



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY DIVISION
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

MDSPGP-7
Activity e(11)

**Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated
with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized
Under the MDSPGP-7**

The authorized Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized Under the MDSPGP-7 activities must comply with the following applicable activity specific conditions, all general conditions of this permit, and any project-specific special conditions.

This activity authorizes discharges of dredged or fill material in waters of the United States and work in navigable waters of the United States associated with the restoration, enhancement, and establishment of non-tidal and tidal wetlands and riparian areas, including invasive, non-native or nuisance species control; the restoration and enhancement of non-tidal streams and other non-tidal open waters; and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services. The authorized activities must be designed and constructed to satisfy a State of Maryland or federal compensatory mitigation requirement for activities eligible for authorization under this Maryland State Programmatic General Permit-7. (Sections 10 and/or 404; all waters of the United States).

Activities authorized by this activity include:

- a. the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitat;
- b. the installation, removal and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed;
- c. the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure;
- d. the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders;
- e. the removal of stream barriers, such as undersized culverts, fords, and grade control structures, the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology;
- f. the installation of structures or fills necessary to restore or enhance wetland or stream hydrology;

- g. the construction of small nesting islands; the construction of open water areas;
- h. the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species;
- i. the re-establishment of SAV and tidal wetlands in areas where those plant communities previously existed; and
- j. the use of mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation, and other related activities. Only native plant species shall be planted at the site.

Category A Impact Limits and Requirements:

- (i) This activity authorizes compensatory mitigation activities required to offset unavoidable permanent impacts to waters and wetlands under a Category A MDSPGP-7 authorization.
- (ii) Compensatory mitigation activities to offset impacts authorized by a Category B MDSPGP-7 authorization must be reviewed by the Corps under the Category B review procedures or alternative Corps permit review procedures, as appropriate.
- (iii) The total temporary and permanent impacts to waters of the United States which includes wetlands, streams, and other open waters, associated with restoration, enhancement, and establishment activities are not to exceed 10,000 square feet including no more than 200 linear feet of streams, rivers, and other open waters.
- (iv) This activity authorizes the relocation of non-tidal wetlands, on the project site provided there are net increases in aquatic resource functions and services.
- (v) Except for the relocation of non-tidal wetlands on the project site, this activity does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (e.g., the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.
- (vi) Any tidal control structures (e.g., tide gates) should be designed to be self-regulating and regularly maintained to allow tidal flow and fish passage but can be set to close at a specified water level. For projects not proposing the use of a self-regulating tide control structure, the applicant shall demonstrate why it is not practicable to use a self-regulating tidal control structure, and shall also provide documentation that the waterway above the proposed structure does not currently support diadromous fish migrations.
- (vii) This Category A activity does not authorize:

a. Compensatory mitigation activities proposed in all tidal and nontidal coastal plain streams within the State of Maryland or nontidal Piedmont streams in Harford and Cecil Counties, Maryland.

b. Impacts to SAV (documented to exist in the last five years as specified in Section III).

c. Releases of sediment from reservoirs.

d. Stream relocations.

e. New ditching to eliminate mosquito breeding habitat.

f. Losses of streambed.

g. Water impoundments.

h. Discharge of dredged materials for beneficial reuse in tidal areas.

i. Activities listed as not authorized under (c) below.

Category B Impact Limits and Requirements:

(i) This activity authorizes compensatory mitigation activities required by the Corps and/or MDE to offset permanent impacts to waters and wetlands losses eligible for Category B MDSPGP-7 project authorizations or compensatory mitigation activities required under a MDSPGP-7 authorization that are not eligible for Category A impact limits and requirements above.

(ii) This activity authorizes the relocation of non-tidal waters, including all non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services.

(iii) Sediment releases from reservoirs that have a drainage area of greater than 640 acres, or the height of the pond measured from the upstream toe to the top of dam is 20 feet or have the storage capacity of more than 50 acre-feet more will require testing of sediment size, distribution and potential pollutants based on past upstream land uses and discharges. Testing maybe required on dams smaller than these thresholds in certain circumstances.

(iv) Except for the relocation of non-tidal waters on the project site, this activity does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type.

Requirements Applicable to Both Category A and Category B Activities:

(i) Application required to MDE for Corps authorization.

(ii) This activity does not authorize stream channelization or dam removal activities.

(iii) This activity does not authorize artificial reefs.

(iv) This activity does not authorize activities for development of a compensatory mitigation bank site or an in-lieu fee program site.

(v) This activity does not authorize the relocation of tidal waters or the conversion of tidal waters or tidal wetlands to another aquatic habitat type (i.e., uplands or non-tidal aquatic habitats or open waters).

(vi) The applicant shall include information in the application regarding the presence, absence, or proximity of horned pondweed (*Zannichellia palustris*) within the project site within mesohaline waters (i.e., salinity 5-18 parts per thousand) of the mid and upper Chesapeake Bay. Distribution information of horned pondweed shall require recent ground-truth survey of the area by the applicant (i.e., employing a survey crew with relevant experience) during the period May 1 through June 15, of any year. Horned pondweed is less prevalent or does not occur upstream of the geographical exclusion lines shown on the Low Salinity Waters in Maryland Chesapeake Bay Map Appendix B and in tidal waters of the Maryland Atlantic Coastal Bays. Therefore, documentation regarding the presence or proximity of horned pondweed is not required in these areas. The applicant may request the Corps conduct surveys for horned pondweed; however, this will require a Category B review and may result in significant delays in review timeframes.

(vii) To be authorized by this activity, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of one or more intact aquatic habitats or riparian areas of the same type that exist in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area. The Corps or MDE as applicable must approve of the selection of a reference site, or the conceptual model used to identify reference standards.

(viii) The full suite of aquatic habitat functions and services must be considered when determining whether the net gains in aquatic resource functions and services required by this activity will occur. There should not be a focus on a specific aquatic resource function, or the ecological service(s) produced from that aquatic resource function. Supporting information must be provided in the application to demonstrate net increases in aquatic resource functions and services. Prospective permittees should consider using a Corps-approved before-and-after functional or conditional assessment protocol. Corps approved stream and wetland functional assessments can be found here: <https://www.nab.usace.army.mil/Missions/Regulatory/Mitigation/>.

(ix) Permittee must document sufficiently that proposed release of sediments from reservoirs to restore downstream habitat will result in a net ecological gain. Testing of sediment size, distribution and potential adverse impacts and pollutants based on past

upstream land uses and discharges shall be conducted to the satisfaction of the Corps, as required.

(x) Shellfish seeding activities, such as the placement of shell material or any other habitat development or enhancement, are restricted to shellfish species that are native to that waterbody.

(xi) The introduction or spread of invasive or other non-native plant or animal species on the project site caused by the authorized work shall be avoided to the maximum extent practicable. For example, construction mats and equipment must be thoroughly cleaned and free of vegetation and soil before and after use. The introduction or spread of invasive plant or animal species on the project site caused by the authorized work must be controlled.

(xii) This activity does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

(xiii) Compensatory mitigation activities authorized by this activity will not be used to increase the impact thresholds allowed by the acreage limits of the MDSPGP-7. For example, if an activity has an acreage limit of 0.5 acre, it cannot be used to authorize any project resulting in impacts greater than 0.5 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the impacted waters.

(xiv) Compensatory mitigation projects provided to offset losses of aquatic resource functions and services must comply with the applicable provisions of 33 CFR Part 332.