



# Public Notice

Public Notice No. - CENAP-OP-R-NJ-SPGP17 (modification)

In Reply Refer to: - CENAP-OP-R-NJ-SPGP17 Date - **September 20, 2019**

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

---

Reference is made to Department of the Army General Permit SPGP-17 originally issued on December 9, 1982 authorizing the construction of structures, work and the discharge of dredged and fill material in substantially developed artificial or man-modified tidal lagoons in the State of New Jersey. This general permit is applicable to the appropriate navigable waters located within the geographic boundaries of both the Philadelphia District and the New York District of the Corps of Engineers. On January 26, 2018, the United States Army Corps of Engineers, Philadelphia District, re-authorized the above referenced Department of the Army General Permit with an expiration date of December 31, 2022.

Notice is hereby given that the United States Army Corps of Engineers, Philadelphia District, proposes to modify the above referenced Department of the Army General Permit CENAP-OP-R-SPGP-17.

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 New Jersey authorizations. Typical activities authorized by this general permit include minor dredging, bulkheads construction and replacement, breakwaters, piers, docks, pilings, rip-rap, dredging and filling, etc. The revalidation and extension of General Permit SPGP-17 was coordinated with other interested Federal agencies, the State of New Jersey and the general public.

During the previous re-authorization of this general permit, the Term of Authorization #16 was modified to read as follows:

This term of authorization shall apply to lagoons which have been designated as having "hard clam - high or moderate value commercial" based upon shellfish surveys conducted subsequent to the construction and development of the lagoon. Shellfish surveys and any shellfish value designations in areas currently occupied by tidal artificial lagoons that were conducted prior to the construction and development of the lagoon must be supported by post-construction and development shellfish surveys. These shellfish value designations can be found on maps listed on the New Jersey Department of Environmental Protection website <http://www.nj.gov/dep/landuse/shellfish.html> or any later versions of same (including 1963 U.S Fish and Wildlife Service maps entitled "Distribution of Shellfish Resources", designated as "Hard Clam Density - Moderate or

High” on the New Jersey Department of Environmental Protection, Bureau of Shellfisheries maps dated 1984 through 1988) provided the following:

a) All structures must be constructed with alternative materials, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products. Creosote and un-coated pressure-treated lumber (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.)(wolmanized) which are susceptible to leaching are not acceptable for the purpose of this general permit in these locations.

After further consideration and review of all available information, this office has determined that this term of authorization has generated some uncertainty with regard to its applicability, and further, may no longer be necessary. As such, this office proposes to remove the above Term of Authorization 16 from this general permit.

In addition, Term of Authorization 1 of this general permit requires that all work approved by this permit must receive approval, or waiver from approval, by the state of New Jersey through issuance of a waterfront development permit, coastal wetland permit, water quality certificate, or Zane exemption/waiver. As an added measure to clarify this term of authorization the following sentence will be added to Term of Authorization 1.

Any conditions in the applicable state authorization required for compliance with the state CZM program are made conditions of this authorization by reference.

We believe that the changes described above will generate greater clarity on the applicability of this general permit and simplify the review and approval process. We further believe that these changes will result in greater clarity and consistency with respect to any conditions requiring the use of non-polluting/alternative materials.

The Magnuson-Stevens Fishery Conservation and Management Act requires all federal agencies to consult with the NOAA Fisheries all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The Philadelphia District will evaluate the potential effects of this proposed modification on EFH and will consult with NOAA Fisheries as appropriate. Consultation will be concluded prior to the final decision on this General Permit modification.

No activity is authorized by General Permit SPGP-17 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. This office has determined that the developed artificial tidal lagoons would not likely harbor listed avian, terrestrial, or marine species and so the reissuance of this general permit would have no effect on listed species under the jurisdiction of the U.S. Fish and Wildlife Service or National Marine Fisheries Service. Furthermore, no critical habitats of listed species are found within the area consideration for this general permit. Accordingly, our previous determination with respect to the Endangered Species Act remains unchanged and no additional consultation is necessary pursuant to the Endangered Species Act.

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 modification 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.

The decision whether to modify this general permit will be based on an evaluation of the general permit's probable impact including its cumulative impacts on species regulated under the Magnuson Stevens Act. 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 modification will be considered. The Department of the Army general permit will be modified unless the District Engineer determines that it would be contrary to the public interest.

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. Comments concerning the impact of the proposed modification of General Permit SPGP-17 on the State's coastal zone should be sent to this office, with a copy to the New Jersey Department of Environmental Protection, Land Use Regulation Program, P.O. Box 439, Trenton, New Jersey, 08625.

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 general permit modification. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Comments on the proposed modification to SPGP-17, should be submitted, in writing, within 30 days to the District Engineer, U.S. Army Corps of Engineers, Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107-3390.

The processing of this Department of the Army general permit modification 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:

Edward E. Bonner  
Chief, Regulatory Branch