US Army Corps of Engineers
Philadelphia District

DELAWARE
2021 NATIONWIDE PERMIT REGIONAL CONDITIONS

These Regional Conditions are applicable to waters of the United States within the geographic boundaries of the state of Delaware and in waters of the United States near and including the Chesapeake and Delaware Canal in Maryland. These areas in Maryland include Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. All Nationwide permit (NWP) verifications shall be made in accordance with the below listed regional conditions and attached 2021 NWPs CZM and WQC Status Table with regional conditions, unless otherwise authorized by the district engineer through the preconstruction notification process.

REGIONAL GENERAL CONDITION – 1 (G-1)

This regional condition is applicable to all nationwide permits (NWPs) where a preconstruction notification (PCN) is required to be submitted to the U.S. Army Corps of Engineers, District Engineer and provides specific information to request verification by the Corps District in order to process your PCN. NWP activities require notification under certain circumstances. Review the terms of the individual NWP authorization, general condition 22 and 32 or the regional conditions to identify these circumstances. In addition, the PCN shall include:

Condition G-1:

1. The permittee shall notify the Corps of Engineers in accordance with General Condition 32 by using a signed application form (ENG Form 6082);

2. The PCN shall also include the following information:

   A. All PCNs to the Corps of Engineers shall describe all activities that the applicant plans to undertake that are reasonably related to the same project.

   B. A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.

   C. All PCNs to the Corps of Engineers shall include the following information, where applicable: (1) all information specified in the nationwide permit itself or general conditions; (2) plan(s) showing all work in areas subject to Federal jurisdiction on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; (3) formal property identification such as lot and block or tax parcel number; (4) a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; (5) existing water depths; (6) depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; (7) the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; (8) the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; (9) the width of the waterway at the project site; (10) the location of any mapped floodplain areas; (11) the location of any dredged material disposal area; (12) the distance from the edge of any navigation channel; (13) the location of any temporary work, structures, vessels, or fills required for the construction; (14) a copy of any previous Federal or State approvals; (15) and, the location and nature of any submerged aquatic vegetation (e.g., eel grass - *Zostera marina*) or shellfish beds.

   D. For All Mariculture activities, all PCNs to the to the Corps of Engineers shall also include the following information at a minimum, in addition to any specified PCN requirements set forth in the terms and conditions of the NWP (48, 55 & 56): (1) A map showing the location of the proposed project (e.g., waterway, county, city, state), including the longitude and latitude of site boundaries; (2) a written description of the proposed project describing the size and scale of the project; (3) a description of culture and harvesting methods being proposed, which include common and scientific names of cultivated

species, to include sub species if applicable; (3) the type of seed to be used (e.g., spat-on-shell, shellfish shells or shell fragments, alternative substrate materials, etc.); (4) description of any and all proposed predator exclusion devices and/or bird deterrents; (5) general water depths, bottom characteristics (e.g., sand, silt, shell, mud, etc.), and benthic species present (including submerged aquatic vegetation) in the project area(s); and (6) schematics or drawings (formally engineered schematics and drawings are not required but shall be of good reproducible quality) showing how the gear will be deployed on the site which include a project Site Plan (Bird's Eye View), a Cross-Sectional View Plan, and an equipment (e.g., cage design, bag design, racks, etc.) Typical View Plan.

E. Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee **shall** contact the State to obtain an activity specific review and approval by the State **prior** to submitting any required preconstruction notification to the Corps of Engineers.

For Projects in the State of Delaware, The Delaware Department of Natural Resources and Environmental Control (DNREC) can be reached at:

- For projects requiring an individual 401 WQC, and/or a wetlands and subaqueous lands permit please contact the DDNREC by following the instructions found on their website at: https://dnrec.alpha.delaware.gov/water/wetlands-subaqueous/

- For projects requiring an individual CZM consistency determination, please contact the DDNREC by following the instructions found on their website at: https://dnrec.alpha.delaware.gov/coastal-programs/coastal-management/federal-consistency/

For Projects in the State of Maryland, The Maryland Department of Environment (MDE) can be reached at:

- For projects requiring an individual 401 WQC please contact the MDE by following the instructions found on their website at: https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/WQC.aspx

- For projects requiring an individual CZM consistency determination, please contact the MDE by following the instructions found on their website at: https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/CZM.aspx

- For projects requiring a MDE wetlands and waterways permit, please contact the MDE by following instructions found on their website at: https://mde.maryland.gov/programs/water/WetlandsandWaterways/Pages/index.aspx

F. Documentation from the State agency(s) indicating whether the proposed project is located within a State Natural Heritage site, or National Estuarine Research Reserve. This documentation shall also indicate whether the project is located on a property listed or eligible for listing on the National Register of Historic Places. The information provided to State agency(s) shall include the information described above in this condition and any other information specifically requested by the state agency(s) to conduct their evaluation. (For further information see NWP general conditions 20, 22 and 32)

The appropriate addresses for these programs are also provided below:

- For inquiries related to State Natural Heritage Sites and/or National Estuarine Research Reserves in Delaware, please contact the DDNREC by following instructions found on their website at: https://dnrec.alpha.delaware.gov/fish-wildlife/conservation/reviews/

- For inquires related to the National Register of Historic Places in Delaware, please contact the Delaware Historical and Cultural Affairs by following instructions found on their website at: https://history.delaware.gov/preservation/sec106/

- For inquiries related to the National Register of Historic Places in Maryland, please contact the Maryland Historical Trust by following instructions found on their website at: https://mht.maryland.gov/projectreview.shtml

REGIONAL GENERAL CONDITION – 2 (G-2)

This regional condition is applicable to all nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a "study river" for possible inclusion in the system (See NWP General Condition 16).

Condition G-2: Coordination between the applicant and the National Park Service is required for any activity potentially affecting a component of the National Wild and Scenic Rivers System or a river under official study status. No work can begin until the National Park Service has determined in writing that the proposed activity will not adversely affect the designation or study status. Documentation of coordination and National Park Service concurrence shall be forwarded to the Corps of Engineers. Additional coordination between the Army Corps, applicant and National Park Service may be necessary on a case-by-case basis to address identified Wild and Scenic River issues. The following list includes the waterway locations in Delaware that are currently subject to this regional condition. White Clay Creek; Pennsylvania and Delaware; from the headwaters in Pennsylvania to the confluence with the Christina River in Delaware and all tributaries, including the East, West and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries. National Park Service correspondence shall be sent to the following address:

National Park Service, Wild and Scenic Rivers Program
Division of Conservation and Recreation Assistance
Interior Region 1, Mid-Atlantic
1234 Market Street
Philadelphia PA 19107

REGIONAL GENERAL CONDITION - 3(G-3) ENDANGERED SPECIES (USFWS)

This regional condition is intended to satisfy the requirements of Section 7 of the Endangered Species Act (ESA) for those species under the jurisdiction of the United States Fish and Wildlife Service (USFWS). This regional condition is applicable to ALL nationwide permit (NWP) activities (See NWP General Condition 18. *Endangered Species*.).

Condition G-3: Prior to any work, the applicant shall document that they have followed the consultation guidance published on the Chesapeake Bay Field Office website https://www.fws.gov/chesapeakebay/saving-wildlife/project-review/index.html to determine if a proposed NWP activity may affect a listed species. A list of federally listed species for your action area shall be generated using the USFWS's, Information for Project Planning and Conservation (IPaC) at the following website https://ecos.fws.gov/ipac/. Upon your IPaC report, the proposed activity shall be screened for potential adverse effects to any listed species using the screening procedures published on the Chesapeake Bay Field Office website, or other more specific screening procedures that have been developed by the Chesapeake Bay Office for particular agencies, organizations, activities, or species. The applicant shall follow the guidance provided on the Chesapeake Bay Office website. If necessary, contact the Chesapeake Bay Field Office for further coordination prior to applying to the Corps for an NWP verification.

REGIONAL GENERAL CONDITION 4 (G-4) ENDANGERED SPECIES (NMFS)

This regional condition is intended to satisfy the requirements of the Section 7 of ESA for those species under the jurisdiction of the National Marine Fisheries Service (NMFS). This regional condition is applicable to ALL nationwide permit activities (See NWP General Condition 18. *Endangered Species*.).

Condition G-4: Prior to any work, the applicant shall conduct and on-line project review by accessing the NOAA Fisheries ESA Section 7 Mapper found at https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-species-critical-habitat-information-maps-greater#esa-section-7-mapper. If upon completion of this review the species list determination indicates there are listed, proposed or candidate species located in an area that may be affected by the proposed action, the applicant is required to submit a PCN to the Corps of Engineers to determine if the action will result in an "EFFECT" to the listed species.

Additional technical consultation guidance can be found on the NOAA Fisheries website https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultation-technical-guidance-greater-atlantic to determine if a proposed NWP activity may affect a listed species.

REGIONAL GENERAL CONDITION 5 (G-5) ESSENTIAL FISH HABITAT

This regional condition is intended to satisfy the requirements of the Magnuson Stevens Fishery Conservation and Management Act (MSA). This regional condition is applicable to all nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers. The NOAA National Marine Fisheries Service (NMFS) and the MSA requires federal agencies such as the Corps to consult with NMFS on projects that may adversely affect Essential Fish Habitat (EFH).

Condition G-5(a): Provided the applicant complies with the general conditions and terms of the NWPs, as applicable, in addition to any regional or case-specific conditions imposed by the district engineer, the Philadelphia District through consultation with the service has determined the adverse effect on EFH is not substantial for all activities verified under the 2021 NWPs except for the following:

(1) A PCN shall be submitted to the Corps of Engineers for all NWP activities covered under NWPs 27, 38, 52, 53, 54, 55, & 56, all proposed one-way tide gates, all structures placed offshore for the sole purpose of bank stabilization as specified below in Condition (c) under NWP 13, all requests for waivers as specified under the terms and conditions of the regional conditions, activities that result in the loss of greater than 1/2-acre of waters of the United States; or when the district engineer determines to grant a waiver of an applicable limit as provided for in NWPs 13, 36, or 54.

(2) A PCN shall also be submitted to the Corps of Engineers for any NWP activity that is proposed within 50 feet of submerged aquatic vegetation (SAV) beds, mapped SAV habitat and/or within the sandbar (*Carcharhinus plumbeus*) & sand tiger (*Carcharias taurus*) sharks Habitat Areas of Particular Concern (HAPC) as depicted by the Essential Fish Habitat Mapper (https://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper)

*SAV is defined as rooted, submerged vascular plants such as widgeon grass (*Ruppia maritima*), sago pondweed (*Potamogeton pectinatus*), horned pondweed (*Zannichellia palustris*), eelgrass (*Zostera marina*), water weed (*Elodea nuttalli*), Parker's pipewort (*Eriocaulon parkeri*), eastern grasswort (*Liaeopsis chinesis*), wavy waternymph (*Najaflexilis*), spatterdock (*Nuphar variegatum*), curly-leaf pondweed (*Potamogeton crispus*), ribbonleaf pondweed (*Potamogeton epihydrus*), claspingleaf pondweed (*Potamogeton perfoliatus*), small pondweed (*Potamogeton pusillus*), water bulrush (*Scirpus subterminalis*), and wild celery (*Vallisneria Americana*). For the purpose of this condition, species of attached macro-algae are also included in this definition.

Condition G-5(b): In order to protect diadromous fish migrations, spawning activities, and EFH, in-water work shall be avoided in accordance to the following:

(1) To protect diadromous fish migrations and spawning, in-water work shall be avoided from ***March 1 to June 30*** in all waters. This time of year restriction is not applicable to waters of the United States located upstream of an obstruction that precludes fish passage. This condition does not apply to on-going Commercial Shellfish Mariculture Activities (NWP 48) activities where a PCN was submitted and verified by the Corps of Engineers.

(2) Work within cofferdams that fully enclose and dewater the project area can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction and do not preclude the free movement of migrating and spawning aquatic species to ensure compliance with NWP General Condition 2 and 3.

(3) A request for waiver from these timing restrictions may be requested by submitting a PCN to the Corps as set forth in Regional Condition-1 (G-1) which shall also include a written statement that clearly describes one or more of the following: (a) why the use of cofferdams cannot be implemented; (b) evidence documenting the waterway does not or has not historically supported migrations and/or spawning habitat; (c) what additional measures have been taken or are being proposed to avoid impacts; (d) and, why the activity must be conducted within the restricted time periods. Cost and logistics alone will not be sufficient.

*Additional information on the MSA and EFH consultations can be found on the NOAA Fisheries, Greater Atlantic Region's Habitat and Ecosystem Services Division website at: https://www.fisheries.noaa.gov/new-england-mid-atlantic/habitat-conservation/essential-fish-habitat-consultations-greater-atlantic-region.

REGIONAL GENERAL CONDITION 6 (G-6) FISH & WILDLIFE COORDINATION ACT

This regional condition is intended to satisfy conservation recommendations made under the Fish and Wildlife Coordination Act. This regional condition is applicable to ALL nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers unless waived by the district engineer.

Condition G-6(a): In order to protect the American horseshoe crab (*Limulus Polyphemus*), a NOAA Trust Resource, in-water work shall be avoided from River Mile Zero (RM 0) at the mouth of the Delaware Bay, extending to the Kent/New Castle County line along the Delaware Bay shoreline, and to include ALL tributary mouths within this reach, from ***April 15 to August 30***. In-water work shall also be avoided in Rehoboth Bay and Indian River Bay within this time of year restriction. This condition does not apply to on-going Commercial Shellfish Mariculture Activities (NWP 48) activities where a PCN was submitted and verified by the Corps of Engineers.

Condition G-6(b): For all activities requiring the use of poured concrete in waters of the United States, any discharge of poured concrete must be contained within watertight cells/forms or poured in the dry until the concrete has set.

REGIONAL GENERAL CONDITION 7 (G-7)

This regional condition is a modification of general condition 22 (Critical Resource Waters).

Condition G-7: In the State of Delaware, State Natural Heritage Sites are included as critical resource waters and are subject to the terms and limitations specified in general condition 22. Information relating to Natural Heritage sites can be obtained by contacting the Wildlife Species Conservation and Research Program. Their contact information is included in Regional General Condition 1 (G-1).

Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The Corps of Engineers may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The Corps of Engineers may also designate additional critical resource waters after notice and opportunity for public comment.

(1) Discharges of dredged or fill material into waters of the United States are **NOT** authorized by NWPs ***7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58*** for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(2) For NWPs ***3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38***, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The Corps of Engineers may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

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Activity Specific Nationwide Permit Regional Conditions

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REGIONAL CONDITION FOR NWP (3) MAINTENANCE

Condition (a): A PCN shall be provided to the Corps for all tide gate replacements where a self-regulating tide gate is not being proposed. Self-regulating tide gates allow tidal flow and fish passage but can be set to close at a specified water level. For projects not proposing the use of self-regulating tide gates, the applicant shall demonstrate why it is not practicable to replace the tide gate with self-regulating tide gates and shall also provide documentation that the waterway above the proposed gate does not currently support diadromous fish migrations.

REGIONAL CONDITION FOR NWP (5) SCIENTIFIC MEASUREMENT DEVICES

Condition (a): Weirs and flumes cannot be constructed in a manner that would preclude the passage of diadromous fishes.

Condition (b): The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

REGIONAL CONDITION FOR NWP (6) SURVEY ACTIVITIES

Condition (a): The permittee shall ensure that all in-stream exploratory trenching is conducted under dry conditions and returned to preconstruction conditions and elevations. To ensure the impacts to the streambed are temporary and no more than minimal, native clean material excavated from the trench shall be used to backfill. All unsuitable/excess excavated material not used as backfill shall be removed from the stream/river bottom and disposed of at an upland disposal site.

Condition (b): The use of in-water explosives is prohibited.

REGIONAL CONDITION FOR NWP (7) OUTFALL STRUCTURES AND ASSOCIATED INTAKE STRUCTURES

Condition (a): Any proposed intake structures must include "wedge wire" screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meets or exceeds the "wedge wire" design technology.

Condition (b): The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

REGIONAL CONDITION FOR NWP (10) MOORING BUOYS

Condition (a): Water depths in the mooring area must be sufficient to allow any moored vessel to float at all stages of the tide.

Condition (b): Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat.

REGIONAL CONDITION FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): All temporary structures must be located with sufficient water depths so that the structures float at all stages of the tide.

Condition (c): This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV).

REGIONAL CONDITIONS FOR NWP (12) OIL OR NATURAL GAS PIPELINE ACTIVITIES

Condition (a): Any activity associated with this NWP shall require a PCN submitted to the Corps of Engineers.

Condition (b): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (d): Any excavated or stockpiled materials shall be stabilized in accordance with applicable State Sediment and Stormwater Regulations to prevent reentry into any waterway or wetland.

Condition (e): Activities occurring 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 Corps of Engineers to be impracticable.

Condition (f): The proposed activity shall not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material, as approved by the Corps, to seal the trench at wetland boundaries and every 100 feet within any water of the U.S. including wetlands.

Condition (g): Where a pipeline is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as 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 Corps of Engineers.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), 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.

Condition (i): Clearances for aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

For Buried Pipelines Across Navigable Waters:

Condition (j): The top of the pipe or pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (k): Within 60 days after completion of the work, the permittee shall furnish the Corps and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the pipe or pipeline has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the pipe or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (l): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Pipes or Pipelines Across the Delaware River Federal Navigation Channel:

Condition (m): The top of the pipe or pipeline crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of pipe or pipeline shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Pipes or Pipelines Across "ALL OTHER" Federal Navigation Channels:

Condition (n): The top of the pipe or pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of pipe or pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITION FOR NWP (13) BANK STABILIZATION

Condition (a): Any PCN to the Corps of Engineers that does not utilize a non-structural bank stabilization method (e.g. vegetation or combinations of vegetation and rock) must include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b): This NWP may not be used to authorize any stabilization activity where no demonstrable erosion is evident.

Condition (c): A PCN shall be provided to the Corps for all in-water structures, such as bioengineering, break waters, sills, gabion baskets, wave attenuation devices (WADs), or any combinations of bank stabilization techniques, placed offshore of the bank for the purpose of erosion control or prevention.

REGIONAL CONDITION FOR NWP (14) LINEAR TRANSPORTATION PROJECTS

Condition (a): Any activity associated with this NWP shall require a PCN submitted to the Corps of Engineers

Condition (b): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or waterbody to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. 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. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width of depth of the stream channel.

REGIONAL CONDITION FOR NWP (18) MINOR DISCHARGES

Condition (a): This NWP may not be used to authorize stream elimination, relocation, or impoundment.

REGIONAL CONDITION FOR NWP (23) APPROVED CATEGORICAL EXCLUSIONS

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the authorization of this NWP.

Condition (b): Activities authorized by this NWP shall not cause the loss of more than one acre of waters of the United States, including wetlands.

REGIONAL CONDITION FOR NWP (27) AQUATIC HABITAT RESTORATION, ESTABLISHMENT AND ENHANCEMENT ACTIVITIES

Condition (a): Any activity associated with this NWP shall require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies.

Condition (b): Any activity involving shellfish seeding, such as, the placement of shell material or any other habitat development or enhancement is restricted to native shellfish species.

REGIONAL CONDITION FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

REGIONAL CONDITION FOR NWP (29) RESIDENTIAL DEVELOPMENTS

Condition (a): In Delaware, a duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the U. S.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): This NWP does not authorize the discharge of dredged or fill material for the construction or expansion of a single-family residential structure, including any attendant features or structures. This type of activity may be eligible for some other type of authorization.

REGIONAL CONDITION FOR NWP (33) TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

Condition (a): Activities authorized by this NWP may remain in place for no more than 6 months from the commencement date of the permitted activity.

Condition (b): Activities occurring in wetlands, authorized by this NWP shall require the use of construction pads, timber matting, and/or geotextile fabric, or a BMP to prevent wetland compaction.

REGIONAL CONDITION FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

REGIONAL CONDITION FOR NWP (38) CLEANUP OF HAZARDOUS AND TOXIC WASTE

Condition (a): All projects authorized under this NWP shall incorporate the use ecological standards into the design in addition to any requirements made by the state. The use of ecological standards is the industry standard when assessing contaminant risk in the aquatic environment.

REGIONAL CONDITION FOR NWP (39) COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

Condition (a): In Delaware, a duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the plotted lot lines of any commercial or institutional development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is not authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of other NWPs or individual permit.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES

Condition (a): This NWP does not authorize any activities located in any perennial stream.

REGIONAL CONDITION FOR NWP (41) RESHAPING EXISTING DRAINAGE AND IRRIGATION DITCHES

Condition (a): A PCN shall be submitted to the Corps of Engineers for any proposed activity in waters of the United States.

REGIONAL CONDITION FOR NWP (42) RECREATIONAL FACILITIES

Condition (a): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (b): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (c): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

REGIONAL CONDITION FOR NWP (43) STORMWATER MANAGEMENT FACILITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States.

Condition (b): This NWP does not authorize any activities located in perennial streams and intermittent waters.

REGIONAL CONDITION FOR NWP (48) COMMERCIAL MARICULTURE ACTIVITIES

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States.

Condition (b): Any introduced shellfish must be certified under Delaware standards as being disease and parasite free.

Condition (c): All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

Condition (d): Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass, and garbage) is prohibited.

Condition (e): Any proposed shellfish aquaculture activity within any portion of the Shellfish Aquaculture Development Areas (SADA) locations in the Delaware Inland Bays would not be subject to the terms of Regional General Conditions G-1.

Condition (f): Any PCN to the Corps of Engineers for any shellfish aquaculture activities within the SADA locations in the Delaware Inland Bays must provide the following information: (1) name and address of the applicant, (2) a copy of any lease agreement between the applicant and the State of Delaware for the proposed aquaculture activity, (3) a description of the proposed equipment to be used at each location, (4) the location of the proposed activity including latitude and longitude coordinates along with any other lease area identification numbers further identifying the leased area(s).

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

Condition (h): Each individual cage and/or bag shall be directly tagged to display the owners name, address, lease location and USACE permit number.

Condition (i): To protect navigation during daylight, lowlight and nighttime conditions, the perimeter of the lease site and authorized structures shall be marked in accordance with U.S. Coast Guard requirements. The permittee shall contact the U.S. Coast Guard at the following address to determine such requirements and shall comply with such requirements as directed by the U.S. Coast Guard: Commander (oan), Fifth Coast Guard District; 431 Crawford Street; Portsmouth, VA 23704; and no gear shall be installed prior to receiving official authorization.

REGIONAL CONDITION FOR NWP (52) WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS

Condition (a): Any activity associated with this NWP shall require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies.

REGIONAL CONDITION FOR NWP (54) LIVING SHORELINES

Condition (a): Fill or dredged material used for the purpose of establishing or re-establishing a vegetative plain must be of appropriate grain size to support plant growth and development.

Condition (b): Sills shall be constructed of riprap, gabion baskets, or clean broken concrete free of metal and re-bar. Alternative materials may be considered for use at the discretion of the District Engineer.

Condition (c): Sills shall be designed with at least one 5' foot window/gap per property and per every 100 linear feet of sill unless waived by the District Engineer.

Condition (d): The sill height shall be a maximum of +1 foot above mean high water and should be placed at a distance no greater than 30 feet from mean low water to the landward peak side of the sill unless waived by the District Engineer.

Condition (e): The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the acreage of living shoreline establishment or re-establishment unless the District Engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects. All temporary impacts to sub-tidal, inter-tidal, and/or existing wetland vegetation shall be restored to previous conditions and may require a wetland planting plan.

Condition (f): If the proposed project results in temporary impacts to existing wetland vegetation, then you shall monitor the re-establishment of wetland vegetation until such time as the vegetation meets pre-disturbance conditions (i.e., coverage and density). If the wetland is not restored to previous conditions within 2 compete growing seasons, you shall provide a modification request to the Corps and may be required to provide compensatory mitigation.

Condition (g): Projects which include placement of sandy fill material may result in creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the applicant seeks to either add to or replenish the area previously filled, the

Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act and to ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.

REGIONAL CONDITION FOR NWP (55) SEAWEED MARICULTURE ACTIVITIES

Condition (a): All structures associated with the Seaweed Mariculture operation shall be removed from waters of the United States when/if the activity is abandoned.

Condition (b): All installed buoys, long-lines, floats, anchors, rafts, racks, and other similar structures installed into navigable waters of the United States shall be directly tagged to display the owners name, address, and USACE permit number.

Condition (c): To protect navigation during daylight, lowlight and nighttime conditions, the perimeter of the site and authorized structures shall be marked in accordance with U.S. Coast Guard requirements. The permittee shall contact the U.S. Coast Guard at the following address to determine such requirements and shall comply with such requirements as directed by the U.S. Coast Guard: Commander (oan), Fifth Coast Guard District; 431 Crawford Street; Portsmouth, VA 23704; and no gear shall be installed prior to receiving official authorization.

REGIONAL CONDITION FOR NWP (56) FINFISH MARICULTURE ACTIVITIES

Condition (a): All structures associated with the Finfish Mariculture operation shall be removed from waters of the United States when/if the activity is abandoned.

Condition (b): All installed buoys, long-lines, floats, anchors, rafts, racks, and other similar structures installed into navigable waters of the United States shall be directly tagged to display the owners name, address, and USACE permit number.

Condition (c): To protect navigation during daylight, lowlight and nighttime conditions, the perimeter of the site and authorized structures shall be marked in accordance with U.S. Coast Guard requirements. The permittee shall contact the U.S. Coast Guard at the following address to determine such requirements and shall comply with such requirements as directed by the U.S. Coast Guard: Commander (oan), Fifth Coast Guard District; 431 Crawford Street; Portsmouth, VA 23704; and no gear shall be installed prior to receiving official authorization.

REGIONAL CONDITION FOR NWP (57) ELECTRIC UTILITY LINE AND TELECOMMUNICATIONS ACTIVITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days. Any excavated or stockpiled materials shall be stabilized in accordance with applicable State Sediment and Stormwater Regulations to prevent reentry into any waterway or wetland.

Condition (d): Activities occurring 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 Corps of Engineers to be impracticable.

Condition (e): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances 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 Corps of Engineers.

Condition (f): The proposed activity shall not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material, as approved by the Corps, to seal the trench at wetland boundaries and every 100 feet within any water of the U.S. including wetlands.

Condition (g): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), 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.

For Aerial Transmission Lines Across Navigable Waters:

Condition (h): The following minimum clearances are required. 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 U.S. Coast Guard for new fixed bridges in the vicinity of the proposed transmission line. These clearances are based on the low point of the line under conditions which produce 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 (feet) above clearance required for bridges
115 and below	20 feet
136	22 feet
161	24 feet
230	26 feet
350	30 feet
500	35 feet
700	42 feet
750 – 765	45 feet

Condition (i): Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

Condition (j): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Utility Lines Across Navigable Waters:

Condition (k): The top of the utility line shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (l): Within 60 days after completion of the work, the permittee shall furnish the Corps of Engineers and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the electric and/or telecommunication utility line has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (m): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Utility Lines Across the Delaware River Federal Navigation Channel:

Condition (n): The top of the utility line crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of utility line shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Utility Lines Across "ALL OTHER" Federal Navigation Channels:

Condition (o): The top of the utility line crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of the utility line shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDTIONS FOR NWP (58) UTILITY LINE ACTIVITIES FOR WATER AND OTHER SUBSTANCES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP

Condition (b): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days. Any excavated or stockpiled materials shall be stabilized in accordance with Delaware's Sediment and Stormwater Regulations (October 2006 or as subsequently amended) to prevent reentry into any waterway or wetland.

Condition (d): Activities occurring 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 Corps of Engineers to be impracticable.

Condition (e): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances 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 Corps of Engineers.

Condition (f): The proposed activity shall not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material, as approved by the Corps, to seal the trench at wetland boundaries and every 100 feet within any water of the U.S. including wetlands.

Condition (g): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), 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. This information shall also be furnished to NMFS in consort with the PCN for this NWP.

Condition (h): Clearances for aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

Condition (i): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Utility Lines Across Navigable Waters:

Condition (j): The top of the utility line shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (k): Within 60 days after completion of the work, the permittee shall furnish the Corps of Engineers and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the utility line has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the utility line across the waterway. Any discrepancies shall be clearly noted.

Condition (l): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Utility Lines Across the Delaware River Federal Navigation Channel:

Condition (m): The top of the utility line crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of utility line shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Utility Lines Across "ALL OTHER" Federal Navigation Channels:

Condition (n): The top of the utility line crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of the utility line shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.