



U.S. Army Corps  
Of Engineers  
Norfolk District

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

CENAO-WRR  
18-RP-15

## REGIONAL PERMIT

Effective Date: September 5, 2018

Expiration Date: September 5, 2023

### I. AUTHORIZED ACTIVITIES:

18-RP-15, Regional Permit 15 (RP), authorizes certain activities associated with the maintenance of existing drainage ditches originally constructed in and previously authorized in navigable waters and waters of the U.S., provided the ditches are maintained for a covered purpose. This RP does not authorize new construction of ditches or the channelization, realignment, or relocation of streams or other waterways and does not authorize any work other than that which complies with the general and special conditions below.

This RP does not regulate activities that are otherwise exempt (see *Instructional Notes* below). Project proponents should refer to Regulatory Guidance Letter (RGL) No. 07-02, 33 C.F.R. § 323.4(a)(3), and 40 C.F.R. § 232.3(c)(3) for more information on exempt activities.

For the purposes of this RP:

The term “**drainage ditch**” means an existing, man-made linear feature excavated for the purpose of draining or directing surface or groundwater.

The term “**maintenance**” means maintenance of existing drainage ditches, provided that 1) the final dimensions of the maintained ditch do not exceed the average contours and dimensions of the original ditch, and 2) maintenance of the ditch does not increase drainage capacity beyond the original as-built capacity or expand the area drained by the ditch as originally constructed.

The term “**new construction**” means creation of a new ditch or the channelization, realignment, or relocation of streams or other waterways. This term includes work that 1) increases final dimensions of a ditch beyond the average contours and dimensions of the original ditch, or 2) increases drainage capacity beyond the original as-built capacity or expansion of the area drained by the ditch as originally constructed.

The term “**covered purpose**” means mosquito control or maintaining drainage from upland areas for the purposes of stormwater management.

## **Instructional Notes:**

Regulated Activities: 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 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.

Exempt Activities: 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)). Exempt 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:**

For projects located within the Commonwealth of Virginia, project proponents 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/or Section 404 of the Clean Water Act (33 U.S.C. § 1344) to perform the aforementioned work in waters of the U.S. pursuant to the terms and conditions herein.

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 U.S. 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 (804) 698-4000, the VMRC at (757) 247-2200, and/or 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, Tidewater Regional Office, at (757) 518-2000 regarding the need for a Virginia Water Protection Permit.
3. The State Water Control Board provided conditional §401 Water Quality Certification for the 18-RP-15. As such, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the §401 Water Quality Certification condition, below, and all of the terms and conditions of 18-RP-15.

§401 Water Quality Certification Condition: Deviations from the original configuration or filled area shall not change the character, scope, or size of the original design or approved alternative design.

4. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of the Environmental Quality, Virginia Coastal Zone Management Program completed its review of the Federal Consistency Determination and issued its conditional concurrence on August 16, 2018. Specifically, DEQ concurs that the RPs and General Conditions are consistent to the maximum

extent practicable with the Virginia CZM Program provided that the following conditions are satisfied:

- a. Prior to construction, applicants shall obtain all required permits and approvals for the activities to be performed that are applicable to the enforceable policies and that applicants adhere to all conditions contained therein.
  - b. The activities that qualify for the RPs meet the requirements of DEQ's Virginia Water Protection Permit Regulation and the permittee abides by the conditions of the RP as certified under Section 401 of the Clean Water Act.
5. Permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations.
  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. For actions (a) and (b) below, prospective permittees must submit a pre-construction notification in accordance with the procedures outlined in *General Condition 33: Pre-construction Notification*, and must receive written authorization from the Corps before any work may begin. This RP shall not be interpreted as authorizing any work other than which is outlined above and which strictly meet all terms and conditions set out herein. All work undertaken that does not strictly comply with the following terms, conditions, standards and limitations will require separate Department of the Army authorization.
  - a. The volume of area excavated below the plane of the high tide line exceeds 10 cubic yards in tidal waters, or
  - b. The discharge of fill is in waters of the U.S., including wetlands.
2. Within Virginia, the U.S. Army Corps of Engineers, Norfolk District encourages prospective permittees to utilize the Joint Permit Application (JPA) as the pre-construction notification. The JPA is also used to apply for corresponding permits from the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality, and/or Local Wetlands Boards. The JPA process and JPA forms are used by the Corps, the VMRC, the DEQ, and the LWB for permitting purposes involving tidal and/or non-tidal water, tidal and/or non-tidal wetlands, and/or dune/beach resources, including, but not limited to, construction, dredging, filling, or excavation. Read the directions on the application carefully to determine how many copies must be submitted to the VMRC, who acts as the clearinghouse for permit applications. Prospective

permittees may obtain paper copies of the Joint Permit Applications by calling the Corps at 757-201-7652, or by downloading and using one of the two versions of the JPA on the Norfolk District Regulatory Webpage:

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

3. The following additional information must be included in the PCN and/or on the drawings in order for the PCN to be considered complete:
  - a. 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.
  - b. 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.
  - c. 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 prospective permittee's ability.
  - d. 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 U.S. Fish and Wildlife Service's Cowardin System for classification of wetland and deep water systems.
  - e. A description of any adjoining and/or abutting wetlands and/or waters to the project area.
  - f. 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. PERMIT SPECIFIC CONDITIONS:**

1. Maintenance shall not result in the discharge of dredged or fill material into waters of the U.S. that causes the permanent loss of more than one-half (0.5) acre of wetlands associated with work or alteration in the entire reach.<sup>1</sup>
2. Maintenance excavation/dredging of drainage ditches or mosquito control ditches authorized by this permit is limited to the removal of accumulated material at an elevation above mean low water in tidal waters. Any excavation/dredging below the plane of mean low water in tidal waters does not qualify for this RP and must receive separate Department of the Army authorization.

---

<sup>1</sup> 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).

3. 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.
4. 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.
5. This RP 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 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.
6. To avoid and minimize impacts to waters of the U.S., the excavated/dredged material must 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. Prospective permittees must consider the following alternatives to avoid and minimize impacts to waters of the U.S.:
  - 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 the Corps may approve its placement in adjacent wetlands. For example, the material may be spread as thinly and evenly as possible in wetlands and/or 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. Generally, berms that are less than 50 linear feet in length require one breach.
  - d. If site conditions render breaching impractical, then the Corps may authorize an alternative plan. Under such conditions, the Corps must be notified and ditch maintenance dredging cannot be commenced until the permittee obtains written approval from the Corps.
7. 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.

## **VI. GENERAL CONDITIONS:**

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 U.S. 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 Areas: 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.
6. Submerged Aquatic Vegetation (SAV) Beds: Activities in SAV beds must be avoided and minimized to the maximum extent practicable. 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> or by using the DCR native plant finder: <http://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.

15. Removal of Temporary Fills and Impacts: The soils of any temporarily impacted areas located in wetlands that are cleared, grubbed, and/or filled, must be restored once these areas are no longer needed for their authorized purpose, no later than completion of project construction, and not to exceed twelve (12) months after commencing the temporary impacts. To restore, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations, the soil surface loosened by ripping or chisel plowing to a depth of 8-12", and then seeded using native wetland species. See *General Condition 14: Invasive Species* 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 an 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 this 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 this 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 RP activity and are later in time, but still reasonably certain to occur.
- b. Federal permittees should follow their own procedures for complying with the requirements of the ESA. 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 shall submit a pre-construction notification to the District Engineer if any proposed or listed species or proposed or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 permittee of the Corps' determination. In cases where the non-Federal permittee 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 permittee 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 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 permittees 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 this 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 permittee should provide a copy of that ESA Section 10(a)(1)(B) permit in the Joint Permit Application. 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 permittee 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 permittee shall not begin work until the Corps has provided notification that the EFH consultation has concluded.
23. Anadromous Fish: Authorizations associated with this RP shall not adversely affect documented spawning habitat or a migratory pathways 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 main-stem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River.

24. Designated Critical Resource Waters and National Estuarine Research

Reserves: This RP does not authorize the discharge of dredged or fill material into 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/>.

25. Trout Waters: Designated Trout Waters, as defined by the Virginia State Water Control Board and the Virginia Department of Game and Inland Fisheries (VDGIF), occurring specifically within the mountains of Virginia, are within the following river basins:

- Potomac-Shenandoah Rivers
- James River
- Roanoke River
- New River
- Tennessee and Big Sandy Rivers
- Rappahannock River

The Virginia Department of Game and Inland Fisheries (VDGIF) recommends the following time-of-year restrictions (TOYR) for any in-stream work within waters identified as wild trout waters. 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 U.S. 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 Virginia Department of Environmental Quality (DEQ) and/or the VDGIF. Comments from DEQ and VDGIF will be fully considered before the Corps makes a final decision on the project. Additional information regarding trout waters can be found at: <https://www.dgif.virginia.gov/>.

26. Historic Properties:

- a. In cases where 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 a permittee has identified historic properties which the proposed activity may have the potential to affect, the permittee 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 permittee 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 permittee. 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 permittee, 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 activities 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 U.S. to the maximum extent practicable at the project site (i.e., on site).
29. Use of Multiple Regional Permits: This RP 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 U.S. 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 RP 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 RP 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, enclosed with the Corps’ written authorization for the activity, 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 Corps federally authorized Civil Works 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 Corps Civil Works 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 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](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 Pre-construction 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 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 U.S. 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 U.S., but there may be a delay if the Corps does the delineation.
- 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 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. If the PCN is determined to be incomplete, the Corps will request the prospective permittee to provide 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 he or she is notified in writing by the Corps that the activity may proceed under the RP, subject to any additional conditions imposed by the Corps.

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: The permittee must provide a copy of this permit and any verification letter 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.

## **VII. DISTRICT ENGINEER'S DECISION:**

1. In reviewing the PCN 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 require an individual permit for the proposed activity.
2. When making minimal adverse environmental effects determinations the District Engineer will consider the direct and indirect effects caused by the RP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by the RP and whether those cumulative adverse environmental effects are no more than minimal. The District Engineer will also consider site specific factors, such as the environmental setting in the vicinity of the RP activity, the type of resource that will be affected by the RP activity, the functions provided by the aquatic resources that will be affected by the RP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the District Engineer. The District Engineer may add case-specific special conditions to the RP authorization to address site-specific environmental concerns.
3. 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 permittee that the activity does not qualify for authorization under the RP and instruct the permittee on the procedures to seek authorization under an individual permit or process to modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal. In addition, if the District Engineer determines on a case-by-case basis that concerns for the aquatic environment so indicate, the District Engineer may exercise discretionary authority to override the Regional Permit and require an Individual Permit application and review.

## VIII. 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 32).
  - 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 Permittee'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 the 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 PCN 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. Expiration: Unless further modified, suspended, or revoked, this RP will be in effect until September 5, 2023. Activities which have commenced (i.e. under construction) or are under contract to commence in reliance upon this RP will remain authorized provided the activity is completed within twelve (12) months of the date of the RP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of the RP which was in effect at the time the activity was completed continue to be authorized by that RP.

5 Sept 2016  
Date

  
Patrick V. Kinsman, PE  
Colonel, U.S. Army  
Commanding