



**US Army Corps
of Engineers**

Philadelphia District
100 South Independence Mall
West
Philadelphia, PA 19106-3400
ATTN: NAP-OPR

Public Notice

Public Notice No.	Date
NAP-OPR-DE-SPGP18 (revalidation)	

Application No.	File No.
NAP-OPR-DE-SPGP18	NAP-2022-01006-85

In Reply Refer to:
REGULATORY BRANCH

Reference is made to Department of the Army General Permit SPGP 18 dated November 9, 1987 authorizing the construction of structures, work, and the discharge of dredged and fill material in substantially developed artificial tidal lagoons in the State of Delaware. This general permit is applicable to the appropriate navigable waters located within the geographic boundaries of the Philadelphia District of the Corps of Engineers.

Notice is hereby given that the United States Army Corps of Engineers, Philadelphia District, proposes to revalidate and extend the expiration date of the above referenced Department of the Army General Permit from December 31, 2022 until December 31, 2027. This general permit, NAP-OPR-SPGP18, was last revalidated and extended in December of 2017 with an expiration date of December 31, 2022.

This general permit has been developed for certain categories of structures and work and the discharge of dredged and fill material in waters of the U.S. that require Department of the Army and State of Delaware authorizations. Activities typically authorized by this general permit include work and structures, such as bulkheads, breakwaters, piers, docks, pilings, rip rap, dredging and filling, etc., in substantially developed artificial tidal lagoons and their access channels. The re-validation and extension of General Permit SPGP 18 is being coordinated with other interested Federal agencies, the State of Delaware and the general public. The text of the proposed reauthorization of SPGP-18 is attached.

General permits are developed for certain clearly described categories of structures or work that require Department of the Army permits. Such activities are considered for authorization by general permits because they are substantially similar in nature, they cause no more than minimal cumulative adverse environmental effects, and they are not controversial in nature.

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 received in response to this public notice are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of

an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed reauthorization of this general permit.

The decision whether to reauthorize this general permit will be based on an evaluation of the general permit'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 activities authorized by this general permit, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the general permit reauthorization 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 reauthorized 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 affect Essential Fish Habitat (EFH). A preliminary assessment of this general permit indicates that EFH is present within the project area. The Philadelphia District will evaluate the potential effects of the proposed actions on EFH and will consult with NOAA Fisheries as appropriate. Consultation will be concluded prior to the final decision on this general permit issuance.

No activity would be authorized by General Permit SPGP-18 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. All waters along the Mid-Atlantic region, including tidal rivers and streams and coastal estuaries have been identified by the National Marine Fisheries Service as being within the estimated range of the five distinct population segments of the Atlantic Sturgeon, which are listed as threatened or endangered pursuant to the Endangered Species Act. Based upon the relatively poor quality of habitat within the artificial lagoons, these areas are not expected to be utilized by the Atlantic Sturgeon or any other threatened or endangered species under the responsibility of the National Marine Fisheries Service. Furthermore, the Delaware Division of Fish and Wildlife has conducted trawl surveys from April through October at 12 sample stations within the Indian River, Indian River Bay, and the Rehoboth Bay since 1986 without a sturgeon ever being recorded. The coastal waters of Delaware are also utilized by marine mammals and sea turtles. The water depths and conditions within the artificial tidal lagoons are considered too shallow and disturbed for utilization by any federally listed marine mammals. Further, these waterways would offer little or no foraging value for any federally listed sea turtles. As such activities authorized by

General Permit SPGP-18 are not expected to affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. 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-18 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. Furthermore, upon the unanticipated discovery of any previously unknown historic properties (historic or archeological), all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The Corps will contact the Tribes they routinely consult with within 24 hours in accordance with each District's tribal Consultation process. The SPGP-18 verification is not valid until it is determined, through the Section 106 consultation process, whether the activity will have an effect on the historic property. The SPGP-18 may be re-verified and special conditions added if necessary, after an effects determination on historic properties and/or Tribal resource is made, in consultation with the SHPO, the Tribes and other interested parties. The SPGP-18 verification may be modified and/or rescinded for the specific activity if an adverse effect on the historic property cannot be avoided, minimized, or mitigated. Furthermore, no activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting grounds.

The proposed revalidation and extension to the General Permit will remain in effect until the general permit expires on December 31, 2027. At that time, this General Permit may be re-issued/extended. In the event that this General Permit is modified, 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.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, any work performed 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-18 on the State's coastal zone should be sent to this office, with a copy to the Delaware Department of Natural Resources and Environmental Control, Coastal Management Program, 100 West Water Street, Suite 7B Dover, Delaware 19904, DNREC.FederalConsistency@delaware.gov.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate will be necessary for those activities involving a discharge of dredged and/or fill material into waters of the United States. The State of Delaware upon receipt of a permit application under this general permit will determine the need for a Section 401 Water Quality Certificate. A separate permit application will not be required for this certification procedure. Any comments concerning this general permit revalidation and extension which relate to Water Quality considerations should be sent to this office, with a copy to the Delaware Department of Natural Resources and Environmental Control, Wetlands and Subaqueous Lands Section, 89 Kings Highway, Dover, Delaware 19901.

The evaluation of the impact of the proposed general permit revalidation and extension described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Comments on the proposed revalidation and extension to SPGP-18, should be submitted, in writing, within 30 days to Michael D. Yost, U.S. Army Corps of Engineers, Dover, Delaware Field Office, 1203 College Park Drive, Suite 103, Dover, Delaware 19904, or by email at michael.d.yost@usace.army.mil.

The processing of this Department of the Army general permit revalidation and extension is under the statutory authority of Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act.

FOR THE DISTRICT ENGINEER:

Todd A. Schaible
Chief, Regulatory Branch