



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

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

**CENAO-REG  
18-RP-17**

## **REGIONAL PERMIT**

**Effective Date: August XX, 2018**

**Expiration Date: August XX, 2023**

### **I. AUTHORIZED ACTIVITIES:**

18-RP-17, Regional Permit 17 (RP), authorizes the installation and/or construction of open-pile piers, mooring structures/devices, certain covered boathouses/boatslips, boatlifts, osprey poles/platforms, accessory pier structures, and devices associated with shellfish gardening, **for private use**, subject to strict compliance with all conditions and limitations further set out herein. For the purpose of this RP, private use is defined as non-commercial, residential use only and does not include community or government structures (e.g. structures to be used by the residents of a condominium complex, members of a specific homeowners association, commercial piers, military piers, etc.).

The intent of this RP is to provide a streamlined permitting process for those activities listed in paragraph 1 that do not individually or cumulatively adversely affect general navigation and/or the aquatic environment.

### **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) to install and/or construct open-pile piers, mooring structures/devices, certain covered boathouses/boatslips, boatlifts, osprey poles/platforms, accessory pier structures, and devices associated with shellfish gardening, for private use, in certain navigable waters of the United States within the Commonwealth of Virginia.

Activities authorized under this RP do not require further authorization unless the District Engineer 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 **OR** if notification to the Corps is required per the "Section V: NOTIFICATION REQUIREMENTS" listed below in which case you do not meet the terms and conditions of a non-reporting

Regional Permit 17 and you must receive written approval from the Corps prior to commencing the work.

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 written Department of the Army authorization.

### **III. STATE AND LOCAL APPROVALS:**

1. A permit from the Virginia Marine Resources Commission (VMRC) to encroach upon State bottom and/or a local wetlands board permit may also be required for work authorized by this RP.
2. *The Corps is coordinating separately with the Virginia 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. Those activities on the Potomac River extending beyond the mean low water line may require authorization by the Virginia Marine Resources Commission (VMRC) and/or the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.
4. *The Corps is coordinating separately with the Virginia Department of Environmental Quality (DEQ) Coastal Zone Management Program (VCP) regarding its review of the Federal Consistency Determination pursuant to the Coastal Zone Management Act (CZMA) of 1972.*
5. Permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA) (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*).
6. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or local laws or regulations.

### **IV. PROCEDURES:**

Prospective permittees/applicants must notify the Corps' District Engineer, via the submission of 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>.

To qualify for a non-reporting Regional Permit 17:

1. Please read through this enclosure and fill out the Regional Permit 17 Certificate of Compliance Checklist. If you have answered “no” to any of the questions on the Regional Permit 17 Certificate of Compliance Checklist, a non-reporting Regional Permit 17 does not apply and you are required to obtain written approval from the Corps prior to performing the work.
2. If you have answered “yes” (or “N/A”, where applicable) to all of the questions on the Regional Permit 17 Certificate of Compliance Checklist, you are in compliance with a non-reporting Regional Permit 17. Please sign the checklist, attach, and submit it with your completed Joint Permit Application. The signed Regional Permit 17 Certificate of Compliance Checklist serves as your letter of authorization from the Corps. You will not receive any other written authorization form the Corps. However, you may not proceed with construction until you have obtained all other necessary state and local permits.

#### **V. PERMIT EXCLUSIONS:**

The provisions of this RP **DO NOT** authorize:

1. Structures proposed channelward of the limit lines described in Special Condition #1.
2. Structures proposed that specify or require a mooring plan where moored vessels will extend channelward of the limit lines described in Special Condition #1.
3. Structures that include more than two (2) boatlifts, more than two (2) boatslips, and/or an open-sided boathouse where the cumulative roof square footage exceeds 700 square feet.
4. Construction where dredging and/or filling in the waterway is proposed as part of the project.
5. Piers intended for commercial or government use including marinas, marine railways, fueling facilities, and toilet facilities.
6. Construction in Broad Creek in Middlesex County, Fisherman's Cove in Norfolk, and the Salt Ponds in Hampton which were the subject of navigational studies which concluded that these waterways were not suitable for this RP.

## VI. NOTIFICATION REQUIREMENTS:

**A non-reporting Regional Permit 17 does not apply and you are required to obtain written approval from the Corps prior to performing the work if any of the following criteria are met:**

1. Notification is 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/>. The applicant may use IPaC to determine if any federally listed species or designated critical habitat may be affected by their proposed project. Further information about the Virginia Field Office "Project Review Process" may be found at: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>. All work will occur behind cofferdams, turbidity curtains, or other methods to control turbidity will be utilized when operationally feasible and federally listed listed species may be present.
2. Notification is required if the project will occur in areas that contain submerged aquatic vegetation (SAV). Information about SAV can be found at the Virginia Institute of Marine Science's website at <http://www.vims.edu/bio/sav/>. Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions (TOYR), may be required to reduce impacts to SAV habitat.
3. Notification is required if the project is located in an area documented as an anadromous fish use area (confirmed or potential) and the applicant cannot adhere to the anadromous fish use area time-of-year restriction (TOYR) prohibiting in-water work from February 15 to June 30 of any given year. Information about anadromous fish use areas can be found at <http://vafwis.org/fwis/>.
4. Notification is required for activities occurring in two categories of waters; Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters), is 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 (TOYRs) for any in-stream work within streams identified as wild trout waters in its Cold Water Stream Survey database. The recommended TOYRs for trout species are:

Brook Trout:	October 1 through March 31
Brown Trout:	October 1 through March 31
Rainbow Trout:	March 15 through May 15

This notification requirement 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, Wanesboro, Wise, and Wythe.

5. Notification is required if the project will occur in the following waterways, which have Federal Navigation Channels:
  - a. Lower North Landing River from Blackwater Creek to the North Carolina State Line (Atlantic Intracoastal Waterway)
  - b. Hampton Roads (Channel to Newport News, Norfolk Harbor and anchorages).
  - c. Chincoteague Channel and Inlet
  - d. 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
  - e. The James River from Richmond to Hopewell and including Richmond Harbor and the Richmond Deepwater Terminal
  - f. Little River (Creek) except the Northwest Branch and Pretty Lake.
  - g. Norfolk Harbor Channel, all reaches
  - h. The York River from the Poropotank River to the Virginia Highway 33 Bridge at West Point

For information on the location of Norfolk District projects, prospective permittees are directed to the maps showing the locations of Norfolk District projects located 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).

6. Notification is required if the project will occur in other waterways that contain a Federal Navigation Channel with setbacks if the required 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. For information on the location of Norfolk District projects, prospective permittees are directed to the maps showing the locations of Norfolk District projects located 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).
7. Notification is required if the project will occur within a Corps of Engineer Flood Control/Flood Risk Management Project. 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).
8. Notification is required for the construction of a structure along the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line, which has been 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.
9. Notification is required if construction of the pier structure will involve the installation of any steel pilings, pilings greater than 12” in diameter, or if the total number of pilings landward of mean high water will exceed 25.

## **VII. SPECIAL CONDITIONS:**

1. Piers may not extend more than one-fourth of the distance across the waterway measured from either the mean high water mark to the mean high water mark (including all channelward wetlands) or the ordinary high water mark to the ordinary high water mark (including all channelward wetlands). The measurement should be based on the narrowest distance across the waterway regardless of the orientation of the proposed pier. Authorizing this encroachment assumes that the deep water is located in the center of the waterway. When this is not the case, the RP will not apply and the Corps’ 18-RP-18 may be used in lieu of this permit. Those proposed piers that will extend

more than 300 feet from mean high water or ordinary high water will not qualify for this RP and the Corps' 18-RP-18 may be used in lieu of this permit

2. A pier may be constructed in and over wetland areas to allow access. Such piers shall be attached to the upland at a point landward of mean high water. Mooring piles will be permitted in wetland areas for the purpose of boat mooring only if sufficient water depths exist to float the vessel during periods of low water without alteration of the wetland. All piers that cross wetland vegetation shall be an open-pile design, up to five (5) feet wide and have minimum elevation of at least four (4) feet between the decking and the vegetated wetlands substrate. The required 4-foot elevation must be achieved at or above the mean high water mark or ordinary high water mark.
3. Subject to any applicable local ordinances, the proposed pier may include no more than two (2) boatlifts, no more than two (2) boatslips, and/or an open-sided shelter roof with a maximum roof square footage of 700 square feet. In cases where such roofs exceed 700 square feet, the cumulative number of boatlifts exceeds two, or the number of cumulative boatslips exceeds two, the Corps' 18-RP-18 may be used in lieu of this permit. This permit does not authorize the construction of closed-sided boathouses or other habitable structures.
4. Floatation units will be made of materials that will not become waterlogged or sink if punctured. Floating sections must be braced so they will not rest on the bottom during periods of low water.
5. The remainder of the waterways, not listed in #5 of the "Notification Requirement" section above, containing Corps Federal Project Channels in Virginia (managed by the Corps except for those in the Potomac River Watershed which are managed by the Baltimore District) will require an 85-foot setback from the permitted structure to the toe of the slope of the federally maintained channel unless otherwise noted. A copy of the appropriate Federal Project Channel map can be obtained by writing to the Regulatory Branch at the address on the first page of this RP. Also included are channels maintained by other federal agencies in Skiffes Creek adjacent to Fort Eustis, the James River adjacent to the Maritime Administration, and Back Creek adjacent to Langley Air Force Base. If the 85-foot setback cannot be met, notification to the Corps will be required and written authorization will be given, if appropriate, after coordination with the Norfolk District Corps of Engineers Operations Branch has been completed.
6. A proponent (permittee or applicant) of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Branch to cross government property before any construction can take place:
  - a. James River

- b. Lynnhaven Inlet and Long Creek
- c. All Local Cooperation Agreement areas
- d. Dismal Swamp Canal
- e. Albemarle and Chesapeake Canal
- f. Appomattox River
- g. Atlantic Intracoastal Waterway
- h. Craney Island
- i. Gathright Dam

For further information regarding the government easements, please contact the Norfolk District's Real Estate Office at the address on the first page of this RP or at (757) 201-7735.

- 7. By accepting this RP, the permittee hereby recognizes the possibility that the structures permitted herein may be subject to damage by waves caused from passing vessels. This RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structures permitted herein and the safety of boats moored thereto from damage from waves. The permittee hereby acknowledges, agrees and admits that the United States is not liable in any way for such damage and that it shall not seek to involve the U.S. in any actions or claims regarding such damage.
- 8. All structures will be of suitable materials and practical design so as to reasonably ensure a safe and sound structure.
- 9. This permit does not authorize any dredging and filling of waters of the United States, including wetlands. If dredging is proposed, it must be authorized under a separate Department of the Army permit. However, a permit for a certain structure or activity does not imply that future dredging proposals will be approved.
- 10. The proposed structure(s) (including any moored vessels) should be located on the property in accordance with the local zoning requirements.
- 11. Devices used for shellfish gardening shall be attached directly to a pier and limited to a total of 160 square feet. Property owners will ensure they are in compliance with the Virginia Marine Resource Commission's Regional permit for shell fish gardening and the applicable special and general conditions of this permit.
- 12. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters.



## **VIII. GENERAL CONDITONS:**

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

### **1. Navigation.**

- a) No activity may cause more than a minimal adverse effect on navigation.
- b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The U.S. Coast Guard may be contacted at the following address: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704 or by telephone: (757) 398-6230.
- c) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

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

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

**14. Invasive Species.** Plant species listed by the most current version of Virginia Department of Conservation and Recreation's (DCR) *Invasive Alien Plan List* shall not be used for re-vegetation for activities authorized by these regional permits. The list of invasive plants in Virginia may be found at: <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. The DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures: <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.

**15. Removal of Temporary Fills and Impacts.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate. All temporarily disturbed waters and wetlands must be restored to their pre-existing contours within twelve (12) months of commencing the temporary impacts' construction. Once restored to pre-construction elevation and contours, the soils must be mechanically loosened to a depth of twelve (12) inches and seeded or sprigged with appropriate native vegetation. See General Condition 14 for more information on vegetation recommendations.

Fill or dredged material into waters of the U.S. that are not removed within the 12 month period will be considered a permanent impact, unless otherwise determined by the Corps. This additional impact to waters of the U.S. may result in the Corps initiating a permit non-compliance action which may include, but not limited to, a restoration order, after-the-fact permitting, and/or compensatory mitigation.

**16. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RP conditions, as well as any activity-specific conditions added by the district engineer to a RP authorization.

**17. Single and Complete Project.** The activity must be a single and complete project. The same RP cannot be used more than once for the same single and complete project. *For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area.*

**18. Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia. No RP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River

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

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

**20. Endangered species.**

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

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

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

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

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

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

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

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

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

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

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

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

**23. Anadromous Fish.** Authorizations associated with these regional shall not adversely affect documented spawning habitat or a migratory pathways for anadromous fish. Areas of anadromous fish use are indicated on the Virginia Department of Game and Inland Fisheries (VDGIF) information system at: <http://vafwis.org/fwis/>. If a project is located within an area documented as an anadromous fish use area (confirmed or potential), all in-stream work is prohibited from occurring between February 15 through June 30 of any given year or other time of year restriction (TOYR) specified by the VDGIF and/or the Virginia Marine Resources Commission (VMRC). Should the Norfolk District

determine that the work is minimal and no TOYR is needed, the District will initiate consultation with NOAA Fisheries Service for their concurrence.

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

#### **24. Designated Critical Resource Waters; National Estuarine Research**

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

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

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

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

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

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

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

- Brook Trout: October 1 through March 31
- Brown Trout: October 1 through March 31
- Rainbow Trout: March 15 through May 15

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

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

## **26. Historic properties.**

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



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

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

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

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

**30. Transfer of Regional Permit Verifications.** If the permittee sells the property associated with the regional permit verification, the permittee may transfer the verification to the new owner by submitting a letter to the appropriate Corps District Office to validate the transfer. A copy of the regional permit verification

must be attached to the letter, and the letter must contain the following statement and signature:

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**31. Compliance Certification.** A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1011, or to the Regulatory Field Office listed on the Certificate of Compliance, within 30 days of completion of the authorized activity.

**32. Activities Affecting Structures or Works Built by the United States.** If the RP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the activity that requires section 408 permission is not authorized by the RP until the appropriate Corps District office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written RP verification.

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

Locations of Norfolk District civil works projects can be found at:  
[http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17\\_Corps\\_Project\\_Maps.pdf](http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17_Corps_Project_Maps.pdf).

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

**33. Pre-Construction Notification.** Prior to commencing the activity, prospective permittees (“permittees”) must submit a Preconstruction Notification (PCN) to the District Engineer, unless otherwise specified in the RP, and must receive written

notification from the Corps acknowledging that the project is authorized pursuant to this RP.

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

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

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

Norfolk District Regulatory Branch website:

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

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

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

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

**34. Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

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

## DISTRICT ENGINEER'S DECISION

1. In reviewing the pre-construction notification for the proposed activity, the district engineer will determine whether the activity authorized by the RP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the district engineer should issue the RP verification for that activity if it meets the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.
2. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant that the activity, as proposed, does not qualify for authorization under the RP. The district engineer will instruct the applicant on the procedures to seek authorization under an individual permit or modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal.

## ADDITIONAL INFORMATION

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. **Limits of this authorization.**
  - a) Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
  - b) Regional permits do not grant any property rights or exclusive privileges.
  - c) Regional permits do not authorize any injury to the property or rights of others.
  - d) Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 28).
  - e) Regional permits do not authorize the impingement upon Federal Lands.
  - f) Regional permits do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. **Limits of Federal Liability.** In issuing this RP, the Federal government does not assume any liability for the following:
  - a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;

- c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP;
  - d) Design or construction deficiencies associated with the permitted work;
  - e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision.** The district engineer may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a) The permittee fails to comply with the terms and conditions of this permit.
  - b) The information provided by the permittee in support of your permit application proves to have been false, incomplete, or inaccurate.
  - c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
7. **Duration of Activity's Authorization.** Activities authorized under 18-RP-02; 18-RP-15; 18-RP-17; 18-RP-18; 18-RP-19; 18-RP-22 must be completed by *August XX, 2023*. If the RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration, unless discretionary authority has been exercised on a case-by-case

basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by *August XX, 2024*, you must reapply for separate permit authorization in order to meet current permit criteria.

8. **Expiration.** Unless further modified, suspended, or revoked, this RP will be in effect until *August XX, 2023*. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.