



**US Army Corps of Engineers**  
100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

# Public Notice

Public Notice No: CENAP-OP-R-SPGP-20 (Re-issuance)  
In Reply Refer to: CENAP-OP-R (Regulatory Branch)  
USACE File Number CENAP-OP-R-2009-1286  
Date NOV 06 2009

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Reference is made to Department of the Army General Permit SPGP-20, initially issued on March 23, 1984, authorizing the construction of certain structures (piers, docks, mooring piles, bulkheads etc.) in navigable waters of the United States in the State of Delaware. This general permit is applicable to the appropriate navigable waters located within the geographic boundaries of Philadelphia District Corps of Engineers.

Notice is hereby given that the United States Army Corps of Engineers, Philadelphia District, proposes to re-issue and extend the expiration date of the above referenced Department of the Army General Permit from December 31, 2009 until December 31, 2014. This general permit, CENAP-OP-R-SPGP-20, was last re-issued and extended on January 25, 2005.

This general permit has been developed for certain categories of structures and work in waters of the U.S. that require Department of the Army and State of Delaware permits. Activities authorized by this general permit include work and structures such as piers, docks, mooring piles, boat lifts, structural breakwaters and the replacement of existing bulkheads within eighteen (18) inches of existing serviceable bulkheads in navigable waters of the United States in the State of Delaware. The re-issuance and extension of General Permit SPGP-20 is being coordinated with other interested Federal agencies, the State of Delaware and the general public. The text of the proposed reauthorization of SPGP-20 is attached.

General permits are developed for certain clearly described categories as noted in the permit that require Department of the Army permits. Such activities are considered for authorization by general permits as the State of Delaware completes a comprehensive environmental review pursuant to their permit review process. Activities covered under this general permit are consistent with the State of Delaware environmental rules and regulation and cause no significant adverse cumulative effects and they are non-controversial activities.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the proposed revalidation and extension of this general permit.

Any comments received will be considered by the Corps of Engineers to determine whether or not to modify this general permit. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed below. Comments are also used to determine the need for a public hearing and to determine whether or not the proposed re-issuance of this general permit is contrary to the public interest.

The decision whether to re-issue this general permit will be based on an evaluation of the activity's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the work must be balanced against its reasonably

foreseeable detriments. All factors which may be relevant to the work will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property rights and, in general, the needs and welfare of the people. The Department of the Army general permit will be re-issued unless the District Engineer determines that it would be contrary to the public interest.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely effect Essential Fish Habitat (EFH) as identified in the Guide to Essential Fish Habitat Designations in the Northern United States Volume IV: New Jersey and Delaware, March 1999. A particular species of concern based on the past five years of permitting has been winter flounder (*Pseudopleuronectes americanus*.) A preliminary assessment of impacts of SPGP-20 on winter flounder habitat indicates that this general permit may cause a minimum loss of bottom substrates resulting in the direct mortality of demersal eggs and larval of the flounder. However, this work is temporary and performed relatively fast. Adult and juvenile flounder are not expected to be adversely impacted as they are mobile and are able to leave the site until construction is complete. This determination may be modified if additional information indicates otherwise.

No activity would be authorized by General Permit SPGP-20 which is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or to destroy or adversely modify the critical habitat of such species. Non-federal applicants shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Non-federal applicants shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

No activity would be authorized by General Permit SPGP-20 which may affect properties listed or properties eligible for listing in the National Register of Historic Places without complying with Section 106 of the National Historic Preservation Act. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of National Historic Preservation Act have been satisfied and that the activity is authorized.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, any work proposed under this general permit must be consistent with the State's Coastal Zone Management Plan. No permit will be issued until the State has determined that the work is consistent with the Coastal Zone Management Plan or has waived its right to do so. Comments concerning the impact of the proposed revalidation and extension of General Permit SPGP-20 on the State's coastal zone should be sent to this

5. The structures subject to this general permit shall be constructed a minimum of 50 feet outside of any authorized Federal navigation channel/project.
6. The work and/or structures authorized by the general permit may be used for non-commercial purposes only. This general permit authorizes work and/or structures used for non-commercial municipal projects provided the project complies with all terms of authorization and special conditions of this permit, below.
7. No more than one pier/dock and other mooring structures constructed for a maximum of four (4) permanent slips/mooring spaces per buildable lot or municipal project. A buildable lot is defined as a single parcel or multiple contiguous parcels of land, which supports a residential building. A jet ski dock is considered a slip/mooring space for the purpose of this general permit.
8. For individual lots the maximum width of piers shall be four (4) feet, the maximum width of docks shall be five (5) feet, except when boat lifts are constructed, then, the maximum width shall be six (6) feet and the maximum width of structure shall be three (3) feet when crossing wetlands, seasonally vegetated mudflats and submerged vegetation. Jet ski docks, lifts and jet ski platforms are considered to be docks for the purpose of this general permit.
9. For municipal projects the maximum width of piers shall be six (6) feet, the maximum width of docks shall be eight (8) feet. The maximum width of any structure shall be four (4) feet when crossing wetlands, seasonally vegetated mudflats and submerged vegetation. Jet ski docks, lifts and jet ski platforms are considered to be docks for the purpose of this general permit.
10. A minimum width of 3/8", 1/2", 3/4" or 1" space shall be provided for 4", 6", 8-10", or 12" wide planks, respectively. 12" is maximum plank width allowed under this general permit.
11. The structures subject to this general permit shall not extend more than 20 percent of the width of the adjacent waterway measured from mean low water line and in no instances exceed 250 feet channelward of the mean high water line. Each application shall include a written justification for the number and length of all proposed structures.
12. This permit authorizes the replacement of bulkheads within eighteen (18) inches of an existing serviceable bulkhead.
13. This general permit authorizes the construction of timber breakwaters (no fill material). All breakwaters must be constructed at least 18 inches above the bottom of the waterway with a minimum spacing of three (3) inches between sheathing.
14. This general permit is not applicable for work reasonably related to another activity requiring an individual Department of the Army permit application and approval by the District Engineer, Corps of Engineers.
15. The provisions of this general permit shall apply to any area designated as a component of the National Wild and Scenic River System or any river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status provided the National Park Service, after having been notified of the proposed work, determines that the proposed activity will not adversely effect the Wild and Scenic River Designation or study status.
16. This General Permit will expire on December 31, 2014. At that time, this General Permit may be re-issued/extended. In the event that this General Permit is re-issued/extended, any activity which has been authorized under the terms and conditions of this General Permit will remain authorized until such time that the required State permit/authorization issued with the general permit expires, provided the authorized activity complies with any subsequent re-authorization or modification of this general permit.

17. This general permit does not authorize the following:

- a. Any structure or fill in areas named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Wildlife Refuges, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries.
- b. Any dredging, or any other activity not specified in this general permit.
- c. Piers, docks, boat lifts and breakwaters constructed of solid fill (earth or rock). Construction of these types of structures will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
- d. The storage of petrochemicals, pollutants, or hazardous products on docks or piers.
- e. Any structures or work within the Chesapeake and Delaware Canal or the Lewes and Rehoboth Canal. Proposed work/structures within these waterways will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
- f. Floating docks in submerged aquatic vegetation habitat.

**PERMIT CONDITIONS:**

**General Conditions:**

1. The time limit for completing the work authorized by this general permit ends on December 31, 2014. However, term of authorization 16, above, specifically addresses those circumstances where this time limit may be extended beyond December 2014.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 3 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. If a conditioned water quality certification has been issued for your project by DDNREC, you must comply with conditions specified in the certification as special conditions to this permit.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

1. All construction equipment working in wetlands shall be supported on mats. Any wetlands disturbed during construction shall be restored to pre-project conditions upon completion of authorized work.

2. The permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of National Historic Preservation Act have been satisfied and that the activity is authorized. Furthermore, that if the permittee before or during prosecution of the work authorized encounters a historic property that has not been listed or determined eligible for listing on the National Register but which may be eligible for listing in the National Register, the he/she shall immediately notify the District Engineer.
3. All work identified and authorized herein shall be consistent with the terms and conditions of this general permit. The Corps may impose other special conditions on a project authorized pursuant to SPGP-20 where it is determined necessary to minimize adverse environmental effects or based upon any other factor of the public interest. Any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit, in whole or in part, and may result in the institution of such legal proceedings as the United States Government may consider appropriate.
4. Any archeological artifacts discovered during the performance of work under the authorization of this general permit must be adequately protected and their discovery promptly reported to the District Engineer.
5. No activity authorized under this General Permit shall adversely affect any federally-listed threatened or endangered species, as identified under the Endangered Species Act of 1973, or result in the destruction or adverse modification of critical habitat of such species. If the activity may affect listed species or critical habitat, or is likely to jeopardize proposed species, or likely to result in the adverse modification of proposed critical habitat, the Corps shall initiate and complete a Section 7 consultation or conference, as appropriate, in accordance with the Endangered Species Act of 1973 prior to authorization of the activity under this General Permit.
6. All work performed under the authorization of this general permit must be consistent with approved coastal zone management program. The applicant must include a statement with the permit application indicating that, "The proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program.
7. Prior to commencing any work under this general permit, the permittee should contact the various utility authorities and companies (i.e., electric, gas, water, sewage, etc.) in order to prevent personal injury and/or damage to property during construction of work.
8. Floating docks shall be designed and operated to prevent them from resting on the bottom at low tide.
9. All materials used in authorized construction (structures and fill) must be free of unsuitable material or solid waste (e.g., trash, debris, car bodies, etc.) and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the Clean Water Act.
10. The permittee shall notify the Corps District Office at least 10 days prior to the commencement of authorized work by completing and signing the enclosed Notification/Certification of Work Commencement Form (Enclosure 1). The permittee shall notify the Corps District Office within 10 days of the completion of the authorized work by completing and signing the enclosed Notification/Certification of Work Completion/Compliance Form (Enclosure 2). All notifications required by this condition shall be in writing and shall be transmitted to this office by registered mail. Oral notifications are not acceptable. Similar notification is required each time maintenance work is to be done under the terms of this Corps of Engineers permit.
11. Damage to structures/vessels: The permittee hereby recognizes the possibility that the structures permitted may be subject to damage by wave wash from passing vessels. The issuance of this general permit does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

13. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (This special condition is applicable to Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act of 1899.)

**FURTHER INFORMATION:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
  - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
  - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
  - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE) (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
(District Engineer) (DATE)  
Frank J. Cianfrani, Chief, Regulatory Branch  
Thomas Tickner, Lieutenant Colonel  
Corps of Engineers, District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE) (DATE)

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