



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

**CENAO-REG
13-RP-19**

REGIONAL PERMIT

Effective Date: August 14, 2013

Expiration Date: August 14, 2018

I. AUTHORIZED ACTIVITIES:

The following activities may be authorized under 13-RP-19, Regional Permit 19 (“RP”), subject to the conditions, limitations and descriptions set out further herein:

- 1. Living Shoreline Group 1: Non-structural activities that improve growing conditions for wetlands and/or riparian buffer vegetation.**
- 2. Living Shoreline Group 2: Submerged sill with tidal marsh.**
- 3. Low breakwaters and associated sandy fill material.**
- 4. Bulkheads, riprap, and associated backfill and/or excavation, including bulkhead repair and/or replacement.**
- 5. Groins, jetties, spurs and/or baffles and associated sandy fill material.**
- 6. Aquaculture/mariculture activities.**
- 7. Boat ramps and accessory structures, including any fill or excavation for installation.**

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 perform certain work in waters of the Commonwealth as described further herein strictly subject to the conditions and limitations set out further herein.

Activities receiving written authorization under this RP do not require further authorization unless the District Commander determines that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR Part 325) for a particular project that might generally qualify for this RP. This RP covers only those activities that comply with the general and special conditions set out below. Activities that do not comply with the conditions, terms, and limitations herein do not qualify for this RP and will require separate Department of the Army authorizations/permits.

III. STATE AND LOCAL APPROVALS:

1. In order for this RP-19 to be valid as to particular work, a person or entity seeking verification under this RP (“permittee”, “applicant” or “prospective permittee) must obtain the following state and/or local permits prior to commencement of such work in waters of the United States from:
 - Virginia Marine Resources Commission (“VMRC”) and/or
 - Local Wetlands Board (“LWB”)
2. *The Corps is coordinating separately with Department of Environmental Quality (DEQ) regarding the 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.*
3. 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 (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.*). Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Act or to any State or local law or regulation.

IV. PROCEDURES:

1. In order to obtain authorization for any of the activities covered by this RP, the applicant must complete a Joint Permit Application (“JPA”). A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link: <http://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>
2. If the proposed activity qualifies for this RP, the Corps will send the applicant a letter acknowledging the qualification and stating that the applicant must obtain a permit (not a waiver) from the Virginia Marine Resources Commission and/or the local wetlands board before the proposed work may begin.
3. Those activities on the Potomac River extending beyond the mean low water line must be authorized by the Virginia Marine Resources Commission, the Maryland Department of Natural Resources and/or the Potomac River Fisheries Commission in order to comply with this regional permit. Authorization may also be required from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.
4. In the event the proposed project or any portion of the project receives a waiver (or exemption under the grandfather clause) from the VMRC or the LWB, the project would not qualify for authorization under this RP-19 and would require separate Department of the Army authorization/permits.

ACTIVITIES DO NOT QUALIFY FOR THIS REGIONAL PERMIT UNLESS, THEY SATISFY ALL OF THE SPECIAL AND GENERAL CONDITIONS LISTED BELOW:

V. ACTIVITY SPECIFIC SPECIAL CONDITIONS:

1. Living Shoreline Group 1: Non-structural activities that improve growing conditions for wetlands and/or riparian buffer vegetation:

- a. For the purpose of this RP, the living shoreline group 1 activities are associated with existing tidal marsh improvements and/or new marsh creation that may include the placement of sand fill, coir logs, coir mats, and/or native oyster shell.
- b. This activity authorizes the placement of sandy fill material landward of mean low water. The maximum fill area within waters of the United States that can be authorized under this RP is one (1) acre.
- c. All proposed sandy fill material must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- d. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the length of the activity along the shoreline in linear feet. All impacts must be offset by new plantings and result in no net loss of areal vegetated wetlands.
- e. If the proposed project results in impacts to existing wetland vegetation, then a written monitoring report may be required at the end of the first full growing season following planting, and after the second year of establishment. The monitoring should be undertaken between June and September of each year and should include: The project location, the Corps project number, representative photos of the site, and a brief statement on the success of the project.
- f. As the design of a living shoreline project is site specific, it is suggested that the Virginia Institute of Marine Sciences be consulted for advice. Living Shoreline Design Guidelines for Shore Protection in Virginia's Estuarine Environments can be found at: http://web.vims.edu/physical/research/shoreline/docs/LS_Design_final_v1.2.pdf
- g. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- h. Please be aware that projects which include the placement of sandy fill material may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously filled, the Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

- i. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

2. Living Shoreline Group 2: Submerged sill with tidal marsh:

- a. For the purpose of this RP, a submerged sill is defined as a low, detached structure constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. Because a sill acts like a natural bar, it is most effective when constructed at or near the mean low water line and low enough to allow wave overtopping.
- b. Submerged sills may be constructed of riprap, gabion baskets, or concrete. Alternative materials may be considered for use during the permit review process. The materials should be of sufficient weight or adequately anchored to prevent their being dislodged and carried about by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills.
- c. Submerged sills will be designed with gaps at least 5 feet wide for each 100 linear feet of sill.
- d. The sandy fill area and the submerged sill shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 or (757)398-6360 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- e. Submerged sills may not be connected to upland or constructed in conjunction with groins or other erosion control structures. Such structures will require individual Department of the Army review.
- f. This activity authorizes the placement of sandy fill material landward of the sills provided the fill is for erosion control (and not solely recreational activities). The maximum fill area within waters of the United States that can be authorized under this RP is one (1) acre.
- g. All proposed sandy fill material must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- h. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the length of the activity along the shoreline in linear feet. All impacts must be offset by new plantings and result in no net loss of areal vegetated wetlands.
- i. If the proposed project results in impacts to existing wetland vegetation, then a written monitoring report may be required at the end of the first full growing season following planting, and after the second year of establishment. The monitoring should be undertaken between June and September of each year and should include: The project

location, the Corps project number, representative photos of the site, and a brief statement on the success of the project

- j. As the design of a living shoreline project is site specific, it is suggested that the Virginia Institute of Marine Sciences be consulted for advice. Living Shoreline Design Guidelines for Shore Protection in Virginia's Estuarine Environments can be found at: http://web.vims.edu/physical/research/shoreline/docs/LS_Design_final_v1.2.pdf
- k. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- l. Please be aware that projects which include the placement of sandy fill material may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously filled, the Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.
- m. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

3. Low breakwaters and associated sandy fill material:

- a. For the purpose of this RP, a breakwater is defined as a structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy.
- b. This RP authorizes low breakwaters constructed close to shore for the purpose of erosion protection by reducing wave height and thereby reducing the erosive power of the waves reaching the shoreline. This permit does not include high breakwaters constructed farther offshore for the purpose of creating quiet water for the protection of a boat harbor.
- c. The fill area and low breakwater shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 or (757)398-6360 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- d. Under this RP, a breakwater may be a single structure or a series of structures separated by gaps, but may not be connected to the upland or constructed in conjunction with other land attached structures. Such structures will require individual Department of the Army review.
- e. Breakwaters may be constructed of quarry stone, gabion baskets, or concrete. Alternative materials may be considered for use during the permit review process. However, as breakwaters are barriers to the forces of waves, they should be massive enough to resist the full power of the maximum expected wave energy. Asphalt and

materials containing asphalt or other toxic substances shall not be used in the construction of breakwaters. As the design and location of breakwaters is site specific, it is suggested that the Virginia Institute of Marine Science be consulted for advice.

- f. Included in this permit are floating breakwaters which filter energy from the incoming waves as they pass through the device, thereby reducing wave energy reaching a shoreline or harbor. Floating breakwaters should be adequately anchored to prevent their being dislodged by wave action.
- g. This activity authorizes the placement of sandy fill material landward of the breakwaters provided the fill is for erosion control (and not solely recreational activities). The maximum fill area within waters of the United States that can be authorized under this RP is one (1) acre.
- h. All proposed sandy fill material must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- i. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the length of the activity along the shoreline in linear feet. All impacts must be offset by new plantings and result in no net loss of areal vegetated wetlands. If there are no impacts to vegetated wetlands, the planting of new vegetation may not be required unless the Corps determines it is necessary for compensatory mitigation purposes.
- j. If the proposed project results in impacts to existing wetland vegetation, then a written monitoring report may be required at the end of the first full growing season following planting, and after the second year of establishment. The monitoring should be undertaken between June and September of each year and should include: The project location, the Corps project number, representative photos of the site, and a brief statement on the success of the project.
- k. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- l. Please be aware that projects which include the placement of sandy fill material may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously filled, the Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.
- m. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

4. Bulkheads, riprap, and associated backfill and/or excavation, including bulkhead repair and/or replacement:

- a. The work must be necessary to address and remediate an existing erosion problem.
- b. The total amount of vegetated wetlands which may be filled, in square feet, may not exceed the length of the activity along the shoreline in linear feet (e.g. 100 square feet maximum for a 100-foot-long bulkhead.)
- c. The structure and backfill must be placed as closely to the shoreline as is practicable. No material may be placed in excess of the minimum necessary for erosion protection.
- d. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.
- e. Only clean, non-metallic, non-organic, non-floatable fill obtained from an upland source may be used as backfill material.
- f. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.
- g. This RP also covers all bulkhead repair and/or replacement up to two feet channelward of existing deteriorated bulkheads which are still functional. For sheet pile bulkheads, this shall generally mean that at least fifty (50) percent of the sheeting must be standing. This authorization includes no limitation on length, nor does it exclude bulkheads which may result in the filling of wetland vegetation as long as there is an apparent existing erosion problem. As above, the total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet. This total does not include wetlands landward of the existing bulkhead. This portion of the work complies with Corps Nationwide Permit Number 3. The Corps Nationwide Permits and Conditions can be found in the February 21, 2012, Federal Register notice (Volume 77, No. 34). The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this permit, and will require an individual Department of the Army permit.
- h. Special Conditions for Discharges in Section VI below apply to this activity as well as the general conditions listed in the regional permit.

5. Groins, jetties, spurs and/or baffles and associated sandy fill material:

- a. For this regional permit, groins are defined as structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline for the purpose of accreting sand. Groins may merely stop further erosion of a shoreline or they may actually build a sand beach by trapping sand moving in the near shore zone. A jetty is a structure constructed perpendicular to the shoreline with the primary purpose of stabilizing and/or protecting an inlet or harbor. Spurs and baffles are defined as short (less than 20 feet) structures constructed perpendicular to groins for the sole purpose of dampening diffracted wave energy. Groins and jetties may be constructed of quarry stone, gabion baskets, or concrete. As the design and location of groins and jetties are

site specific, it is suggested that the Virginia Institute of Marine Science be consulted for advice.

- b. This activity may authorize the placement of sandy fill material landward of the groins provided the fill is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the fill area may be required by the Corps, where appropriate. The maximum fill area within waters of the United States that can be authorized under this RP is one (1) acre.
- c. All proposed sandy fill material must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- d. The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the length of the activity along the shoreline in linear feet. All impacts must be offset by new plantings and result in no net loss of areal vegetated wetlands.
- e. If the proposed project results in impacts to existing wetland vegetation, then a written monitoring report may be required at the end of the first full growing season following planting, and after the second year of establishment. The monitoring should be undertaken between June and September of each year and should include: The project location, the Corps project number, representative photos of the site, and a brief statement on the success of the project.
- f. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- g. Please be aware that projects which include the placement of sandy fill material may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the permittee seeks to either add to or replenish the area previously filled, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.
- h. Special Conditions for Discharges and Structures in Sections VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

6. Aquaculture/mariculture activities:

- a. This authorization is limited to the bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting.

- b. The aquaculture activity area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- c. No aquaculture activity shall occur within beds of submerged aquatic vegetation or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by submerged aquatic vegetation or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional permit. Information on the location of submerged aquatic vegetation can be found at: <http://web.vims.edu/bio/sav/maps> .
- d. An aquaculture activity will not meet the terms for this RP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.
- e. An aquaculture activity will not qualify for this RP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.
- f. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.
- g. Crab pounds (e.g. devices used for softshell crab harvesting, etc.) are authorized by this RP, but crab pounds in Mailboat Harbor and adjacent waterways at Tangier Island, Virginia must be constructed outside the hatched areas shown on the map entitled "Structures at Mailboat Harbor" which may be obtained from the Corps Eastern Virginia Regulatory Section Eastern Shore Field Office, P.O. Box 125, Greenbackville, Virginia 23356, phone number (757) 903-1562.
- h. As-built drawings must be submitted with the certificate of compliance for all aquaculture projects.
- i. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

7. Boat ramps and accessory structures, including any fill or excavation for installation:

- a. This activity covers all boat ramps (concrete or open-pile timber), whether private, public, commercial or government-owned. For this RP, accessory structures include catwalks, pilings and small piers whose sole purpose is to make it easier to get boats into or out of the water. Permanent or semi-permanent mooring facilities are not covered.
- b. This permit authorizes excavation and/or filling within the limits of the boat ramp only (e.g. for bedding). Dredging or filling for water access to the ramp is not covered under this regional permit and will require separate Department of the Army authorization.

Authorization of the boat ramp does not imply that a future dredging proposal to provide access to the structure would be approved.

- c. All boat ramps and accessory structures shall be located so as to eliminate or minimize impacts to vegetated wetlands.
- d. The pouring of concrete for the construction of boat ramps must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited.
- e. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

VI. SPECIAL CONDITIONS FOR DISCHARGES:

1. No discharge of dredged or fill material may consist of unsuitable material (e.g. trash, debris, car bodies, asphalt etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA). All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws.
2. Work in areas with submerged aquatic vegetation (SAV) should be avoided. However, if work will occur in areas that contain (SAV), additional avoidance and minimization measures, such as relocating a structure, time of year restrictions, compensatory mitigation, etc. may be required to reduce impacts to SAV. Conditions relating to SAV impacts will be determined on a case-by-case basis after consultation with the NOAA Fisheries Service (“NOAA”).
3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.
4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.
5. Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.
6. Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.

7. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
8. All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

VII. SPECIAL CONDITIONS FOR STRUCTURES:

1. The permittee must install and maintain, at his/her expense, any safety lights, markers and/or signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities and/or structures. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, and telephone number (757) 398-6230.
2. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.
3. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure or time of year restrictions, may be required to reduce impacts to SAV.

VIII. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under Regional General Permits (RP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the U.S. Army Corps of Engineers (the Corps).
2. **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 23510-1096 within 30 days of completion of the project.
3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Corps.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on

concerns for the aquatic environment or for any other factor of the public interest (33 CFR Part 320.4(a)). This authority is exercised on a case-by-case basis.

6. **Single and complete projects.** This RP shall only be applied to single and complete projects. 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 and which has independent utility.
7. **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. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
8. **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 impacts are considered cumulatively and do not exceed the acreage limit or linear foot limits of the RP/ NWP.
9. **Permit on-site.** The permittee shall ensure that a copy of the RP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

General Conditions Related to National Concerns:

10. **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 notify the Corps if the authorized activity has the 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. 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) 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.

11. **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.
12. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights, treaty fishing, and hunting rights.
13. **Federal Lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.
14. **Endangered species.** (a) No activity is authorized under any RP which is likely to 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 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 Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district commander with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees shall notify the district commander if any listed species or designated critical habitat might 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 commander that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the U.S. Fish and Wildlife online project review process at http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews.html and/or the NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062. For activities that might affect Federally-listed rare, endangered, or threatened species or designated critical habitat, notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district commander will determine whether the proposed activity “may affect” or will have “no effect” to listed species and 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 has identified listed species or

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 critical habitat, or until Section 7 consultation has been completed. (d) As a result of formal or informal consultation with the FWS or NOAA FISHERIES the district commander 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 U.S. FWS or the NOAA Fisheries, both lethal and non-lethal “takes” of protected species are in violation of the ESA

15. **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 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, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.
16. **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 FWS indicating that a permit is not necessary prior to initiating construction activities. You should contact FWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 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: http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews_Introduction.html.
17. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No 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). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

18. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
19. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) 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.
20. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
21. **Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
22. **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".
23. **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.

General Conditions Related to Minimizing Environmental Impacts:

24. **Avoidance and minimization.** Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.(40 CFR Part 230.10(a) Section 404 (b)(1) Guidelines).
25. **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)."
26. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
27. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours within 6 months of commencing the temporary impact's construction. Impacts that will not be restored within 6 months (calculated from the start of the temporary impacts construction) will be considered permanent unless otherwise

approved by the RP. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

28. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed 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, must be permanently stabilized at the earliest practicable date.
29. **Aquatic life movements.** No authorized activities may substantially disrupt the necessary life cycle movements 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. Corps has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary. All permanent and temporary crossings of water bodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
30. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
31. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
32. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
33. **Native trout and anadromous fishes.** Authorizations for activities under this RP within native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.
34. **Water supply intakes. No discharge of dredged or fill material** may occur in proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

General Procedural Conditions:

35. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee understands and agrees that the Corps are permitted and allowed to make periodic inspections at any time the Corps deems 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.

36. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
37. **Property rights.** This General Permit does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
38. **Modification, suspension, and revocation.** This RP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR Part 325.7. Any such action shall not be the basis for any claim for damages against the United States.
39. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
40. **Special conditions.** The Corps may impose other special conditions on a project authorized pursuant to this RP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
41. **False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
42. **Abandonment.** If the permittee decides to abandon the activity authorized under this RP, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.
43. **Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Corps with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps.
44. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:

45. **Duration of Activity's Authorization.** Activities authorized under 13-RP-19 must be completed by August 14, 2018. If this 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 (i.e. August 14, 2019), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR Part 325.7(a-e). If work cannot be completed by August 14, 2019, you must reapply for separate permit authorization in order to meet current permit criteria.

46. **Expiration of 13-RP-19.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2018. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of a RP which was in effect at the time the activity was completed continue to be authorized by that RP.

Date

PAUL B. OLSEN
Colonel, Corps of Engineers
Commanding

DRAFT