in-lieu-fee program used to provide the required compensatory mitigation and the number and resource type of credits the permittee is required to secure. Proof of payment to the

approved mitigation bank or in-lieu-fee program shall be submitted to the appropriate Corps district 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 that considers the importance of landscape position and resource type of compensatory mitigation projects for the sustainability of aquatic resource functions within the watershed should be used.

SPECIAL NOTES:

1. Where the Commonwealth, State or the District of Columbia (District) has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the Commonwealth/State/District to obtain an activity specific review and approval by the Commonwealth/State/District prior to submitting any required pre-construction notification (PCN) to the Corps of Engineers.

2. The attached addresses should be used for notification to those agencies required by regional conditions.

List of Agencies:

(1) Environmental Protection Agency
1650 Arch Street - 3ES42
Philadelphia, Pennsylvania 19103-2029

(2) U.S. Department of the Interior
Fish and Wildlife Service
315 South Allen Street, Suite 322
State College, Pennsylvania 16801-4850

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

(4) National Marine Fisheries Service
Habitat Conservation Division
74 Magruder Road, Sandy Hook
Highlands, New Jersey 07732

(5) National Marine Fisheries Service
Chesapeake Bay Office
410 Severn Ave., Suite 107A
Annapolis, Maryland 21403

(6) Pennsylvania Historical & Museum Commission
Bureau of Historic Trust
P.O. Box 1026
Harrisburg, Pennsylvania 17110

(7) Pennsylvania Fish & Boat Commission
Bureau of Fisheries & Engineering
450 Robinson Lane
Bellefonte, Pennsylvania 16823-9616

(8) Pennsylvania Department of Environmental Protection
Bureau of Watershed Management
Division of Waterways, Wetlands & Stormwater Management
Rachel Carson State Office Building
P.O. Box 8460
Harrisburg, Pennsylvania 17105-8775

(9) Pennsylvania Game Commission
2001 Elmerton Avenue
Harrisburg, Pennsylvania 17110-9797

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

(11) Maryland Historical Trust
Division of Historical & Cultural Programs
100 Community Place
Crownsville, Maryland 21032-2023

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

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

(14) District of Columbia Office of Planning Historic Preservation Office
1100 4th Street, SW
Suite E 650
Washington, DC 20024

(15) District Department of Environment
Water Quality Division
51 N Street, NE, 6th Floor
Washington, DC 20002

(16) Virginia Department of Historic Resources
Attn: Project Review
2801 Kensington Avenue
Richmond, Virginia 23221

(17) Virginia Department of Game and Inland Fisheries
4010 West Broad Street
P.O. Box 11104
Richmond, Virginia 23230

(18) Northern Regional Office
Virginia Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia 22193

(19) Virginia Marine Resources Commission
Habitat Management Division
2600 Washington Avenue, 3rd Floor
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Division of Habitat and Resource Conservation
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1849 C Street NW, Room 3331
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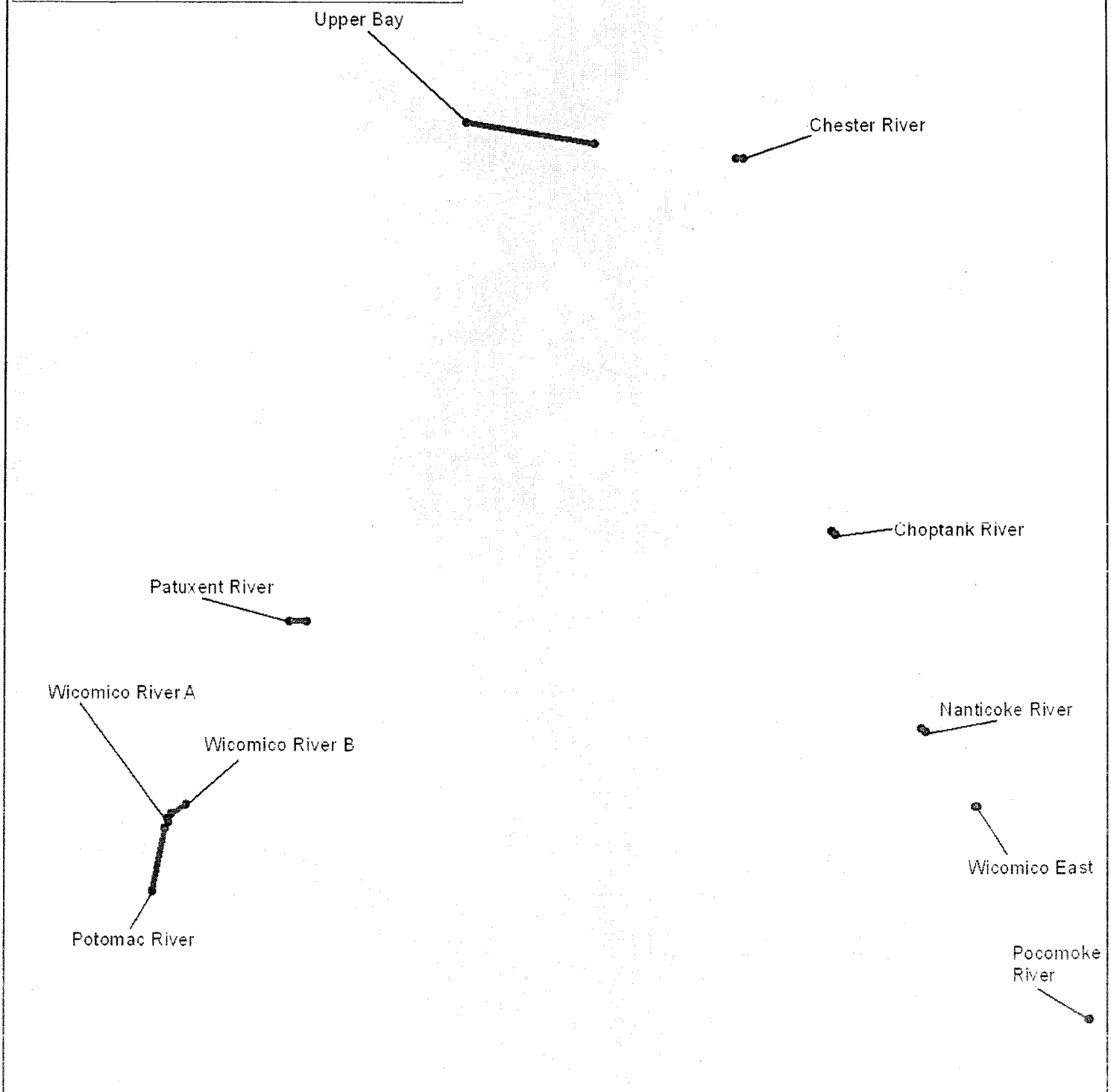
Enclosure
Low Salinity (<6 ppt) Waters
Maryland Chesapeake Bay

Under the NWPs, certain activities (pile driving, sediment disturbing activities and dredging) are subject to a time of year restriction prohibiting in water work betewwen April 1 - June 30 in low salinity waters upstream of the delineated lines on the figure. Please see Baltimore District's regional general conditions of the 2012 NWPs for more information.

Under NWP 48 regional conditions, commercial shellfish aquaculture activities in new project areas in waters upstream of the delineated lines on the figure are not eligible for authorization under the Nationwide Permit 48.



2012 NWPs Regional Conditions
Baltimore District
U.S. Army Corps of Engineers