

**Norfolk District Regional Conditions for the  
2017 Nationwide Permits (NWPs) Applicable in Virginia  
(Including Northern Virginia Military Installations within Baltimore  
District's Area of Responsibility)**

**I. REGIONAL CONDITIONS APPLICABLE TO MULTIPLE AND/OR ALL NWPS:**

**1. Conditions for Waters Containing Submerged Aquatic Vegetation (SAV) Beds:**

This condition applies to: NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 44, 45, 48, 52, 53 and 54.

A pre-construction notification (PCN) is required if work will occur in areas that contain submerged aquatic vegetation (SAVs). Information about SAVs can be found at the Virginia Institute of Marine Science's website <http://web.vims.edu/bio/sav/>. Additional avoidance and minimization measures, such as relocating a structure or time-of-year (TOYR) restrictions may be required to reduce impacts to SAVs.

**2. Conditions for Anadromous Fish Use Areas:**

To ensure that activities authorized by any Nationwide Permit does not impact waterways documented to provide spawning habitat or a migratory pathway for anadromous fish, a check for anadromous fish use areas must be conducted via the Norfolk District's Regulatory GIS (for reporting permits) and/or the Virginia Department of Game and Inland Fisheries (VDGIF) Information System (by applicant for non-reporting permits) at <http://vafwis.org/fwis/>. For any proposed NWP, if the project is located in an area documented as an anadromous fish use area (confirmed or potential), a time-of-year restriction (TOYR) prohibiting all in-water work will be required from February 15 to June 30 of any given year or any TOYR specified by VDGIF and/or Virginia Marine Resources Commission (VMRC). For permits requiring a PCN, if the Norfolk District determines that the work is minimal and the TOYR is unnecessary, informal consultation will be conducted with NOAA Fisheries Service (NOAA) to obtain concurrence that the TOYR would not be required for the proposed activity. For dredging in the Elizabeth River upstream of the Mid-Town Tunnel on the mainstem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River, TOYR are not required.

**3. Conditions for Designated Critical Resource Waters, which include National Estuarine Research Reserves:**

Notification is required for work under NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38 and 54 in the Chesapeake Bay National Estuarine Research

Reserve in Virginia. This multi-site system along a salinity gradient of the York River includes Sweet Hall Marsh, Taskinas Creek, Catlett Islands, and Goodwin Islands. More information can be found at: <http://www.vims.edu/cbnerr/>.

NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 cannot be used to authorize the discharge of dredged or fill material in the Chesapeake Bay National Estuarine Research Reserve in Virginia.

#### **4. Conditions for Federally Listed Species and Designated Critical Habitat**

Notification for ALL NWPs will be required for any project that “may affect” a federally listed threatened or endangered species or designated critical habitat. The U.S. Fish and Wildlife Service (Service) has developed an online system that allows users 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: <http://ecos.fws.gov/ipac/>. This system provides information regarding federally listed and proposed candidate, threatened, and endangered species, designated critical habitats, and Service refuges that may occur in the identified areas, or may be affected by the proposed activities. The applicant may use this system to determine if any federally listed species or designated critical habitat may be affected by their proposed project, ensuring compliance with the Endangered Species Act. If your Official Species List from IPAC identifies any federally listed endangered or threatened species, you are required to submit a PCN for the proposed activity, unless you can clearly make a “no effect” determination (e.g., no tree clearing onsite within an area designated as Northern Long-eared Bat habitat or only nontidal waters in your project review area and IPAC lists Atlantic Sturgeon). If you are unsure about making a “no effect” determination for your project, please submit a PCN, so the Norfolk District may review the action. Further information about the Virginia Field Office “Project Review Process” may be found at: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>.

Additional consultation may also be required with National Marine Fisheries Service 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 see <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.

#### **5. Conditions for Waters with Federally Listed Endangered or Threatened Species, Waters Federally Designated as Critical Habitat, and One-mile Upstream (including tributaries) of Any Such Waters:**

A pre-construction notification (PCN) is required for work in the areas listed below for NWPs 3, 4, 5, 6, 7, 12, 13, 14, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, and 54 for the Counties of Lee, Russell, Scott, Tazewell, Wise, and Washington in Southwestern Virginia within the following specific waters and reaches:

- 1) Powell River - from the Tennessee-Virginia state line upstream to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.
- 2) Clinch River - from the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek, and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.
- 3) North Fork Holston River - from the Tennessee-Virginia state line upstream to the Smyth County/Bland County line and one mile upstream of any tributary adjacent to this portion of the River.
- 4) Copper Creek - from its junction with the Clinch River upstream to the Route 58 bridge at Dickensonville in Russell County and one mile upstream of any tributary adjacent to this portion of the Creek.
- 5) Indian Creek - from its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.
- 6) Middle Fork Holston River - from the Tennessee-Virginia state line to its junction with Walker Creek in Smyth County near Marion, Virginia.
- 7) South Fork Holston River - from its junction with Middle Fork Holston River upstream to its junction with Beech Creek in Washington County.

For the above listed NWP's that require a PCN to work in specific waters and reaches, as described above, in the counties of Lee, Russell, Scott, Smyth, Tazewell, Wise, and Washington in southwestern Virginia, the Norfolk District recommends that the prospective permittee first contact the applicable Norfolk District Field Office, found at this web link: <http://www.nao.usace.army.mil/Missions/Regulatory/Contacts.aspx>, to determine if the PCN procedures would apply. If required, the PCN must be submitted in writing and include the following information (the Joint Permit Application may also be used – be sure to mark it with the letters PCN at the top of the first page):

- Name, address, and telephone number of the prospective permittee.
- Name, address, email, and telephone number of the property owner.
- Location of the proposed project.
- Vicinity map and project drawings on 8.5-inch by 11-inch paper (including a plan view, profile, & cross-sectional view).
- Brief description of the proposed project and the project purpose.
- Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands.

When all required information is received by the appropriate field office, the Corps will notify the prospective permittee within 45 days whether the project may proceed under the NWP permit or whether an individual permit is required. If, after reviewing the notification, the District Commander determines that the proposed activity would have more than a minimal individual or cumulative adverse impact on the aquatic environment or otherwise may be contrary to the public interest, then he/she will either

condition the nationwide permit authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the activity is not authorized by the nationwide permit and provide the prospective permittee with instructions on how to seek authorization under an individual permit.

Non-federal applicants 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. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the PCN 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 PCN. 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.

## **6. Conditions for Designated Trout Waters:**

Notification is required for work in the areas listed below for NWP 3, 4, 5, 6, 7, 12, 13, 14, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, and 54.

This condition applies to activities occurring in two categories of waters; Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters), as defined by the Virginia State Water Control Board Regulations, Water Quality Standards (VR-680-21-00), dated January 1, 1991, or the most recently updated publication. The Virginia Department of Game and Inland Fisheries (VDGIF) designated these same trout streams into six classes. Classes I-IV are considered wild trout streams. Classes V and VI are considered stockable trout streams. Information on designated trout streams can be obtained via their Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. Basic access to the VAFWIS is available via <http://vafwis.org/fwis/>.

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

- 1) Potomac-Shenandoah River Basins
- 2) James River Basin
- 3) Roanoke River Basin
- 4) New River Basin
- 5) Tennessee and Big Sandy River Basins

## 6) Rappahannock River Basin

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

Any discharge of dredged and/or fill material authorized by the NWP listed above, which would occur in the designated waterways or adjacent wetlands of the specified counties, requires notification to the appropriate Corps of Engineers field office, and written approval from that office prior to performing the work. The Norfolk District recommends that prospective permittees first contact the applicable Norfolk District Field Office, found at this web link:

<http://www.nao.usace.army.mil/Missions/Regulatory/Contacts.aspx>, to determine if the PCN procedures would apply. The notification must be in writing and include the following information (the standard Joint Permit Application may also be used):

- Name, address, and telephone number of the prospective permittee.
- Name, address, email, and telephone number of the property owner.
- Location of the proposed project.
- Vicinity map and project drawings on 8.5-inch by 11-inch paper (plan view, profile, & cross-sectional view).
- Brief description of the proposed project and the project purpose.
- Where required by the terms of the nationwide permit, a delineation of affected special aquatic sites, including wetlands.

When all required information is received by the appropriate field office, the Corps will notify the prospective permittee within 45 days whether the project can proceed under the NWP or whether an individual permit is required. If, after reviewing the notification, the District Commander 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 he/she will either condition the nationwide permit authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the activity is not authorized by the NWP and provide instructions on how to seek authorization under an individual permit. If the prospective

permittee is not notified otherwise within the 45-day period the prospective permittee may assume that the project can proceed under the NWP.

## 7. Conditions Regarding Invasive Species

Plant species listed by the most current *Virginia Department of Conservation and Recreation's Invasive Alien Plant List* shall not be used for re-vegetation for activities authorized by any NWP. The list of invasive plants in Virginia may be found at: <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. We recommend the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.

## 8. Conditions Pertaining to Countersinking of Pipes and Culverts in Nontidal Waters

This condition applies to: NWPs 3, 7, 12, 14, 17, 18, 21, 23, 25, 27, 29, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, and 52.

**NOTE: COUNTERSINKING IS NOT REQUIRED IN TIDAL WATERS.** However, replacement pipes/culverts in tidal waters must be installed with invert elevations no higher than the existing pipe/culvert invert elevation, and a new pipe/culvert must be installed with the invert no higher than the stream bottom elevation.

- a. Following consultation with the Virginia Department of Game and Inland Fisheries (DGIF), the Norfolk District has determined that fish and other aquatic organisms are most likely present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although prospective permittees have the option of providing such evidence, extensive efforts to collect such information is not encouraged, since countersinking will in most cases be required except as outlined in the conditions below.
- b. All pipes: All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.
- c. Following excavation of the stream bottom and the placement of a pipe/culvert, clean fill material (comparable to the original stream bottom material, including soil, fines and clay), shall be used to bring the stream bottom elevation outside of

the pipe openings both upstream and downstream back to pre-construction elevations, rather than filling the excavated stream bottom with riprap. Riprap may be placed on top of the restored stream bottom to the length required to meet Virginia stormwater requirements, but to a minimum depth. Clean fill and/or riprap may be placed in the pipe up to the elevation of the pre-construction stream bottom. The purpose of this requirement is to insure re-establishment of a surface water channel to allow for the movement of aquatic organisms.

- d. Exemption for extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).
- e. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).
- f. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- g. Pipes on bedrock or above existing utility lines: Different procedures will be followed for pipes or culverts to be placed on bedrock or above existing buried utility lines where it is not practicable to relocate the lines, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:
  - i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.
  - ii. A pipe/culvert is being placed in a new location: If the prospective permittee determines that bedrock or an existing buried utility line that is not practicable to relocate prevents countersinking, he/she should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then he/she must submit a pre-construction notification (PCN) to the Norfolk District in accordance with General Condition 32 of the NWP's. In addition to the information required by General

Condition 32, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The PCN must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (VDGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from VDGIF, the prospective permittee should provide the VDGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from VDGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

- h. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5%, a larger pipe than required be installed to allow for the passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the prospective permittee not want to countersink the pipe/culvert for other reasons, he/she must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition 32 of the Nationwide Permits. In addition to the information required by General Condition 32, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The prospective permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water

necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals. The prospective permittee may find it helpful to contact his/her regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN.

- i. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, a utility line, or other documentable obstacle, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for a nationwide permit.
- j. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (g) and/or (h) above.

## 9. Conditions for the Repair of Pipes

This condition applies to: NWP's 3, 7, 12, 14, 17, 18, 21, 23, 25, 27, 29, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, and 52.

**NOTE: COUNTERSINKING IS NOT REQUIRED IN TIDAL WATERS.** However, replacement pipes/culverts in tidal waters must be installed with invert elevations no

higher than the existing pipe/culvert invert elevation, and a new pipe/culvert must be installed with the invert no higher than the stream bottom elevation.

If any discharge of fill material will occur in conjunction with pipe maintenance, such as concrete being pumped over rebar into an existing deteriorated pipe for stabilization, then:

- a. If the existing pipe or line of pipes are NOT currently countersunk:
  - i. As long as the inlet and outlet invert elevations of at least one pipe located in the low flow channel are not being altered, and provided that no concrete apron is being constructed, then the work may proceed under the NWP for the other pipes, provided it complies with all other NWP General Conditions, including Condition 9 for Management of Water Flows. In such cases, notification to the Norfolk District Commander is not required, unless specified in the NWP Conditions for other reasons, and the permittee may proceed with the work.
  - ii. Otherwise, the prospective permittee must submit a pre-construction notification (PCN) to the Norfolk District Commander prior to commencing the activity. For all such projects, the following information should be provided:
    - 1) Photographs of the existing inlet and outlet;
    - 2) A measurement of the degree to which the work will raise the invert elevations of both the inlet and outlet of the existing pipe;
    - 3) The reasons why other methods of pipe maintenance are not practicable (such as metal sleeves or a countersunk pipe replacement);
    - 4) Depending on the specific case, the Norfolk District may discuss potential fish usage of the waterway with the Virginia Department of Game and Inland Fisheries.

The Norfolk District will assess all such pipe repair proposals in accordance with guidelines that can be found under “Pipe Repair Guidelines” at:

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

- iii. If the Norfolk District determines that the work qualifies for the NWP, additional conditions will be placed on the verification. Those conditions can be found at the web link above (in item ii).
- iv. If the Norfolk District determines that the work does NOT qualify for the NWP, the applicant will be directed to apply for either Regional Permit 01 (applicable only for Virginia Department of Transportation projects) or an Individual permit. However, it is anticipated that the applicant will still be required to perform the work such that the waterway is not blocked or restricted to a greater degree than its current conditions.

- b. If the existing pipe or at least one pipe in the line of pipes IS countersunk and at least one pipe located in the low flow channel will continue to be countersunk, and no concrete aprons are proposed:

No PCN to the Norfolk District is required, unless specified in the NWP Conditions for other reasons, and the permittee may proceed with the work.

- c. If the existing pipe or at least one pipe in the line of pipes IS countersunk and no pipe will continue to be countersunk in the low flow channel:

This work cannot be performed under the NWP. The prospective permittee must apply for either a Regional Permit 01 (applicable only for VDOT projects) or an Individual permit. However, it is anticipated that the prospective permittee will still be required to perform the work such that the waterway is not blocked or restricted more so than its current conditions.

- d. Emergency situations: In the case of an emergency situation, a prospective permittee is encouraged to follow the above guidelines at the time of repair. However, if conditions or timeframes do not allow for compliance with the procedure outlined herein, then the pipe can be repaired as it was before the washout, but the prospective permittee will have to come back and replace or reconstruct the pipe/culvert in accordance with these guidelines. In other words, the repair of the pipe is viewed as a temporary fix, and an appropriate repair should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are repaired without compliance with these guidelines at the time that the repair occurs, even if it is an otherwise non-reporting activity, and that notification must provide the prospective permittee's planned schedule for following these procedures and constructing an appropriate repair (it is acceptable to submit such notification by email).

## **10. Condition for Impacts Requiring a Mitigation Plan**

A mitigation plan is required when the permanent loss of wetlands exceeds 1/10 acre and/or 300 linear feet of waters of the U.S., unless otherwise stated in the Regional Conditions (see Regional Condition 12)

## **11. Condition for Temporary Impacts**

All temporarily disturbed waters and wetlands must be restored to their pre-construction contours within 12 months of commencing the temporary impact's construction. Impacts that will not be restored within 12 months (calculated from the start of the temporary impacts construction) will be considered permanent, unless otherwise approved by the Corps, and mitigation may be required. Once restored to their natural contours, soil in these areas must be mechanically loosened to a

depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.

## **12. Condition for Transportation Projects Funded in Part or in Total by State or Federal Funds**

When a PCN is required, compensatory mitigation is required for all wetland impacts (including impacts less than 1/10 acre) associated with transportation projects funded in part or in total by state or federal funds.

## **13. Condition for Projects Requiring Coordination Under Section 408**

Under 33 USC 408, the Secretary of the Army must determine whether to grant permission to alter a U.S. Army Corps of Engineers civil works project. The District Engineer may grant this authorization if the work does not impair usefulness of the project and does not harm the public interest. In order to comply with General Condition 31 of the NWP, perspective permittees need to submit a pre-construction notification (PCN) prior to working under an NWP within the waterways, that contain either a Federal Navigation Channel, Flood Risk Management project (FRM), or an Environmental Restoration project.

The following navigation channels require individual consultation with the Norfolk District Corps of Engineers Operations Branch; therefore work proposed within these waterways requires a PCN:

- 1) Lower North Landing River from Blackwater Creek to the North Carolina State Line (Atlantic Intracoastal Waterway).
- 2) Hampton Roads (Channel to Newport News, Norfolk Harbor and anchorages).
- 3) Chincoteague Channel and Inlet.
- 4) The Elizabeth River, the Eastern Branch of the Elizabeth River to the Norfolk and Western Railroad Bridge, the Southern Branch of the Elizabeth River to a point 0.8 miles upstream of the I-64 Bridge, and the Western Branch of the Elizabeth River to a point 0.34 miles upstream of the West Norfolk Bridge.
- 5) The James River from Richmond to Hopewell and including Richmond Harbor and the Richmond Deepwater Terminal.
- 6) Little River (Creek) except the Northwest Branch and Pretty Lake.
- 7) Norfolk Harbor Channel, all reaches.
- 8) The York River from the Poropotank River to the Virginia Highway 33 Bridge at West Point.

For other waterways that contain a Federal Navigation Channel with setbacks, notification is only required if the 85-foot setback cannot be met. Written authorization will be given, if appropriate, after coordination with the Norfolk District Corps of Engineers Operations Branch has been completed.

Maps showing the locations of these projects can be viewed 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)

## **II. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPS:**

### **NWP 1 – Aids to Navigation**

The U.S. Coast Guard (USCG) has been designated as the Lead Federal Agency for this action when the structures are approved by and installed in accordance with the USCG.

### **5 - Scientific Measurement Devices**

#### **Condition for Construction or Installation of Subaqueous Turbines:**

A pre-construction notification (PCN) is required if a prospective permittee proposes the construction or installation of subaqueous turbines because this work may have more than minimal impacts and the work will need to be coordinated with appropriate federal, state, and/or local agencies.

### **NWP 7 - Outfall Structures and Associated Intake Structures**

#### **Conditions for Intakes in Anadromous Fish Waters:**

When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish:

1. Screening over the mouth of the intake with mesh size that does not exceed 1mm;
2. Intake velocities that do not exceed 0.25 feet per second;
3. Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.

### **NWP 10 - Mooring Buoys**

#### **Condition for Sufficient Mooring Depths:**

Water depths in the mooring areas should be sufficient that vessels moored float at all stages of the tide. Boats should not hit bottom during low water conditions. The swing radius of the vessel plus the mooring chain should not result in the vessel becoming an obstruction to navigation. Use of this NWP is prohibited in and around SAV beds.

Information about SAVs can be found at the Virginia Institute of Marine Science's website

<http://web.vims.edu/bio/sav/>.

## **NWP 11 - Temporary Recreational Structures**

### **Condition for Sufficient Mooring Depths:**

Water depths in the mooring areas should be sufficient that structures moored float at all stages of the tide or stoppers must be utilized to prevent the structures from resting on the bottom, so as to not damage the underlying benthic communities. Structures should not hit bottom during low water conditions. Use of this NWP is prohibited in and around SAV beds. Information about SAVs can be found at the Virginia Institute of Marine Science's website <http://web.vims.edu/bio/sav/>.

## **NWP 12 - Utility Line Activities**

### **Conditions Specific to NWP 12:**

1. Construction of access roads may not result in more than 1/3 acre of impacts to waters of the United States.
2. A PCN is required for discharges associated with the construction of utility line substations that result in the permanent loss of greater than 5000 square feet of waters of the United States.
3. For utility activities requiring a PCN the prospective permittee shall provide the following information:
  - a. A map of the entire utility corridor including a delineation of all wetlands and waters of the United States within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, POW, etc.).
  - b. An alternatives analysis, which specifically addresses the following:
    - i. Selection of an alignment, which avoids and minimizes wetland impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the use of directional drilling in karst areas may not be recommended.
    - ii. Selection of an alignment, which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. We recommend consulting the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision>.
    - iii. Minimizing clearing of wetlands. Grubbing shall be limited to the permanent easement for underground utility lines. Outside of the permanent easement, wetland vegetation shall be removed at or above the ground surface unless

written justification is provided and the impacts are reviewed and approved by the Corps.

- iv. For overhead utility lines, allowance of natural succession to restore and maintain the corridor in scrub-shrub wetlands except for a minimum corridor needed for access, to the maximum extent practicable.
  - v. For buried utility lines, allowance of natural succession to restore the area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent practicable.
  - vi. Compensatory mitigation may be required for permanent conversion of wetlands within the utility line corridor.
4. For all submerged utility lines across navigable waters of the United States, a location map and cross-sectional view showing the utility line crossing from bank to bank is required. In addition, the location and depth of any Federal Navigation Channels shall be shown in relation to the proposed utility line. In general, all utility lines shall be buried at least six (6) feet below the authorized bottom depth of Federal Navigation Channel and at least three (3) feet below the bottom depth in all subaqueous areas. When circumstances prevent the placement of at least three feet of cover over the line (outside of the Federal Navigation Channel), then written justification and an alternative method must be provided with the notification and the deviation must be reviewed and approved by the Corps. Section 408 permission may be required. See #10 under Regional Conditions that are applicable to multiple NWP's.
  5. Whenever possible, excavated material shall be placed on an approved upland site. However, when this is not feasible, temporary stockpiling is hereby authorized provided that:
    - a. All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into the waterway.
    - b. All excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the pipeline has been laid through the wetland areas. Permission must be granted by the District Commander or his authorized representatives if the material is to be stockpiled longer than 30 days.
  6. When open-cut trenching in designated anadromous fish use areas or hydrostatic testing of a pipeline involving water withdrawals from tidal waters are proposed, the Corps will coordinate with the NOAA Fisheries Service and/or the Virginia Department of Game and Inland Fisheries. Written verification from this office must be received before performing the proposed work. In most cases, the following time-of-year restrictions (TOYR) will apply:

- James River, below Rt. 17 bridge: No TOYR.
- James River, at Jamestown Island (Gray's Creek) downstream to Rt. 17 bridge: TOYR from February 15 through June 15 of any given year.
- James River, at Jamestown Island upstream to Boshers's Dam: TOYR from February 15 through June 30 of any given year.
- James River, above Boshers's (including Rivanna River): TOYR from March 15 through June 30 of any given year.
- Rappahannock River, below Route 360 bridge: TOYR from February 15 through June 15 of any given year.
- York River, below Route 33 bridge: TOYR from February 15 through June 15 of any given year.
- Nansemond River: TOYR from February 15 through June 15 of any given year.
- Elizabeth River: Dredging upstream of the Mid-Town Tunnel on the mainstem and the West Norfolk Bridge (Route 164, Western Freeway) on the Western Branch of the Elizabeth River, then TOYR are not required.
- Unless otherwise noted: TOYR from February 15 through June 30 of any given year.

7. Aerial Transmission Lines Crossing Navigable Waters:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

<b>Nominal System Voltage (kV)</b>	<b>Minimum additional clearance (ft.) above clearance required for bridges</b>
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 - 765	45

- b. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless otherwise specifically authorized by the District Engineer.
  - c. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required.
8. For utility lines landing in Virginia, from the Outer Continental Coast (OCS), the applicant shall submit documentation from the following federal contacts that verifies consultation and a determination that there is no objection, or no objection with specific conditions to the proposed cable corridor, from the beach mean high tide line, out to the limit of the OCS.

Director, Naval Seafloor Cable Protection Office, Naval Facilities Engineering Command, 1322 Patterson Ave SE, Suite 1000, Washington DC 20374; and

Bureau of Ocean Energy Management (BOEM), Atlantic OCS Region, 1201 Elmwood Park Blvd., New Orleans, LA 70123-2394.

9. For utility line projects completed by horizontal directional drilling or other boring methods, a plan to address the prevention, containment, and cleanup of sediment or other materials caused by inadvertent returns of drilling fluids to waters of the U.S. through sub-soil fissures or fractures needs to be included with the PCN (if a PCN is required). If an inadvertent return of drilling fluids to waters of the U.S. occurs, and the remediation requires work within waters of the U.S., then the applicant must notify the Corps immediately and submit a remediation plan as soon as possible.
10. When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish:
- a. Screening over the mouth of the intake with mesh size that does not exceed 1mm;
  - b. Intake velocities that do not exceed 0.25 feet per second;
  - c. Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.

## **NWP 14-Linear Transportation Projects**

### **Restricted use of NWP 14 Linear Transportation Projects in Nontidal Waters**

The nontidal portion of NWP 14 overlaps with the current State Program General Permit (SPGP-01); therefore, NWP 14 may not be used for projects impacting nontidal waters of

the United States, including wetlands within the Norfolk District. NWP 14 may still be used for projects impacting tidal waters of the United States.

### **NWP 23 - Approved Categorical Exclusions Conditions Specific to NWP 23:**

1. The use of this NWP applies to an entire project addressed in the Categorical Exclusion prepared by another Federal agency. This NWP cannot be used separately at individual crossings/impact areas of a single project. However, multiple crossings/impact areas of a single project can be authorized by this NWP provided the combined impacts of all crossings/impact areas do not exceed the thresholds described below. This NWP cannot be used in combination with other NWPs for a single project.
2. Discharges from an entire project must not cause a combined permanent loss of greater than ½ acre of wetlands or 1,000 linear feet of stream.
3. The prospective permittee must notify the District Commander, via a pre-construction notification (PCN) if there is a discharge in special aquatic sites, including wetlands, and/or resulting in combined impacts to more than 300 linear feet of streambed resulting from the entire project (send notification to the Norfolk District Corps of Engineers, Regulatory Branch, 803 Front St., Norfolk, VA 23510-1096) or email to [CENAO.REG\\_ROD@usace.army.mil](mailto:CENAO.REG_ROD@usace.army.mil) Written verification from this office must be received before performing the proposed work. The PCN must be in writing and include the following information (the Joint Permit Application may also be used; the Virginia Department of Transportation may use their application form):
  - Name, address, email, and telephone number of the prospective permittee.
  - Name, address, email, and telephone number of the property owner.
  - Location of the proposed project.
  - Vicinity map and project drawings on 8.5-inch by 11-inch paper (plan view, profile, & cross section), or electronic PDF.
  - Brief description of the proposed project and the project purpose.
  - A delineation of affected special aquatic sites, including wetlands.
  - Statement describing how losses of the waters of the United States will be avoided and minimized to the maximum extent practicable.
  - Compensatory mitigation proposal to offset permanent losses of waters of the United States.

When all of the required information is received, the Corps will notify the prospective permittee within 45 days of receipt of all information either that the project may proceed under the nationwide permit or that an individual permit is required. If, after reviewing the PCN, the District Commander determines that the proposed activity would have more than a minimal individual or cumulative adverse impact on the aquatic environment or otherwise may be contrary to the public interest, then he/she will either condition the nationwide permit authorization to reduce or eliminate the adverse

impacts, or notify the prospective permittee that the activity is not authorized by the nationwide permit and will provide the prospective permittee with instructions on how to seek authorization under an individual permit. If the prospective permittee is not notified otherwise within the 45-day period, he/she may presume the activity is authorized under this NWP, unless otherwise precluded by requirements of the Endangered Species Act or National Historic Preservation Act.

4. To ensure that permanent losses of waters of the United States do not result in more than minimal adverse effects to the aquatic environment, compensation will be required for all wetland impacts and for any single impact to a stream of greater than 300 linear feet. For projects where the combined impacts to streams due to the entire project exceed 300 linear feet, but no single impact exceeds 300 linear feet, the Corps will determine on a case-by-case basis whether compensation for stream impacts is required.

### **NWP 27-Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

Projects designed with the primary function of in-stream stormwater retention, stormwater treatment, and/or sediment retention, will generally not qualify for authorization under NWP 27. Projects proposed for Total Maximum Daily Load (TMDL) credit may qualify for NWP 27, provided they are designed using natural channel design.

### **NWP 29-Residential Developments**

#### **Restricted use of NWP 29 for Multiple Unit Residential Developments and Residential Subdivisions**

NWP 29 overlaps with the current State Program General Permit (SPGP-01); therefore, NWP 29 may not be used to authorize multiple unit residential developments and residential subdivisions. NWP 29 may still be used for a single residence and attendant features.

### **NWP 39-Commercial and Institutional Developments**

NWP 39 overlaps with the current State Program General Permit (SPGP-01); therefore, NWP 39 may not be used if the SPGP-01 is applicable. However, if the SPGP-01 is not applicable, then NWP 39 may be considered.

### **NWP 48-Commercial Shellfish Aquaculture Activities**

1. 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 NWP. Information on the location of submerged aquatic vegetation can be found at: <http://web.vims.edu/bio/sav/maps> .

2. An aquaculture activity will not meet the terms for this NWP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or other waterfowl. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.
3. An aquaculture activity will not qualify for this NWP 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. Feeding and harvesting plans should be included in the application to evaluate impacts.
4. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.
5. As-built drawings must be submitted with the certificate of compliance for all aquaculture projects.
6. The District Engineer 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.
7. If the permittee decides to abandon the activity authorized under this NWP (unless such abandonment is merely the transfer of property to a third party), the permittee must notify the Corps and may be required to remove the structures and restore the area to the satisfaction of the Corps.

### **NWP 51-Land-Based Renewable Energy Generation Facilities**

If aerial transmission lines crossing navigable waters are proposed, please see NWP 12 Condition number 7.

### **NWP 52-Water-Based Renewable Energy Generation Pilot Projects**

If aerial transmission lines crossing navigable waters are proposed, please see NWP 12 Condition number 7.

### **NWP 53-Removal of Low-Head Dams**

The following information related to physical removal of the dam structure should be included in the PCN:

1. Timing and rate of the drawdown of the impoundment to avoid and minimize downstream flooding and excessive sedimentation to downstream areas.
2. Method of re-establishment and stabilization of the stream channel, and avoidance of other environmental impacts, including the potential for drainage of adjacent wetlands.
3. Construction equipment to be used in the stream channel and appropriate measures that will be taken, such as the use of construction mats or barges, to minimize impacts.
4. Information sufficient to ensure that accumulated sediments are free from contaminants and are disposed of properly. If testing is required, the testing criteria shall be developed in cooperation with Virginia Department of Environmental Quality.
5. Information concerning competing uses of the waterbody above the dam if the impoundment is not fully owned by the applicant.

#### **NWP 54-Living Shorelines**

1. This activity authorizes the placement of sandy fill material, including the placement of sandy fill material landward of the sills provided the fill is for erosion control and/or wetland enhancement (and not solely recreational activities). The maximum fill area within waters of the United States that can be authorized under this NWP is one (1) acre.
2. The grain size of the source material used for fill must be quality beach sand that is the same size or larger than that of the native beach material and suitable for the proposed project. Excess silt/clay fraction and grain sizes slightly smaller than the former native sands will perform poorly. In most cases, sand material with no more than 10% passing a #100 sieve will be appropriate. All material will be obtained from either an upland source, a borrow pit, or dredge material approved by the Corps.
3. Coir logs, coir mats, and native oyster shell should be of sufficient weight, adequately anchored, or placed in a manner to prevent them from being dislodged and carried away by wave action.
4. For the purpose of this NWP, a 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.

5. Sills may be constructed of riprap, gabion baskets, or clean broken concrete free of metal and re-bar. Alternative materials may be considered for use during the permit review process. The materials should be of sufficient weight or adequately anchored to prevent them from being dislodged and carried away by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills.
6. Sills will be designed with at least one 5 foot window/gap per property and per 100 linear feet of sill unless waived by the District Engineer.
7. 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 unless the district engineer waives this criterion by making a written determination concluding that the project will result in minimal adverse effects. All impacts to sub-tidal, inter-tidal, and/or existing wetland vegetation may require a wetland vegetation planting plan and must result in no net loss of vegetated wetlands.
8. 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 at a minimum: The project location, the Corps project number, representative photos of the site, and a brief statement on the success of the project.
9. As the design of a living shoreline project is site specific, it is suggested that you refer to the Virginia Institute of Marine Sciences Living Shoreline Design Guidelines for Shore Protection in Virginia's Estuarine Environments and other reference documents which can be found at:  
<http://ccrm.vims.edu/livingshorelines/agencies/index.html>
10. The District Engineer 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.
11. Projects which include placement of sandy fill material may result in 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 U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.

12. The sill height should be a maximum of +1 foot above mean high water and should be placed at a distance no greater than 30 feet from mean low water to the landward side of the sill unless waived by the District Engineer.
  
13. Projects which include placement of sandy fill material may result in 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 ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.