



U.S. Army Corps
Of Engineers
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1011

**CENAO-WRR
23-RP-15**

REGIONAL PERMIT

Effective date: *TBD (2023)*

Expiration Date: *Five years from Effective Date*

I. AUTHORIZED ACTIVITIES:

23-RP-15, Regional Permit 15 (“RP”), authorizes activities, not otherwise exempt¹, associated with the maintenance of existing drainage ditches² originally constructed in and previously authorized in navigable waters and waters of the United States for either mosquito control purposes or to maintain drainage from upland areas for the purposes of storm water management, subject to standards, limitations and conditions further set out herein.

This RP does not authorize construction of new ditches or the channelization, realignment, or relocation of streams or other waterways. The maintenance of the ditch cannot increase drainage capacity beyond the original as-built capacity, nor can it expand the area drained by the ditch as originally constructed. This maintenance will not result in the discharge of dredged or fill material that causes the permanent loss of more than one-half (0.5) acre of wetlands associated with the proposed maintenance activity.

The permittee must submit written notification to the district engineer prior to commencing the activity if:

- 1) The volume of area excavated exceeds 10 cubic yards below the plane of the high tide line in tidal waters, or
- 2) The discharge of fill is in a special aquatic site, including wetlands.

The types of projects that may qualify for this RP:

Maintenance activities in tidal and navigable waters regulated under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), and Section 404 of

¹ Refer to Regulatory Guidance Letter No. 07-02, 33 CFR 323.4(a)(3) and 40 CFR 232.3(c)(3) for information on exempt activities.

² **Ditch** is defined as man-made linear feature excavated for the purpose of draining or directing surface or groundwater.

the Clean Water Act (33 U.S.C. § 1344), may include, but are not limited to:

- a. Excavation of accumulated sediments to return the ditch to its original contours.
- b. The discharge of fill associated with the removal of sediment, debris, and emergent vegetation within the channel where normal water circulation is impeded.
- c. Re-shaping or stabilization of side slopes to return the ditch to original contours.
- d. Temporary structures, fills, and work necessary to conduct the maintenance activity.

Maintenance activities in non-tidal waters regulated only under Section 404 of the Clean Water Act (33 U.S.C. § 1344), may be considered exempt under Section 404(f)(1)(C) of the CWA (see also 33 CFR 323.4(a)(3) and 40 CFR 232.3(c)(3)). Discharges of dredged or fill material associated with the maintenance (but not construction) of drainage ditches, are not prohibited by or otherwise subject to regulation under Section 404 of the CWA (i.e., these activities are exempt from the need to obtain a Section 404 permit from the Department of the Army (DA)). Maintenance generally includes, but is not limited to, activities such as:

- a. The discharge of fill associated with the removal of sediment, debris, and emergent vegetation within the channel where normal water circulation is impeded.
- b. Re-shaping or stabilization of side slopes to return the ditch to original contours.
- c. Bank stabilization to prevent erosion where reasonably necessary using best management practices. Materials used for stabilization should be compatible with existing bank materials.
- d. Armoring, lining and/or piping. These activities qualify as maintenance only where a previously armored, lined, or piped section is being repaired and all work occurs within the footprint of the previous work.
- e. Replacement of existing control structures, where the original function is not changed, and original approximate capacity is not increased.

Proponents should consult with the Corps to determine if the proposed work meets the above listed exempt maintenance activities.

II. AUTHORITIES:

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344) to maintain existing drainage ditches originally constructed in and previously authorized in navigable waters and waters of the

United States for either mosquito control purposes or to maintain drainage from upland areas for the purposes of storm water management. This maintenance will not result in the discharge of dredged or fill material that causes the permanent loss of more than one-half (0.5) acre of wetlands associated with work or alteration in the entire reach³, and so long as the final dimensions of the maintained ditch do not exceed the average contours and dimensions of the original ditch. This RP does not authorize any work other than that which complies with the general and special conditions below.

Activities receiving written authorization under this RP do not require further authorization under the provisions contained in 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that additional review is in the public interest. All work undertaken outside the following conditions, terms, and limitations will require separate Department of the Army authorization.

III. STATE AND LOCAL APPROVALS:

1. Prospective permittees may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the United States from the Virginia Department of Environmental Quality (DEQ), the Virginia Marine Resources Commission (VMRC) and/or the local wetlands board. You may contact the DEQ at (757) 518-2000, the VMRC at (757) 247-2200, and/or your local government office for further information concerning their permit requirements.
2. When proposed work is associated with mosquito control, the permittee shall obtain a written statement from the Virginia State Health Department which states that the continued maintenance of the mosquito ditch is necessary to prevent the spread of mosquito borne disease. If this statement cannot be obtained, the permittee should contact the DEQ, Water Division, at (757) 518-2000 regarding the need for a Virginia Water Protection Permit.
3. *The Corps is coordinating separately with the Department of Environmental Quality (DEQ) regarding requirements of the Virginia Water Protection Permit Regulation, which also serves as the Commonwealth's §401 Water Quality Certification. Individual §401 Water Quality Certifications will be detailed in this section once provided by DEQ.*
4. *The Corps is coordinating separately with the Virginia DEQ Coastal Zone Management Program (VCP) regarding its review of the Federal Consistency Determination pursuant to the Coastal Zone Management Act (CZMA) of 1972.*
5. Permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the

³ The entire reach of the tributary that is of the same order (i.e., from the point of confluence, where two lower order tributaries meet to form the tributary, downstream to the point such tributary enters a higher order tributary).

Chesapeake Bay Preservation Act (“the Act”) (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*).

6. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or local laws or regulations.

IV. PROCEDURES:

1. Discharges causing a permanent loss of wetlands and/or waters of the U.S., or the volume of area excavated exceeds 10 cubic yards below the plane of the high tide line, require written notification to the Corps prior to commencing the activity. The activity is not authorized until the permittee receives written verification from the Corps that the project meets the terms and conditions of the permit. Any discharges causing a permanent loss which exceeds one-half (0.5) acre of wetlands and/or waters do not qualify for this RP and will require separate Department of the Army authorization.
2. The permittee shall notify the District Engineer in writing of his/her intent to maintenance dredge specific ditches prior to the commencement of the activity. The notification will include the following (a joint permit application is not required, but may be used for this purpose):
 - a. Name and address of permittee.
 - b. A map, preferably USGS topographic map, indicating the exact location of the ditch(es) to be maintained and the site for management of the excavated/dredged material.
 - c. A brief narrative describing the type of excavating/dredging equipment (e.g., dragline, backhoe, hand tools, etc.) to be used, the volume of material to be excavated, where the material is to be placed, and how the material is to be stabilized.
 - d. A plan view and cross section drawing that shows the original design dimensions of the ditch(es) (using Mean Sea Level datum in tidal areas) and the proposed maintenance specifications. If original drawings cannot be produced include drawings roughly depicting both the existing and proposed ditch maintenance project conditions. The extent of an existing ditch and its original dimensions should be determined and measured to the best of the applicant’s ability.
 - e. The area calculation (in acres and/or linear feet) of water (including wetlands) to be impacted by the project and a classification of the waters using the US Fish and Wildlife Service’s Cowardin System for classification of wetland and deep-water systems.
 - f. A description of any adjoining and/or abutting wetlands and/or waters to the project area.

- g. A proposal to compensate for any unavoidable and permanent losses of wetlands that may be drained or filled as a result of the planned activity.

V. SPECIAL CONDITIONS:

1. Maintenance excavation/dredging of drainage ditches or mosquito control ditches authorized by this permit is limited to the removal of accreted or accumulated material at an elevation above mean low water in tidal waters. Any excavation/dredging below the plane of mean low water does not qualify for this RP and must receive separate Department of the Army authorization.
2. The removal of sediment, debris, and emergent vegetation within the channel should be limited to the minimum necessary to return normal flow and water circulation to the waterway. The grade and depth of the ditch bottom will not exceed the previously maintained grade or depth. In the absence of an established grade the elevation will be determined by the depth necessary to achieve sufficient flow not to exceed bottom grade of the nearest discharge.
3. When re-shaping side slopes to return the ditch to original contours every attempt will be made to leave the ditch banking / embankment intact, including vegetation and root structures which do not threaten to impede the flow of the water course, but which offer natural stabilization to this structure.
4. This Regional Permit also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.
5. To avoid and minimize impacts to jurisdictional wetlands and/or waters of the U.S., the excavated/dredged material should be placed on existing upland berms or upland areas to the maximum extent possible. Preferred alternatives for dealing with the excavated/dredged material are listed below in order of preference. These alternatives should be considered during avoidance and minimization review.
 - a. If existing berms are being utilized and the amount of dredged material exceeds the storage capacity of existing berms, then the material should be located in a specified upland management area.
 - b. If placement of the excavated/dredged material in uplands is not practicable, then it may be placed in adjacent wetlands in a manner that

does not impede the reach and flow of water in the system. With the Corps' approval, the discharge of fill associated with the removal of obstructions may be spread as thinly and evenly as possible in wetlands. Spoils will be feathered into existing grade on alternating sides of the ditch as site-specific conditions allow and so as not to impede lateral flow.

- c. Existing or new berm(s) adjacent to the ditches shall be breached at 50-foot intervals to an elevation equal to any adjacent wetlands. The breach must have a five-foot bottom width. Berms that are less than 50 linear feet require one breach.
 - d. If site conditions render breaching impractical, then the District Engineer may authorize an alternative plan. Under such conditions, the District Engineer must be notified, and ditch maintenance dredging cannot be commenced until the permittee obtains written approval from the District Engineer.
6. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require written notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse effects of the proposed activity are minimal and provides a project specific waiver of this requirement. For wetland losses of 1/10-acre or less that require written notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
- a. The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
 - b. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.
 - c. If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the Regional Permit verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

VI. GENERAL CONDITIONS:

Note: To qualify for RP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any case-specific conditions imposed by the district engineer.

1. **Navigation.**

- a) No activity may cause more than a minimal adverse effect on navigation.
- b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The U.S. Coast Guard may be contacted at the following address: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704 or by telephone: (757) 398-6230.
- c) 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/her 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, 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.

2. **Aquatic life movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. **Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (*e.g., through excavation, fill, or downstream smothering by substantial turbidity*) of an important spawning area are not authorized.

4. **Migratory Bird Breeding.** Activities in waters of the U.S. that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations. (*Shellfish harvesting activities may qualify for Nationwide Permit 4*)

or 48 and shellfish seeding or habitat restoration may qualify for Nationwide Permit 27.)

6. **Submerged Aquatic Vegetation (SAV) Beds.** Activities in SAV beds must be avoided and minimized to the maximum extent practicable. A pre-construction notification is required for any proposed work or structures within an SAV bed. Avoidance and minimization measures, such as relocating a structure and/or the implementation of a time-of-year restriction for work in waters, may be required to reduce impacts to the SAV habitat. Information regarding SAV may be found at the Virginia Institute of Marine Science's website at: <http://web.vims.edu/bio/sav/>.
7. **Suitable Material.** No activity may use unsuitable material (e.g., *trash, debris, car bodies, asphalt, etc.*). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
8. **Water supply intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public waters supply intake structures or adjacent bank stabilization.
9. **Adverse Effects from Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
10. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound waters or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., *stream restoration or relocation activities*).
11. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
12. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
13. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low-flow or no-flow, or during low tides.

14. **Invasive Species.** Plant species listed by the most current version of Virginia Department of Conservation and Recreation's (DCR) *Invasive Alien Plan List* shall not be used for re-vegetation for activities authorized by these regional permits. The list of invasive plants in Virginia may be found at: <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. The DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures: <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.
15. **Removal of Temporary Fills and Impacts.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate. All temporarily disturbed waters and wetlands must be restored to their pre-existing contours within twelve (12) months of commencing the temporary impacts' construction. Once restored to pre-construction elevation and contours, the soils must be mechanically loosened to a depth of twelve (12) inches and seeded or sprigged with appropriate native vegetation. See General Condition 14 for more information on vegetation recommendations.
- Fill or dredged material into waters of the U.S. that are not removed within the 12-month period will be considered a permanent impact, unless otherwise determined by the Corps. This additional impact to waters of the U.S. may result in the Corps initiating a permit non-compliance action which may include, but not limited to, a restoration order, after-the-fact permitting, and/or compensatory mitigation.
16. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RP conditions, as well as any activity-specific conditions added by the district engineer to a RP authorization.
17. **Single and Complete Project.** The activity must be a single and complete project. The same RP cannot be used more than once for the same single and complete project. *For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area.*
18. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia. No RP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River

designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

19. **Tribal rights.** No RP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

20. **Endangered species.**

- a) No activity is authorized under any RP which is likely to, directly or indirectly, jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any RP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still reasonably certain to occur.
- b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
- c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, critical habitat waters, or one-mile upstream (including tributaries) of any designated critical habitat waters, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the U.S. Fish and Wildlife (USFWS) online project review process at:

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

and from the National Marine Fisheries Service (NMFS) at:

<http://www.nmfs.noaa.gov/pr/species/>.

The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species or designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant identified listed species or designated critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or designated critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

If the district engineer determines that the proposed activity may affect a listed species or designated critical habitat, the Corps will initiate consultation with the USFWS. The USFWS developed an online system to allow applicants and agencies to find information about sensitive resources that may occur within the vicinity of a proposed project. This system is named "Information, Planning and Conservation System," (IPaC), and is located at <https://ecos.fws.gov/ipac/>.

Additional consultation may also be required with the NMFS for species or critical habitat under their jurisdiction, including sea turtles, marine mammals, shortnose sturgeon, and Atlantic Sturgeon. For additional information about their jurisdiction in Virginia, please visit <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.

- d) As a result of formal or informal consultation with the USFWS or NMFS the district engineer may add species-specific regional endangered species conditions to the RP.
- e) Authorization of an activity by a RP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or NMFS, the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.
- f) If the non-federal permittee has a valid ESA section 10(a)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of

projects that includes the proposed RP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the pre-construction notification. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether a separate ESA section 7 consultation is needed.

21. **Migratory Birds and Bald and Golden Eagle Protection Act.** The bald eagle (*Haliaeetus leucocephalus*) is no longer a federally listed threatened or endangered species; therefore, the Endangered Species Act provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require that a federal agency involved in permitting the proposed action conduct coordination. The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the BGEPA. The applicant should either obtain “take” permit or a letter of concurrence from USFWS indicating that a permit is not necessary prior to initiating construction activities. You should contact USFWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests and concentration areas can be obtained in Step 6 of the U.S. Fish and Wildlife Service’s online project review system available at:

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviewprocess.html>

22. **Essential Fish Habitat.** The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the NOAA Fisheries Service Habitat Conservation Division (NOAA HCD) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required with NOAA HCD, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.

23. **Anadromous Fish.** Authorizations associated with these regional shall not adversely affect documented spawning habitat or a migratory pathway for anadromous fish. Areas of anadromous fish use are indicated on the Virginia Department of Game and Inland Fisheries (VDGIF) information system at: <http://vafwis.org/fwis/>. If a project is located within an area documented as an anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the VDGIF and/or the Virginia Marine Resources Commission (VMRC). Should the Norfolk District determine that the work is minimal and no TOYR is needed, the District will initiate consultation with NOAA Fisheries Service for their concurrence.

A TOYR is not required for dredging activities in the Elizabeth River upstream of the Mid-Town Tunnel on the mainstem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River.

24. Designated Critical Resource Waters; National Estuarine Research

Reserves. Pre-construction notification is required for any proposed work in the Chesapeake Bay National Estuarine Research Reserve (Reserve) in Virginia. This Reserve is a multi-site system along a salinity gradient of the York River, which includes Sweet Hall Marsh, Taskinas Creek, Catlett Islands, and Goodwin Islands. Additional information may be found at: <http://www.vims.edu/cbnerr/>.

These regional permits do not authorize the discharge of dredged or fill material into the Reserve.

25. Trout Waters. Pre-construction notification is required for activities proposed under these regional permits occurring in the following two categories of Designated Trout Waters, as defined by the Virginia State Water Control Board Regulations, Water Quality Standards (VR-680-21-00), dated January 1, 1991, or the most recently updated publication: Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters).

The Virginia Department of Game and Inland Fisheries (VDGIF) classifies the two aforementioned classes of trout streams into six classes based on aesthetics, productivity, resident fish population and stream structure. Classes I-IV rate wild trout habitat and Classes V and VI rate cold water habitat not suitable for wild trout but adequate for year-round hold-over of stocked trout. Information on designated trout streams can be obtained via their Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. <http://vafwis.org/fwis/?Menu=Home>

The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

- 1) Potomac-Shenandoah Rivers
- 2) James River
- 3) Roanoke River
- 4) New River
- 5) Tennessee and Big Sandy Rivers
- 6) Rappahannock River

The VDGIF recommends the following time-of-year restrictions (TOYR) for any in-stream work within waters identified as wild trout waters in its Cold Water Stream Survey database. The recommended TOYRs for trout species are:

- Brook Trout: October 1 through March 31
- Brown Trout: October 1 through March 31

- Rainbow Trout: March 15 through May 15

This requirement applies to all waters of the United States within the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

The Corps will coordinate the permit request with the DEQ and/or the VDGIF. Comments from DEQ and VDGIF will be fully considered before the Corps makes a final decision on the project.

26. Historic properties.

- a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary.
- c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed or determined to be eligible for listing on the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources (VDHR) at: <http://www.dhr.virginia.gov/> or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/ THPO, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties.

27. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

28. Mitigation. Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) may be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

29. Multiple general permit authorizations. This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RP)) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.

30. Transfer of Regional Permit Verifications. If the permittee sells the property associated with the regional permit verification, the permittee may transfer the verification to the new owner by submitting a letter to the appropriate Corps District Office to validate the transfer. A copy of the regional permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

31. **Compliance Certification.** A Certificate of Compliance must be completed, and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011, or to the Regulatory Field Office listed on the Certificate of Compliance, within 30 days of completion of the authorized activity.
32. **Activities Affecting Structures or Works Built by the United States.** If the RP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the activity that requires section 408 permission is not authorized by the RP until the appropriate Corps District office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written RP verification.

Contact a Norfolk District Regulatory project manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps of Engineers federally authorized civil works project.

Locations of Norfolk District civil works projects can be found at:
http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17_Corps_Project_Maps.pdf.

For projects located within the civil works boundary of the Baltimore, Huntington, Nashville, or Wilmington District, please contact a Norfolk District project manager for assistance.

33. **Pre-Construction Notification.** Prior to commencing the activity, prospective permittees (“permittees”) must submit a Preconstruction Notification (PCN) to the District Engineer, unless otherwise specified in the RP, and must receive written notification from the Corps acknowledging that the project is authorized pursuant to this RP.

Notification to the Corps must be in writing (the standard Joint Permit Application may also be used, as described below) and must include the following information:

- Name, address and telephone number of the prospective permittee;
- Name, address and telephone number of the property owner, if different from the prospective permittee;
- Location of the project (including Tax Parcel ID Number, if available);
- Vicinity map, aerial photograph, and/or drawing accurately showing the extent of proposed activity and the extent of waters of the U.S., including wetlands. Drawings, plans and/or sketches should contain sufficient detail to project an illustrative description of the proposed activity;
- Identify the specific RP or RPs the prospective permittee wants to use to authorize the proposed activity;
- A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expect to result from the RP activity, in acres, linear feet or other appropriate unit of measure; a description of any proposed mitigation measures; and any other Corps permit used or intended to be used to authorize any part of the proposed project or any related activity.
- A delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- If compensatory mitigation is required, the prospective permittee must submit a statement describing how any required compensatory mitigation will be provided. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. In accordance with 33 CFR 332.3 (a) the Corps will consider what is environmentally preferable. Factors considered will be likelihood of success, sustainability, location relative to the impact site and significance within the watershed, and the costs of the compensatory mitigation project. The Corps will require the most appropriate and practicable mitigation pursuant to 33 CFR 320.4(r).

A Joint Permit Application (JPA) may also be used. A JPA may be obtained by writing to the U.S. Army Corps of Engineers, Norfolk District, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011; by telephoning the Norfolk District Regulator of the Day at (757) 201-7652 or via the following link to the Norfolk District Regulatory Branch website:

<http://www.nao.usace.army.mil/Missions/Regulatory/JPA/>

The Corps must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the

prospective permittee within that 30-day period to request the additional information necessary to make the request complete. The request must specify the information needed to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete, and the review process will not commence until all of the requested information has been received by the Corps. The prospective permittee shall not begin the activity until either:

- a) He or she is notified in writing by the Corps that the activity may proceed under the RGP, subject to any additional project-specific special conditions imposed by the Corps; or,
- b) 45 calendar days have passed from the Corps' receipt of the complete PCN, and the prospective permittee has not received written notice from the Corps. However, if coordination with other agencies is required, pursuant to Special Condition 4 of this RGP, Section 7 of the Endangered Species Act, and/or Section 106 of the National Historic Preservation Act, the prospective permittee may not proceed until receiving written notification from the Corps, confirming that the coordination is complete.

If, after reviewing the request, the Corps determines that the proposed activity would have more than minimal individual or cumulative adverse impacts on the aquatic environment or otherwise may be contrary to the public interest, then the Corps will notify the project proponent that the activity is not authorized by the regional permit and will provide instructions for seeking authorization under an individual permit. The Corps may revoke this Regional Permit for an individual activity by following the procedures set forth in 33 CFR 325.7.

34. **Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
35. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor(s) and made available at the project site to any regulatory representative. The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.

DISTRICT ENGINEER'S DECISION

1. In reviewing the pre-construction notification for the proposed activity, the district engineer will determine whether the activity authorized by the RP will result in

more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the district engineer should issue the RP verification for that activity if it meets the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

2. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant that the activity, as proposed, does not qualify for authorization under the RP. The district engineer will instruct the applicant on the procedures to seek authorization under an individual permit or modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal.

ADDITIONAL INFORMATION

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. **Limits of this authorization.**
 - a) Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
 - b) Regional permits do not grant any property rights or exclusive privileges.
 - c) Regional permits do not authorize any injury to the property or rights of others.
 - d) Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 28).
 - e) Regional permits do not authorize the impingement upon Federal Lands.
 - f) Regional permits do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. **Limits of Federal Liability.** In issuing this RP, 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 RP;
 - 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.** The district engineer 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) The permittee fails to comply with the terms and conditions of this permit.
 - b) The information provided by the permittee in support of your permit application proves to have been false, incomplete, or inaccurate.
 - 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.

6. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
7. **Duration of Activity's Authorization.** Activities authorized under 23-RP-15 must be completed by *TBD*. If the RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by *TBD*, you must reapply for separate permit authorization in order to meet current permit criteria.
8. **Expiration.** Unless further modified, suspended, or revoked, this RP will be in effect until *TBD*. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.

