

**REGIONAL CONDITIONS TO THE 2020 NATIONWIDE PERMITS FOR THE
STATE OF MARYLAND**

I. Regional Conditions Applicable to Specific Nationwide Permits within the State of Maryland:

A. Nationwide Permit #3 Maintenance: Prior to commencing an activity the non-federal permittee must submit a Pre-construction Notification (PCN) to the District Engineer, for that portion of paragraph (a) of Nationwide Permit (NWP) 3 applicable to the repair, rehabilitation, or replacement in-kind of any previously authorized currently serviceable structure or fill destroyed or damaged by storms, floods, fires, or other discrete events.

1. For activities in all tidal and nontidal coastal plain streams in the State of Maryland or nontidal Piedmont streams located in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the PCN with the National Marine Fisheries Service (NMFS) pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act when:
 - a. A one-way tide gate is proposed to be used to replace an existing tide gate, or when maintenance is proposed on an existing one-way tide gate. The applicant, as part of the PCN, shall explain why it is not practicable to replace the tide gate with self-regulating tide gates.

B. Nationwide Permit #23 Approved Categorical Exclusions: Prior to doing the work, the non-federal permittee shall submit a Pre-construction Notification (PCN) to the District Engineer. (See General Condition 32 and Regional General Condition 32)

C. Nationwide Permit #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities: Prior to doing the work, the non-federal permittee shall submit a Pre-construction Notification (PCN) to the District Engineer (see General Condition 32 and Regional General Condition 32).

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. For activities in all tidal and nontidal coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the PCN with the National Marine Fisheries Service Habitat Conservation Division pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

D. Nationwide Permit #30 Moist Soil Management for Wildlife: Prior to doing the work, the non-federal permittee must submit a Pre-Construction Notification (PCN) to the District Engineer (see General Condition 32 and Regional General Conditions 32).

E. Nationwide Permit #48 Commercial Shellfish Aquaculture Activities:

1. This Nationwide Permit (NWP) **does not** authorize work where:
 - a. Activities are proposed to be located in mapped anadromous fish (striped bass, *Morone saxatilis*) spawning habitat. The applicant may refer to MERLIN or other reliable sources for this information.
<http://dnrweb.dnr.state.md.us/MERLIN/>
 - b. Work or activities are proposed to extend into anchorage areas; customary boating channels; navigation fairways; marked, lighted, or charted channels; or State or Federal Navigation Channels.
 - c. Work or activities are proposed that adversely affect ingress to and egress from neighboring properties or other areas.
 - d. Predator control devices (i.e., mesh fences, mesh nets, mesh tents) are proposed to be suspended or erected vertically or obliquely in the water column, or used to surround or enclose shellfish/containment gear. This condition does not preclude the use of cages for shellfish containment.
2. The prospective non-federal permittee must submit a Pre-construction Notification (PCN) to the District Engineer using the Joint State/Federal Application for a Commercial Shellfish Aquaculture Lease and Federal Permit (<http://dnr2.maryland.gov/fisheries/Documents/Commercial-Shellfish-Lease-Application.pdf> and <http://dnr2.maryland.gov/fisheries/Documents/Shellfish-Lease-Application-Instructions.pdf>) when:
 - a. The project does not have a valid authorization from the Corps in effect as of August 15, 2016, or
 - b. Where a “shell on bottom” project was not approved by the Maryland Department of Natural Resources (MDNR) prior to July 1, 2009, or
 - c. The activity involves any change in the aquaculture type (bottom culture, floating structures, or structures suspended in the water column) from what was previously authorized by the Corps.
3. In addition to the information required by NWP 48, General Conditions and Regional General Condition 32, the PCN must include the following information, also published and provided on the District’s web site (see *Commercial Shellfish Mariculture*):

- a. Legible project vicinity map (black line on white background), to scale, and depicting the footprint of project area relative to prominent land/water geographic features, including approximate latitude/longitude coordinates of the project footprint;
- b. Legible overview plans (black line on white background), to scale (100':1" or 50':1"), depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys), and showing local water depths (bathymetry) of the project area, and other important ecological features of the site (e.g., native tidal marsh) that may be affected by project activities.
- c. Detailed project description, with the following information:
 - i. Description of proposed activities, including site preparation and harvest activities (e.g., dredging, harrowing and dragging of bottom substrate, tonging), and a description of how structures and vertical and horizontal lines would be arranged throughout the project area, spacing of rows and spacing between structures;
 - ii. Types of aquaculture gear to be used, including anchoring devices, maximum number of vertical and horizontal lines, and buoys;
 - iii. Acreage of project footprint affecting bottom and water column;
 - iv. Impacts (temporary and/or permanent) to aquatic areas required for access to the aquaculture facility/gear, and remedial measures proposed to restore temporarily affected aquatic areas;
 - v. Substrate type of bottom affected by proposed activities (particularly for on-bottom activities) (e.g., soft sand, hard sand, mud, shell.).
- d. Provide information sufficiently detailed to identify how the proposed work will not be adverse to general navigation in the area of the proposed work and will not hinder or adversely affect ingress to or egress from neighboring properties or other areas.
- e. Cross-sectional view of proposed aquaculture structures and all associated apparatus that represents the proposed operations of the activity (on-bottom, suspended, or floating).

4. The total number of vertical and horizontal lines must be minimized to the maximum extent practicable.

Note: The Maryland Department of Natural Resources will forward the Joint Application to the Corps on behalf of the applicant, or the applicant may submit the application directly to the Corps. The Corps' review period shall commence with the receipt of a completed PCN at the Corps' District Office.

F. Nationwide Permit #52 Water-Based Renewable Energy Generation Pilot Projects:

1. The PCN must indicate the project life span and include a detailed maintenance, decommissioning, and demolition plan for the life of the project.
2. For activities in all tidal and nontidal stream coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, the Corps of Engineers will coordinate review of the Pre-Construction Notification with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

G. Nationwide Permit #53 Removal of Low-Head Dams:

1. For activities in all tidal and nontidal coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland, the District Engineer will coordinate review of the Pre-construction Notification with the National Marine Fisheries Service Habitat Conservation Division pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

H. Nationwide Permit #54 Living Shorelines

1. Wetland components of living shoreline projects shall be maintained as a wetland, with areal coverage by native, hydrophytic, non-nuisance species of at least 85% for 3 consecutive years. Monitoring reports documenting areal coverage shall be submitted to the Corps annually. If 85% coverage by such species is not attained, the reasons for the failure must be documented in writing and provided to the Corps with proposed corrective measures, including replanting. Final corrective measures must be completed, as approved by the Corps.
2. Living shoreline projects must result in no net loss of wetlands.

II. Regional Conditions Applicable to Multiple and/or All 2020 Nationwide Permits within the State of Maryland

Note: To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any specific NWP regional

conditions identified above in Section I, the general conditions found in the proposal to reissue and modify the NWP published in the *Federal Register* on September 15, 2020 (85 FR 179), and any case-specific special conditions imposed by the District Engineer.

A. Nationwide Permit Regional General Condition #2 Aquatic Life Movement:

1. Conditions for Anadromous Fish Use Areas:

- a. This condition applies to NWPs: 3a, 25, 27, 38, 53, 54, A, B, C, and D.
 - b. To ensure that activities authorized do not impact spawning habitat or a migratory pathway for anadromous fish, work is prohibited during February 15 to June 15 each year to protect sensitive life stages of anadromous fish in all tidal and nontidal coastal plain streams within the State of Maryland and nontidal Piedmont streams in Harford and Cecil Counties, Maryland, unless specifically waived by the District Engineer in consultation with NMFS..
2. Culverted road crossings of perennial and intermittent streams culverts must meet the below depression criteria or a Pre-Construction Notification (PCN) is required to be submitted to the District Engineer for review and coordination with the National Marine Fisheries Service in anadromous fish use areas. Extensions of existing culverts that are not depressed below the stream bottom do not require a PCN.
- a. Culverts measuring greater than 36 inches in diameter must be depressed 12 inches below the stream bottom; or
 - b. Culverts measuring 36 inches or less in diameter must be depressed 6 inches below the stream bottom.
3. If depression of the culvert is not practicable in accordance with this depression criteria, the applicant must submit a Pre-Construction Notification, including 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, cost, and engineering factors that prohibit depressing the pipe/culvert. Options that need to be considered include the use of a bridge, bottomless pipe, partial depression, or other measures to provide for the movement of aquatic organisms. The documentation must also include photographs documenting site conditions. The applicant may find it helpful to contact National Marine Fisheries Service for recommendations about the measures to be taken to allow for fish passage.

B. Nationwide Permit Regional General Condition #18 Endangered Species:

1. **For U.S. Fish and Wildlife Service (FWS) ESA species:** All non-federal permittees must use the FWS Chesapeake Bay Field Office Project Review website (IPaC)

(<https://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>) to determine if any Federally listed species or designated critical habitat may be present in the proposed project area. A complete application must contain one of the following:

- a. If the FWS website shows that listed species or designated critical habitat may be present in the proposed project area, then, using the FWS website tool, the permittee must obtain and submit with the PCN a FWS Official Species List tailored for the proposed project area. An Official Species List is considered valid for 90 days.
 - b. If the FWS website shows that no listed species or designated critical habitat are determined to be present in the proposed project area, then, using the FWS website tool, the permittee must generate and submit with the PCN a report that includes an online self-certification letter and a map of action area.
2. **Interactions with NMFS Federally Threatened or Endangered Species:** Any interaction between sturgeon, sea turtles, or any species listed now or in the future under Federal law as a threatened or endangered species (“listed species”) and the vessels associated with the project must be reported to the NMFS as follows:
- a. If the animal appears alive and uninjured (i.e., breathing normally, no visible wounds, movement uninhibited), the permittee or its representative must report the incident to the NMFS Northeast Region Marine Mammal and Sea Turtle Stranding and Entanglement Hotline at (866) 755-6622 within 24 hours of returning from the trip on which they made the discovery;
 - b. If the animal requires assistance, the call to the hotline must be made immediately;
 - c. If the animal appears to be injured (i.e. bleeding, gasping for air, etc.) or dead, the permittee or its representative must also immediately call the hotline so the appropriate rehabilitation or stranding network representative can be contacted. The applicant shall also notify District Engineer of all communications and coordination with the NMFS within two calendar days. Additional information about any federally threatened or endangered species may be obtained online at: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>. An interaction is defined as an entanglement or capture of a listed species or a strike/direct contact between vessels or equipment used for the project and a listed species.
3. **Vessel Buffer:** When listed species are sighted, vessels must attempt to maintain a distance of 50 yards (150 feet) or greater between the animal and the vessel whenever possible. State and Federal regulations prohibit approaching a right whale within a 500 yard (1,500 foot) buffer zone. Any vessel finding itself within the 500 yard (1,500 foot) buffer zone created by a surfacing right whale must depart immediately at a safe, slow

speed. If other listed species are detected, vessels will reduce their speeds to 10 knots or to the maximum extent practicable to ensure human safety. If listed species are sighted off of a moving dredge, intentional approaches within 100 yards (300 feet) of the animal must be avoided. Vessels must reduce speeds to 4 knots or the lowest speed practicable to ensure human safety. Any interactions must be reported to the NMFS.

4. Conditions for Pile Driving Activities Applicable Within Tidal Waters of the Chesapeake Bay in Maryland:

- a. For the protection of listed species, pile driving methods must maintain noise level thresholds not to exceed 150dB sound exposure level (SEL) re 1 μ Pa or 206dB peak re 1 μ Pa and for any pile driving activity that exceeds the peak sound level. A Pre-Construction Notification (PCN) must be submitted to District Engineer if one of the following conditions cannot be met :
 - i. Plastic or concrete piles must be less than 12 inches when a cushioned impact hammer or vibratory hammer is utilized for installation.
 - ii. Timber piles must be 12 inches or less when a vibratory hammer is utilized for installation.
 - iii. Vinyl or timber sheet piles must be 24 inches or less in width, as measured from the outer edge of corrugation to the inner edge of corrugation, when a cushioned impact hammer or vibratory hammer is used.
 - iv. Pile driving activities must be located within freshwater tributaries or within tidal or nontidal wetlands.
 - v. Piles of any size/type with any hammer method must be installed behind diversion structures or in the dry when the tide is out in the intertidal zone.
 - vi. Piles of any size/type with any hammer method must be installed between November 30 and March 15.
- b. Pile driving must be initiated with a soft start each day of pile driving, building up power slowly from a low energy start-up over a 20 minute period to allow fish and other wildlife to leave the area.

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

6. **Critical Habitat:** Any work proposed in designated or proposed critical habitat requires a Pre-Construction Notification (PCN) to the Corps. Current designated Critical Habitat within the State of Maryland includes:
 - a. Potomac River from the mouth of the Chesapeake Bay to the Little Falls Dam, including Brenton Bay and St. Clements Bay
 - b. Nanticoke River from the mouth of the Chesapeake Bay to the Route 313 bridge, and
 - c. Marshyhope Creek from the confluence with the Nanticoke River to the Route 318 bridge.

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

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

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

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

1. A PCN shall be submitted the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary as identified by:

<http://www.nab.usace.army.mil/Missions/Civil-Works/Nav-Maps/>. In addition, a PCN is required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at:

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

2. **Conditions for Waters Containing Submerged Aquatic Vegetation (SAV) Beds:**

This condition applies to NWP: 3a, 23, 27, 38, 48, 52, 53, 54, A, and B. When a PCN is required, the District Engineer will provide a copy of the complete PCN to the NMFS-HCD Chesapeake Bay Office for all activities proposed within 50 feet of mapped SAV or locations of SAV otherwise identified from actual on-site SAV surveys conducted during the growing season. The PCN shall include plans depicting the entire project footprint and adjacent waters overlaid on composite mapping of the 5 most recent years of verified SAV data (derived from the Virginia Institute of Marine Science (VIMS) aerial surveys or locations of SAV otherwise identified from actual SAV surveys conducted during the growing season). The NMFS will have a 30 calendar day review and comment period from the date of their receipt of the EFH assessment, as provided by the Magnuson-Stevens Fishery Conservation and Management Act. Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions may be required to reduce impacts to SAV habitat. The Virginia Institute of Marine Science aerial surveys may be obtained at: <http://web.vims.edu/bio/sav/index.html>.

3. All PCNs to the District Engineer shall be completed using the established Corps of Engineers permit application procedures for that locality (see <http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx>).

The PCN shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions, including General Condition 32:

- a. For projects along and/or within 150 feet of the horizontal limits of a federally authorized channel, the location and depth of any Federal navigation channel shall be shown in relation to the proposed project.
- b. Copy of response from the FWS concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. Completion of the required screening identified in Regional General Conditions 18 and submission of the documents required by the PCN serves as compliance with this condition.

- c. Copy of response from the State Historic Preservation Officer concerning historic properties that may be affected by the proposed activity.
 - d. Documentation from the Maryland Historical Trust indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. For further information, reference NWP General Condition 22.
4. Applicable to all perennial and intermittent streams within anadromous fish use areas, the Corps shall provide a copy of the PCN, including the supporting documentation, to the NMFS in accordance with the Magnuson Stevens Fisheries Conservation and Management Act for any culvert which cannot be depressed as outlined in Regional General Condition 2 for Aquatic Life Movements for NWP 3 and any other applicable NWP. The NMFS will have a 30 calendar day review and comment period from the date of their receipt of the Essential Fish Habitat Assessment, as provided by the Magnuson-Stevens Act.

E. Nationwide Permit Regional General Conditions A for Certain Activities in Navigable Waters:

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

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

- a. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;

- b. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and
 - c. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
 - d. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>.
2. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the District Engineer and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910, with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.
 3. Aids to Navigation: If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, The permittee must prepare and provide for USCG approval (address below), a Private Aids to Navigation Application (CG-2554), which and the approval must be received prior to commencement of the authorized work. The form can be found at: http://www.uscg.mil/forms/cg/CG_2554.pdf. Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the Corps.

F. Nationwide Permit Regional General Condition B Poured Concrete into Forms:

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

SPECIAL NOTES:

1. Where the State has denied 401 WQC and/or not concurred with the District Engineer' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required PCN to the District Engineer.

2. The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer.

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

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

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

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

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

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

National Marine Fisheries Service-Chesapeake Bay Office
Habitat Conservation and Ecosystem Services Division
200 Harry S. Truman Pkwy, Ste 460
Annapolis, Maryland 21401