DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
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BALTIMORE, MD 21201

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CENAB-OPR

Proposed Nationwide Permits Reissuance, Information to Support Coastal Zone Management Act (CZMA) Consistency Determination Specific to the Following Maryland's Enforceable Policies

On September 30, 2020, the U.S. Army Corps of Engineers, Baltimore District (Baltimore District) provided your office with the September 15, 2020 Federal Register notice for the proposal by the U.S. Army Corps of Engineers to reissue the Nationwide Permits (NWPs). The Federal Register notice was the Corps' determination of Coastal Zone Management Act (CZMA) consistency, pursuant to Section 307(c)(1) of the CZMA for NWP activities within or affecting the coastal zone of the State of Maryland.

NWPs are a type of general permit designed to authorize certain activities that have no more than minimal individual and cumulative adverse environmental effects and generally comply with related laws, including but not limited to, Section 10 of the Rivers and Harbors Act, Section 401, 401, and 404 of the Clean Water Act, Section 307(c) of the Coastal Zone Management Act, the Endangered Species Act, the National Historic Preservation Act, the Magnuson-Stevens Fishery and Conservation and Management Act, and the Fish and Wildlife Coordination Act.

Individual review of each activity authorized by a NWP will not generally be performed except when pre-construction notification (PCN) to the Corps is required or when an applicant requests verification that an activity complies with a NWP. Potential adverse impacts and compliance with related laws are controlled by the terms and conditions of each NWP; general, regional and case-specific conditions; and the review process that is undertaken prior to the issuance of the NWPs. The terms of the NWPs, including any acreage limits or any other quantitative limits in the text of the NWP, the protections provided by many of the NWP general conditions (GCs), plus any regional conditions (RCs) and activity-specific conditions will help to ensure that the activities authorized by the NWPs result in no more than minimal individual and cumulative adverse environmental effects. Additional safeguards include provisions that allow the Corps to assert discretionary authority and require an individual permit for a specific activity or modify NWPs for specific activities by adding special conditions on a case-by-case basis.

In some cases, activities authorized by a NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to, activities that result in discharges of dredged or fill material into waters of the United States and require a Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce

under the Coastal Zone Management Act. In such cases, a provision of the NWPs states than a NWP does not obviate the need to obtain other authorizations required by law (33 CFR 330.4(b)(2)). Furthermore, all NWP verification letters state that the use of the NWP is contingent upon obtaining a State 401 water quality certification (WQC) and that all required Federal, state, and/or local authorizations must be obtained before proceeding with the authorized work.

The Baltimore District's regulatory area of responsibility includes the entire state of Maryland except for applicable waters of the United States near and including Back Creek (of the Chesapeake and Delaware Canal (C & D canal)) in Maryland. The Back Creek (of the C & D canal) within the State of Maryland are within the area of responsibility of the Philadelphia District.

The Federal agency activity is the proposed reissuance of all 52 existing NWPs, general conditions, and definitions with some modifications. The Corps is also proposing to issue five new NWPs. The Baltimore District is also proposing RCs and suspensions in Maryland for the 2020 NWPs. Corps RCs are an important mechanism to protect important regional concerns and resources. CZMA consistency concurrence regional conditions may be added to the NWPs if the State issues a CZMA consistency concurrence with special conditions within the timeframe.

In Maryland, the Baltimore District is proposing to suspend NWPs 1, 2, 3 (except for in-kind repair or replacement from storm/flood/fire or other discrete events), 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 26, 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52 (except for activities in tidal navigable waters of the United States), C, D, and E since these activities are duplicated under the current Maryland State Programmatic General Permit (MDSPGP) and the MDSPGP provides for a more streamlined review process All NWPs are proposed to be applicable in the C & D canal within Philadelphia's area of responsibility. If the SPGP becomes void, enjoined, suspended, or revoked from effect for any reason, the Baltimore District will consider reissuance of some or all of the suspended NWPs for the purposes of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

All projects in waters of the U.S. near and including the Chesapeake and Delaware Canal (C & D canal) within the geographic boundaries of Maryland require a pre-construction notification (PCN) to the Philadelphia District for case-specific review in accordance with NWP GC 31 *Activities Affecting Structures or Works Built by the United States*.

This document provides supplemental information for the Baltimore District's Consistency Determination under CZMA section 307(c)(1) and 15 CFR Part 930, subpart C, for the revision and reissuance of the 2020 Nationwide Permits (NWPs). The information in this Consistency Determination is provided pursuant to 15 CFR §930.39.

Public and Agency Participation

In accordance with 33 CFR §325.3, the general public and other federal, state, and local agencies are invited to participate with comments in review of the US Army Corps of Engineers proposal to revise and reissue the NWPs. In the September 15, 2020, Federal Register notice, the Corps requested comments on the proposed reissuance of the NWPs. The Baltimore District's public notice #20-62 of this proposed action and the Baltimore District's proposed RCs was published on the Baltimore District's website from September 30, 2020 through November 16, 2020. The Philadelphia District's proposed RCs for the C & D canal was published on the Philadelphia District's website on September 24, 2020 (Public Notice # 2020-0006). The substantive comments received from the public and the federal and state agencies will be considered and used to make changes in the proposed suspensions and regional conditions, as necessary. The comment period for the Baltimore public notice expires on November 16, 2020 and the comment period for the Philadelphia district public notice expires on November 8, 2020. The proposed RCs for Maryland and the C & D canal are attached for your review (Enclosures).

The Baltimore District has determined that the proposed NWPs are, to the maximum extent practicable, consistent with state CZMA programs. The proposed NWPs will minimally affect land or water uses or natural resources of Maryland due to the restrictive requirements outlined in the proposed NWPs and Baltimore District regional conditions for the 2020 NWPs.

The Corps is submitting the following information below in response to Maryland Department of the Environment's October 8, 2020 request for additional information on specific Maryland Enforceable Policies and NWPs:

A. General Policies
A.1. Core Policies –

Core Policy 7: NWPs 12, 14, 17, 52: A dam or other structure that impedes the natural flow of a scenic or wild river may not be constructed, operated, or maintained, and channelization may not be undertaken, until the applicant considers alternatives less harmful to the scenic and wild resource. Construction of an impoundment upon a scenic or wild river is contrary to the public interest, if that project floods an area of unusual beauty, blocks the access to the public of a view previously enjoyed, or alters the stream's wild qualities. MDE/DNR (C7) Md. Code Ann., Nat. Res. § 8-406; COMAR 26.17.04.11.

Corp's Response: Applicability: In Maryland except for the C & D canal, NWPs 12, 14, and 52 (except for activities in tidal navigable waters of the United States) are proposed to be suspended. NWP 17 *Hydropower Projects* is available for use throughout Maryland. NWPs 12, 14, 17, and 52 are all available for use in the C & D canal.

NWPs 17, and 52 require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (GC 32). NWP 12 requires a pre-construction notification when (1) a section 10 permit is required; (2) the discharge will

result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts for all crossings of waters of the United States that require DA authorization, including those crossings authorized by NWP would not otherwise require pre-construction notification. (See general condition 32.) NWP 14 requires the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands (GC 32). In the C & D canal, permittees are required to submit a PCN for all proposed NWP activities. The Corps will review the PCN and make a project-specific determination that the activity is eligible for authorization under the NWP and will have no more than minimal adverse environmental effects.

Permanent or temporary discharges within waters of the U.S., including jurisdictional wetlands associated with NWPs have the potential to create permanent or temporary impoundments of water. NWP GC 8 *Adverse Effects From Impoundments* is applicable to all NWPs and specifies that "If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating passage of water, and/or restricting its flow must be minimized to the maximum extent practicable." Furthermore, GC 24 *Safety of Impoundment Structures* specifies that "To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety."

NWP GC 16 *Wild and Scenic Rivers* applicable to all NWPs restricts the use of NWPs for activities that are located in Federally-designated wild and scenic rivers. This GC 16 requires approval from the appropriate Federal agency for any activity occurring in a component of the National Wild and Scenic River System. There are no national wild and scenic rivers designated in Maryland. NWP GC 22 *Designated Critical Resource Waters* restricts use of the NWPs in designated critical resource waters and adjacent wetlands. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. Baltimore District's RC 22 for Maryland restricts any authorized work proposed within the designated National Estuarine Research Reserves (i.e., Jug Bay, Otter Point Creek, and Monie Bay). Additional designated critical resource waters within Maryland not currently listed in the RC #22 may be added through CZMA conditions. Therefore, these conditions ensure that the activities authorized by NWPs will have no more than minimal adverse effects on the aquatic system.

Core Policy 8: NWPs 4, 8, 12, 13, 14, 48, A, and B: Permanent structures that do not have a clear environmental benefit are prohibited east of the dune line along the Atlantic Coast. MDE/DNR (B1) Md. Code Ann., Nat. Res. § 8-1102.

Corp's Response: NWP 12, 13, and 14 are proposed to be suspended in Maryland except for the C & D Canal. NWPs 4, 8, 20, 22, 48, A, and B are available for use throughout Maryland. NWPs 4, 8, 12, 13, 14, 48, A, and B are available for use in the C & D canal.

GC 10 *Fills Within the 100-Year Floodplains* requires that all NWP activities to comply with applicable FEMA-approved state or local floodplain management requirements. GC 26 *Coastal Zone Management* provides that all NWP permittees must obtain an individual coastal zone management consistency concurrence or the presumption of concurrence when they cannot comply with all conditions of the coastal zone management consistency concurrence previously issued by the state to be authorized by NWPs. A PCN to the Corps for a case-specific review is required for all activities authorized under NWPs in the C & D canal within the State of Maryland. NWP 13 RC applicable to the C & D Canal requires all PCNs to the Corps for activities that do not utilize a non-structural bank stabilization method (e.g., vegetation or combination of vegetation and rock) to provide an analysis demonstrating that such measures were not practicable and/or appropriate. In the C & D canal, all aquaculture projects require a PCN be submitted to the Corps for review. In the remainder of Maryland, NWP 48 requires a PCN for new operations and those that have a change in aquaculture type. Mariculture activities proposed under NWP A and B require a PCN to the Corps for all activities.

Core Policy 14: NWPs 4, 8, 10, 12, 20, 22, 48, A, and B: Operations on the Outer Continental Shelf must be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or property, or which may endanger life or health. (B2) Md. Code Ann., Envir. §§ 17-101 to -403; COMAR 26.24.01.01; COMAR 26.24.02.01, .03; COMAR 26.24.05.01.

Corps' Response: NWPs 10 and 12 are proposed to be suspended in Maryland except for the C & D Canal. NWPs 4, 8, 20, 22, 48, A, and B are available for use throughout Maryland. NWPs 4, 8, 10, 12, 20, 22, 48, A, and B are available for use in the C & D canal.

Project proponents may propose mariculture activities in federal waters on the outer continental shelf to avoid nearshore pollution and conflicting uses of coastal waters, including objections from waterfront property owners based on aesthetic impacts. In addition, mariculture has the benefit of reducing the amount of land needed to produce food to support the increasing human population by utilizing the oceans for food production.

All activities authorized under NWP 8 and NWP 12 (C & D canal), require a PCN to the Corps for project-specific review to determine whether the activity will have no more than minimal adverse environmental effects and exercise discretionary authority to require an individual permit, if necessary. NWP mariculture activities in federal waters on the outer continental shelf may require authorizations from other federal agencies. For example, mariculture operators may be required to obtain from the Department of the Interior's Bureau of Ocean Energy Management a Right of Use and Easement (RUE) if the proposed mariculture activity will utilize or tether to existing oil and gas facilities on the outer continental shelf. Consultation with the Department of Interior's Bureau of Safety and Environmental Enforcement may also be required for proposed mariculture activities on the outer continental shelf. Mariculture operators that propose to establish a private aid to navigation to mark the location of the mariculture activity and ensure safe navigation in the vicinity of that activity may need to obtain authorization from the appropriate U.S. Coast Guard District.

The Corps' CZMA consistency determination only applies to NWP authorizations for activities that are within, or affect, any land, water uses, or natural resources of a State's coastal zone. A state's coastal zone management plan may identify geographic areas in federal waters on the outer continental shelf that require federal permits conducted in those areas require consistency certification from the state because they affect any coastal use or resource may be identified in a state's coastal zone management plan. In its coastal zone management plan, the state may include an outer continental shelf plan. An outer continental shelf plan is a plan for ''the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act'' and regulations issued under that Act (see 15 CFR 930.73). Activities requiring federal permits that are not identified in the state's outer continental shelf plan are considered unlisted activities and the state must notify the applicant and federal permitting agency that it intends to review the proposed activity.

NWP GC 14 *Proper Maintenance* applicable to all NWPs requires any authorized structure or fill to be properly maintained to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

A.2. Water Quality-

Water Quality Policy 2: NWP 12, 14, 29, 34, 39, 40, 42, 43, 44, 48, 51, 52, 53, A, B, C, D:. All waters of the State shall be protected for water contact recreation, fish, and other aquatic life and wildlife. Shellfish harvesting and recreational trout waters and waters worthy of protection because of their unspoiled character shall receive additional protection. MDE (A1) COMAR 26.08.02.02.

Corp's Response: NWPs 12, 14, 29, 34, 39, 40, 42, 43, 44, 51, 52 (except for activities in tidal navigable waters of the U.S.), C, and D are proposed to be suspended for use in Maryland (except for the C & D Canal). NWPs 48, A, and B are available for use

throughout Maryland. NWPs 12, 14, 29, 34, 39, 40, 42, 43, 44, 48, 51, 52, 53, A, B, C, and D are available for use in the C & D canal.

When a PCN is required, the Corps will review the project to ensure compliance with the NWP terms and conditions and minimal adverse environmental effects. All NWP activities that may result in discharges of dredged or fill material into waters of the United States require compliance with the water quality certification requirements of Section 401 of the Clean Water Act. We are requesting 401 Water Quality Certification from the State of Maryland. Our NWP regional conditions will include any conditions that are made part of the issued 401 Water Quality Certification. NWP GC 25 *Water Quality* states that where the certifying authority has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived. If the proposed activity involves a discharge into waters of the United States, Clean Water Act section 401 water quality certification will be required. The water quality certification will ensure that the authorized activity does not violate applicable water quality requirements.

Applicable to all NWP activities, GC 3 *Spawning* Areas requires all activities in spawning areas during spawning seasons to be avoided to the maximum extent practicable. Furthermore, any activity that results in the physical destruction (e.g., through excavation, fill or downstream smothering by substantial turbidity. GC 4 *Migratory Bird Breeding* Areas requires that activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. GC 5 *Shellfish Beds* prohibits activities from occurring in areas of concentrated shellfish populations unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27. Therefore, activities authorized by the NWPs must avoid fish and other aquatic wildlife to the maximum extent practicable and would have minimal adverse impacts on fish and aquatic wildlife. Activities authorized under NWP 43 and 53 activities may maintain or improve water quality by reducing inputs of nutrients, sediments, and pollutants into nearby surface waters.

GC 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands at the project site, which will reduce losses in flood storage capacity, wildlife habitat, and nutrient cycling and filtering. Compensatory mitigation may be required for activities authorized by NWPs, which will offset losses of waters of the United States and may help improve water quality functions and wildlife habitat. GC 10 will ensure that authorized activities in 100-year floodplains will not cause more than no more than minimal adverse effects on water quality effects of flood storage. GC 22 prohibits the use of certain NWPs in designated critical resource waters and adjacent wetlands, which may include high value wetlands.

Most causes and sources of impairment on water quality in waters and wetlands are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Non-point sources of pollution to streams and wetlands from farms, roads, and urban areas are not controlled by the NWPs because the Section

404 of the Clean Water Act only requires permits for point source discharges of dredged or fill material regulated under Section 404. Habitat alterations or water quality impairments may be a result of activities regulated under Section 404 and Section 10 when they involve discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters. However, hydrologic and water quality impairments and habitat alterations may also occur as a result of activities not regulated under these two statutes (e.g., removal of vegetation from upland riparian areas or without involving a discharge of fill material, indirect effects of changes in upland land use, etc.).

Some activities authorized by a NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to, activities that result in discharges of dredged or fill material into waters of the United States and require a Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce under the Coastal Zone Management Act. In such cases, a provision of the NWPs states than a NWP does not obviate the need to obtain other authorizations required by law (33 CFR 330.4(b)(2)).

Water Quality Policy 6: NWPs 12, 13, 14, 27, 29, 30, 40, 43, 44, 51, 52, c, and D:
Thermal discharges shall be controlled so that the temperature outside the mixing zone (50 feet radially from the point of discharge) meets the applicable water quality criteria or discharges comply with the thermal mixing zone criteria. MDE (D4) COMAR 26.08.03.03C.

Corp's Response: NWPs 12, 13, 14, 29, 39, 40, 43, 44, 51, 52, C, and D are proposed to be suspended in Maryland (except for the C & D Canal). NWP 27 is available for use throughout Maryland. NWPs 12, 13, 14, 27, 29, 39, 40, 43, 44, 51, 52, C, and D are available for use in the C & D canal.

NWP activities that authorize discharges of dredged or fill material into waters of the United States require Clean Water Act section 401 water quality certification. All NWP activities that may result in discharges of dredged or fill material into waters of the United States require compliance with the water quality certification requirements of Section 401 of the Clean Water Act. We are requesting 401 Water Quality Certification from the State of Maryland. Our NWP regional conditions will include any conditions that are made part of the issued 401 Water Quality Certification. The water quality certification will ensure that the authorized activity does not violate applicable water quality requirements. Temperature requirements are outside the Corps' authority.

Certain NWP activities (e.g., NWP 27 and 43) may maintain or improve water quality by reducing inputs of nutrients, sediments, and pollutants into nearby surface waters. In some cases, these activities may result in the loss of wetlands and riparian vegetation that provide habitat for microorganisms that remove nutrients and pollutants from water and that decrease the velocity of flood waters, remove suspended sediments from the water column and reduce turbidity, Compensatory mitigation may be required for NWP

activities to offset losses of waters of the United States, such as wetlands and streams to ensure that adverse effects on water quality is no more than minimal. Wetlands and riparian areas restored, established, enhanced, or preserved as compensatory mitigation may provide local water quality benefits.

Water Quality Policy 8: NWPs 14, 29, 39, 43, 44: Any development or redevelopment of land for residential, commercial, industrial, or institutional purposes shall use small-scale non-structural stormwater management practices and site planning that mimics natural hydrologic conditions, to the maximum extent practicable. Development or redevelopment will be consistent with this policy when channel stability and 100 percent of the average annual predevelopment groundwater recharge are maintained, nonpoint source pollution is minimized, and structural stormwater management practices are used only if determined to be absolutely necessary. MDE (C9) Md. Code Ann., Envir. § 4-203; COMAR 26.17.02.01, .06.

Corp's Response: NWPs 14, 29, 39, 43, and 44 are proposed for suspension in Maryland except for the C & D Canal. NWPs 14, 29, 39, 43, and 44 are available for use only in the C & D canal.

In the C & D canal, a PCN is required to be submitted to the Corps for all activities authorized under NWP 24, 29, 39, 43, and 44 to ensure that there are no more than minimal adverse environmental effects. In the C & D canal, in accordance with proposed RCs, NWP 43 does not authorize work in perennial and intermittent streams in the C & D canal and NWP 29 does not authorize construction of ponds or stormwater management basins in waters of the U.S. NWP 14 is restricted by a RC in the C & D Canal to maintain continuity of existing benthic habitats and existing stream flow patterns.

Activities authorized by NWPs may require Section 401 water quality certification, since the NWPs authorizes discharges of dredged or fill material into waters of the United States. Most water quality concerns are addressed by the state or tribal section 401 agency. In accordance with GC 25, the permittee may be required to implement water quality management measures to minimize the degradation of water quality. Water quality management measures may involve the installation of stormwater management facilities to trap pollutants and the establishment and maintenance of riparian areas next to waters of the United States. The water quality certification will ensure that the authorized activity does not violate applicable water quality requirements.

Water Quality Policy 10: NWPs 8, 14, 48, 52, A and B: If material being dumped into Maryland waters or waters off Maryland's coastline has demonstrated actual toxicity or potential for being toxic, the discharger must perform biological or chemical monitoring to test for toxicity in the water. MDE (A5) COMAR 26.08.03.07(D); COMAR 26.08.04.01.

Corps' Response: NWPs 14 and 52 (except activities in tidal navigable waters of the U.S.) are proposed to be suspended in Maryland except for the C & D Canal. NWPs 8, 48, A, and B are available for use throughout Maryland. Additionally, NWPs 8, 14, 48, 52, A, and B are available for use in the C & D canal.

Individual evaluation and testing for the presence of contaminants will normally not be required because the terms and conditions of the NWPs specify the types of discharges that are authorized as well as those that are prohibited. If a situation warrants, provisions of the NWPs allow the Corps to further specify authorized or prohibited discharges and require testing. NWP GC 6 *Suitable Material* requires that materials used for construction in waters of the U.S., including wetlands be free from toxic pollutants. Therefore, no toxic discharges are authorized by the NWPs.

Operations and maintenance activities may also other direct and indirect effects on wetlands, streams, and other aquatic resources. The Corps does not have the authority to regulate operations and maintenance activities that: (1) do not involved discharges of dredged or fill material into waters of the United States; (2) involve activities exempt from Clean Water Act Section 404 permit requirements under section 404(f) of the Act; and (3) do not involve structures or work requiring DA authorization under Sections 9 or 10 of the Rivers and Harbors Act of 1899. The Corps does not have authority under Section 404 of the Clean Water Act to regulate the placement of trash or garbage into waters of the United States because trash and garbage are excluded from the regulatory definition of "fill material" (see 33 CFR 323.2(e)(3)). Operations and maintenance activities regulated by the Corps are considered during the PNC review process.

A.3. Flood Hazards-

Flood Hazard Policy 1: **NWP 12, 14, 17, 27, 29, 39, 42, 43, 51, 52, 53:** Projects in coastal tidal and non-tidal flood plains which would create additional flooding upstream or downstream, or which would have an adverse impact upon water quality or other environmental factors, are contrary to State policy. MDE (C2) Md. Code Ann., Envir. § 5-803; COMAR 26.17.05.04A.

Flood Hazard Policy 2: **NWPs same as above:** The following policies apply to projects in non-tidal waters and non-tidal floodplains, but not non-tidal wetlands.

- Proposed floodplain encroachments, except for roadways, culverts, and bridges, shall be designed to provide a minimum of 1 foot of freeboard above the elevation of the 100- year frequency flood event. In addition, the elevation of the lowest floor of all new or 5 substantially improved residential, commercial, or industrial structures shall also be at least 1 foot above the elevation of the 100-year frequency flood event.
- Proposed unlined earth channels may not change the tractive force associated with the 2-year and the 10-year frequency flood events, by more than 10 percent, throughout their length unless it can be demonstrated that the stream channel will remain stable.
- Proposed lined channels may not change the tractive force associated with the 2-year and the 10-year frequency flood events, by more than 10 percent, at their downstream terminus unless it can be demonstrated that the stream channel will remain stable.

- Category II, III, or IV dams may not be built or allowed to impound water in any location where a failure is likely to result in the loss of human life or severe damage to streets, major roads, public utilities, or other high value property.
- Projects that increase the risk of flooding to other property owners are generally prohibited, unless the area subject to additional risk of flooding is purchased, placed in designated flood easement, or protected by other means acceptable to the Maryland Department of the Environment.
- The construction or substantial improvement of any residential, commercial, or industrial structures in the 100-year frequency floodplain and below the water surface elevation of the 100-year frequency flood may not be permitted. Minor maintenance and repair may be permitted. The modifications of existing structures for flood-proofing purposes may be permitted. Flood-proofing modifications shall be designed and constructed in accordance with specifications approved by the Maryland Department of the Environment.
- Channelization shall be the least favored flood control technique.
- Multiple purpose use shall be preferred over single purpose use, the proposed project shall achieve the purposes intended, and, at a minimum, project shall provide for a 50 percent reduction of the average annual flood damages. MDE (C2) COMAR 26.17.04.01, .07, .11.

Flood Hazard Policy 3: NWPs same as above: Development may not increase the downstream peak discharge for the 100-year frequency storm event in the following watersheds and all their tributaries:

- Gwynns Falls in Baltimore City and Baltimore County; and
- Jones Falls in Baltimore City and Baltimore County. MDE (C2) COMAR 26.17.02.07

Corps' Response: NWPs 12, 14, 29, 39, 42, 43, 51, 52 (except for activities in tidal navigable waters of the U.S.), and 53 are proposed to be suspended in Maryland except for the C & D Canal. NWPs 17 and 27 are available for use throughout Maryland. All these subject NWPs are available for use in the C & D canal.

NWPs activities may authorize activities that result in impacts to the flood-holding capacity of the 100-year floodplain, including surface water flow velocities. To minimize these potential adverse effects, GC 10 *Fills Within 100-Year Floodplains* requires the activity to comply with applicable FEMA-approved state or local floodplain management requirements. The requirements of GC 10 will help to ensure that the activities authorized by these NWPs will have no more than minimal adverse effects on flood hazards.

Compliance with GC 9 *Management of Water Flows* will also reduce flood hazards. This general condition requires the permittee to maintain, to the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters, except under certain circumstances. Much of the land within the 100-year floodplains is upland, and outside of the Corps' control and responsibility.

Stormwater management activities (NWP 43) may help reduce flood hazards by increasing storage of stormwater in the watershed and offsetting the reduction of stormwater infiltration caused by urbanization. In addition, NWP 27 may also help reduce flood hazards by restoring floodplain wetlands and riparian systems. GC 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands at the project site, which will reduce losses in flood storage capacity, wildlife habitat, and nutrient cycling and filtering. Compensatory mitigation may be required for activities authorized by NWPs, which will offset losses of waters of the United States and may help improve water quality functions and wildlife habitat.

B. Coastal Resources

B.1. The Chesapeake and Atlantic Coastal Bays Critical Area: All NWP excluding 1, 2, 5, 6, 7, 9, 10, 11, 13, 15, 16, 18, 21, 24, 25, 28, 33, 35, 36, 41, 45, 46, 49, 50, and E.

In addition to the policies in this section, the laws approved by NOAA implementing the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program are enforceable policies. Specific policies identified by Maryland Department of the Environment:

1. Colonial water bird nesting sites in the Critical Area may not be disturbed during breeding season. CAC (C9) COMAR 27.01.09.04.

2. New facilities in the Critical Area shall not interfere with historic waterfowl concentration and staging areas. CAC (C9) COMAR 27.01.09.04.

5. The construction or placement of dams or other structures in the Critical Area that would interfere with or prevent the movement of spawning fish or larval forms in streams is prohibited. CAC (C9) COMAR 27.01.09.05.

6. Development may not cross or affect a stream in the Critical Area, unless there is no feasible alternative and the design and construction of the development prevents increases in flood frequency and severity that are attributable to development; retains tree canopy and maintains stream water temperature within normal variation; provides a natural substrate for affected streambeds; and minimizes adverse water quality and quantity impacts of stormwater. CAC (C9) COMAR 27.01.02.04.

8. Roads, bridges, or utilities may not be constructed in any areas designated to protect habitat, including buffers, in the Critical Area, unless there is no feasible alternative and the road, bridge, or utility is located, designed, constructed, and maintained in a manner that maximizes erosion protection; minimizes negative impacts to wildlife, aquatic life, and their habitats; and maintains hydrologic processes and water quality. CAC (C9) COMAR 27.01.02.03C, .04C, .05C.

9. In the Critical Area, a minimum 100-foot vegetated buffer shall be maintained landward from the mean high water line of tidal waters, the edge of each bank of tributary streams, and the upland boundary of tidal wetlands. The buffer shall be expanded in sensitive areas in accordance with standards adopted by the Critical Area Commission. The buffer

is not required for agricultural drainage ditches if the adjacent agricultural land has in place best management practices that protect water quality. The buffer is not required if existing patterns of development prevent the buffer from protecting ecological quality and functions, in which case, alternative means of protecting ecological quality and functions are required. CAC (C9) COMAR 27.01.09.01, .01-5, .01-7.

10. Disturbance to a buffer in the Critical Area is only authorized for a shore erosion control measure, new development, or redevelopment that is: water-dependent; meets a recognized private right or public need; minimizes the adverse effects on water quality and fish, plant, and wildlife habitat; and, insofar as possible, locates nonwater-dependent structures or operations associated with water-dependent projects or activities outside the buffer. Mitigation of impacts to the buffer and a buffer management plan must be developed in accordance with standards adopted by the Critical Area Commission when a development or redevelopment activity occurs within the buffer. CAC (C9) COMAR 27.01.03.03; COMAR 27.01.09.01, .01-2, .01- 3.

11. If a development or redevelopment activity occurs on a lot or parcel that includes a buffer or if issuance of a permit, variance, or approval would disturb the buffer, the proponents of that activity must develop a buffer management plan that clearly indicates that all applicable planting standards developed by the Critical Area Commission will be met and that appropriate measures are in place for the long-term protection and maintenance of the buffer. CAC (C9) COMAR 27.01.09.01-1, .01-3.

12. Public beaches or other public water-oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the buffer in portions of the Critical Area not designated as intensely developed areas only if adequate sanitary facilities exist; service facilities are, to the extent possible, located outside the Buffer; permeable surfaces are used to the extent practicable, if no degradation of ground water would result; and disturbance to natural vegetation is minimized. CAC (C9) COMAR 27.01.03.08.

14. Industrial and port-related facilities may only be sited in the portions of areas of intense development that are exempted from buffer designation. CAC (C9) COMAR 27.01.03.05.

15. Agricultural activities are permitted in the buffer, if, as a minimum best management practice, a 25-foot vegetated filter strip measured landward from the mean high water line of tidal waters or tributary streams (excluding drainage ditches), or from the edge of tidal wetlands, whichever is further inland, is established in trees with a dense ground cover or a thick sod of grass. CAC (C4) COMAR 27.01.09.01-5.

17. In the Critical Area, the creation of new agricultural lands shall not be accomplished by diking, draining, or filling of nontidal wetlands; by clearing of forests or woodland on soils with a slope greater than 15 percent or on soils with a "K" value greater than 0.35 and slope greater than 5 percent; by clearing that will adversely affect water quality or will

destroy plant and wildlife habitat; or by clearing existing natural vegetation within the 100-foot buffer. CAC (C4) COMAR 27.01.06.02C.

19. Cutting or clearing of trees within the buffer is prohibited except that commercial harvesting of trees by selection or by the clearcutting of loblolly pine and tulip poplar may be permitted to within 50 feet of the landward edge of the mean high water line of tidal waters and perennial tributary streams, or the edge of tidal wetlands if the buffer is not subject to additional habitat protection. Commercial harvests must be in compliance with a buffer management plan that is prepared by a registered professional forester and is approved by the Department of Natural Resources. CAC (C5) Md. Code Ann., Nat. Res. § 8-1808.7; COMAR 27.01.09.01-6.

20. Commercial tree harvesting in the buffer may not involve the creation of logging roads and skid trails within the buffer and must avoid disturbing stream banks and shorelines as well as include replanting or allowing regeneration of the areas disturbed or cut in a manner that assures the availability of cover and breeding sites for wildlife and reestablishes the wildlife corridor function of the buffer. CAC (C5) Md. Code Ann., Nat. Res. § 8-1808.7; COMAR 27.01.09.01-6.

21. Solid or hazardous waste collection or disposal facilities and sanitary landfills are not permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these facilities are needed in order to correct an existing water quality or wastewater management problem. CAC (C9) COMAR 27.01.02.02.

24. Sand and gravel operations shall not occur within 100 feet of the mean high water line of tidal waters or the edge of streams or in areas with scientific value, important natural resources such as threatened and endangered species, rare assemblages of species, or highly erodible soils. Sand and gravel operations also may not occur where the use of renewable resource lands would result in the substantial loss of forest and agricultural productivity for 25 years or more or would result in a degrading of water quality or a loss of vital habitat. CAC (D5) COMAR 27.01.07.03D.

25. Wash plants including ponds, spoil piles, and equipment may not be located in the 100-foot buffer. CAC (D5) COMAR 27.01.07.03E.

27. All stormwater storage facilities shall be designed with sufficient capacity to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its predevelopment state. CAC (C9) COMAR 27.01.02.04.

29. The following development activities and facilities are not permitted in the Critical Area except in intensely developed areas and only after the activity or facility has demonstrated that there will be a net improvement in water quality to the adjacent body of water.
o Nonmaritime heavy industry
o Transportation facilities and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters

o Permanent sludge handling, storage, and disposal facilities, other than those associated with wastewater treatment facilities. However, agricultural or horticultural use of sludge when applied by an approved method at approved application rates may be permitted in the Critical Area, but not in the 100-foot Buffer CAC (C9) COMAR 27.01.02.02.

30. The following policies apply in those areas of the Critical Area that are determined to be areas of intense development.
o To the extent possible, fish, wildlife, and plant habitats, should be conserved.
o Development and redevelopment shall improve the quality of runoff from developed areas that enters the Chesapeake or Atlantic Coastal Bays or their tributary streams.
o At the time of development or redevelopment, appropriate actions must be taken to reduce stormwater pollution by 10%. Retrofitting measures are encouraged to address existing water quality and water quantity problems from stormwater.
o Development activities may cross or affect a stream only if there is no feasible alternative, and those activities must be constructed to prevent increases in flood frequency and severity attributable to development, retain tree canopy, maintain stream water temperatures within normal variation, and provide a natural substrate for affected streambeds.
o If practicable, permeable areas shall be established in vegetation.
o Areas of public access to the shoreline, such as foot paths, scenic drives, and other public recreational facilities, shall be maintained and, if possible, are encouraged to be established.
o Ports and industries which use water for transportation and derive economic benefits from shore access, shall be located near existing port facilities or in areas indentified by local jurisdictions for planned future port facility development and use if this use will provide significant economic benefit to the State or local jurisdiction.
o To the extent practicable, development shall be clustered to reduce lot coverage and maximize areas of natural vegetation.
o Development shall minimize the destruction of forest and woodland vegetation.
CAC (C9) COMAR 27.01.02.03.

31. The following policies apply in those portions of the Critical Area that are not areas of intense development.
o Development shall maintain, and if possible, improve the quality of runoff and ground water entering the Chesapeake and Coastal Bays.
o To the extent practicable, development shall maintain existing levels of natural habitat.
o All development sites shall incorporate a wildlife corridor system that connects undeveloped vegetated tracts onsite with undeveloped vegetated tracts offsite.
o All forests that are cleared or developed shall be replaced on not less than an equal area basis.
o If there are no forests on a proposed development site, the site shall be planted to provide a forest or developed woodland cover of at least 15 percent.
o Development on slopes equal to or greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain the slope and is consistent with other policies.

o To the extent practicable, development shall be clustered to reduce lot coverage and maximize areas of natural vegetation.
o Lot coverage is limited to 15 percent of the site. CAC (C9) COMAR 27.01.02.04.

Corps' Response: NWPs 3 (except repair from storms or other discrete events), 12, 14, 19, 29, 34, 39, 40, 42, 43, 44, 47, 48, 51, 52 (except activities in tidal navigable waters of the U.S.), A, B, C, and D are proposed to be suspended in Maryland except for the C & D Canal. NWPs 3 (storm or other discrete events only), 4, 8, 17, 20, 22, 23, 27, 30, 31, 32, 37, 38, 48, A, and B are available for use throughout Maryland. NWPs 3, 4, 8, 12, 14, 17, 19, 20, 22, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 51, 52, 53, 54, A, B, C, and D are available for use in the C & D canal.

Potential adverse impacts and compliance with related laws are controlled by the terms and conditions of each NWP; general, regional and case-specific conditions; and the review process that is undertaken prior to the issuance of the NWPs. Land use decisions for activities outside the Corps control and responsibility are the responsibility of the state and local governments.

The Corps' requires consultation in accordance with ESA for all activities that may affect endangered or threatened species or critical habitat (see 333 CFR 330.4(f) and NWP GC 18 *Endangered Species.* Activities that do not comply with GC 18 or other applicable general or regional conditions are not authorized by any NWP, and thus fall outside of the NWP Program. GC 20 requires any activity that might affect historic properties to satisfy the requirements of Section 106 of the National Historic Preservation Act before authorization can proceed. GC 1 requires that all activities not adversely affect navigation. Terms and conditions have been included to address potential adverse effects on navigation and a PCN review will allow project-specific reviews, where appropriate.

NWP GC 2. Aquatic Life Movements provides that no activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that 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. In addition, RC 2 *Aquatic Life Movement* requires a time-of-year restriction for activities in all anadromous fish use areas of Maryland unless waived by the Corps in consultation with the National Marine Fisheries Service (NMFS). This RC 2 also requires culverted road crossings of perennial and intermittent streams to meet depression criteria or a PCN is required for review and coordination with NMFS.

NWP GC 3. Spawning Areas provides that 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.

NWP GC 4. *Migratory Bird Breeding Areas* provides that activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. Compliance with GCs 5 and 3 will ensure that the authorized activity has no more than minimal adverse effects on shellfish beds and spawning areas, respectively. GC 19 states that the permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

RCs for NWP 3 *Maintenance* requires a PCN to the Corps and the prospective permittee must include a project-specific rationale for proposing a one-way tide gate to replace an existing tide gate or when maintenance is proposed on an existing one-way tide gate.

Activities authorized by the NWPs may adversely affect streams and wetlands. Compensatory mitigation may be required for activities resulting in the loss of wetlands and streams, which will provide water quality functions and wildlife habitat. GC 23 requires avoidance and minimization of impacts to waters of the United States to the maximum extent practicable at the project site, which will reduce losses of streams and wetland functions. The mitigation requirements of GC 23 will help ensure that the adverse effects of these activities on streams and wetland values are no more than minimal.

Construction and maintenance activities of pipelines and utility lines and associated facilities often result in temporary impacts, unless the site contains forested wetlands that are not allowed to regenerate because of maintenance of the pipeline right-of-way or because of permanent fills in wetlands. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be re-vegetated, as appropriate. Permanent conversions of forested wetlands to scrub-shrub or emergent wetlands or uplands may result in the loss of certain wetland functions, or the reduction in the level of wetland functions being performed by the converted wetland. When a PCN is required, the Corps' has the authority to require mitigation to offset losses of wetland functions caused by regulated activities (see paragraph (i) of GC 23 *Mitigation*).

Permanent or temporary discharges within waters of the U.S., including jurisdictional wetlands associated with NWPs have the potential to create permanent or temporary impoundments of water. NWP General Condition (GC) 8 *Adverse Effects from Impoundments* is applicable to all NWPs and specifies that "If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating passage of water, and/or restricting its flow must be minimized to the maximum extent practicable." Furthermore, GC 24 *Safety of Impoundment Structures* specifies that "To ensure that all

impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety." In Philadelphia District applicable to the C & D canal, RCs for NWP 5 & 6 do not authorize work that precludes the passage of anadromous fish; RCs for NWP 18 restricts work that authorizes impoundments; RCs for NWP 29 and 39 restricts the use for construction of ponds or stormwater management basins in waters of the United States. Therefore, these conditions ensure that the activities authorized by NWPs will have no more than minimal adverse effects on the aquatic system.

NWP GC 12 *Soil Erosion and Sediment Controls*, specifies that "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 United States during periods of low-flow or no-flow, or during low tides".

GC 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands at the project site, which will reduce losses in flood storage capacity, wildlife habitat, and nutrient cycling and filtering. Compensatory mitigation may be required for activities authorized by NWPs, which will offset losses of waters of the United States and may help improve water quality functions and wildlife habitat. GC 10 will ensure that authorized activities in 100-year floodplains will not cause more than no more than minimal adverse effects on water quality effects of flood storage.

Most causes and sources of impairment on water quality in waters and wetlands are not due to activities regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Non-point sources of pollution to streams and wetlands from farms, roads, and urban areas are not controlled by the NWPs because the Section 404 of the Clean Water Act only requires permits for point source discharges of dredged or fill material regulated under Section 404. Habitat alterations or water quality impairments may be a result of activities regulated under Section 404 and Section 10 when they involve discharges of dredged or fill material into waters of the U.S. or structures or work in navigable waters. However, hydrologic and water quality impairments and habitat alterations may also occur as a result of activities not regulated under these two statutes (e.g., removal of vegetation from upland riparian areas, indirect effects of changes in upland land use, etc.).

Some activities authorized by a NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to, activities that result in discharges of dredged or fill material into waters of the United States and require a Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce under the Coastal Zone Management Act. In such cases, a provision of the NWPs states

than a NWP does not obviate the need to obtain other authorizations required by law (33 CFR 330.4(b)(2)). Furthermore, all NWP verification letters state that the use of the NWP is contingent upon obtaining a State 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination and that all required Federal, state, and/or local authorizations must be obtained before proceeding with the authorized work.

B.2. Tidal Wetlands: NWPs 3, 4, 12, 14, 17, 22, 23, 27, 29, 38, 48, 52, 53, A, B, C –

1. Any action which alters the natural character in, on, or over tidal wetlands; tidal marshes; and tidal waters of Chesapeake Bay and its tributaries, the coastal bays adjacent to Maryland's coastal barrier islands, and the Atlantic Ocean shall avoid dredging and filling, be water- dependent, and provide appropriate mitigation for any necessary and unavoidable adverse impacts on these areas or the resources associated with these areas. A proponent of an action described above shall explain the actions impact on:

   o Habitat for finfish, crustaceans, mollusks, and wildlife of significant economic or ecologic value; o Potential habitat areas such as historic spawning and nursery grounds for anadromous and semi-anadromous fisheries species and shallow water areas suitable to support populations of submerged aquatic vegetation; o Marine commerce, o Recreation, and aesthetic enjoyment; o Flooding; o Siltation; o Natural water flow, water temperature, water quality, and natural tidal circulation; o Littoral drift; o Local, regional, and State economic conditions; o Historic property; o Storm water runoff; o Disposal of sanitary waste; o Sea level rise and other determinable and periodically recurring natural hazards; o Navigational safety; o Shore erosion; o Access to beaches and waters of the State; o Scenic and wild qualities of a designated State scenic or wild river; and Historic waterfowl staging areas and colonial bird-nesting sites. MDE (B2) COMAR 26.24.01.01, COMAR 26.24.02.01, .03; COMAR 26.24.05.01

Corps' Response: NWPs 12, 14, 29, 52, 53, and C are proposed to be suspended in Maryland except for the C & D Canal. NWPs 3, 4, 17, 22, 23, 27, 38, 48, A, and B are available for use throughout Maryland. NWPs 3, 4, 12, 14, 17, 22, 23, 27, 29, 38, 48, 52, 53, A, B, and C are available for use in the C & D canal.

Activities authorized by the NWPs may alter or result in the loss of tidal wetlands, including habitat and hydrological characteristics. Activities authorized under NWPs 12 (oil and gas substations), 29, and C (electric utility line and telecommunication substations), are not applicable within tidal wetlands. In addition, NWPs 3, 12, 14 17, 22 (in some circumstances), 23, 27, 29, 38, 48 (in some circumstances), 52, 53, A, B, and C (Philadelphia District) require a PCN to the Corps for an activity-specific review to ensure that the activities authorized will have no more than minimal adverse effects on wetlands.

GC 22 prohibits the use of NWPs to discharge dredged or fill material in designated critical resource waters and adjacent wetlands, which may include high value wetlands. GC 28 *Use of Multiple Nationwide Permits* addresses the use of a NWP with other NWPs to authorize a single and complete project, to ensure that the acreage limits of each of the NWPs used to authorize that project are not exceeded. If an NWP verification includes multiple authorizations using a single NWP (*e.g.,* linear projects with crossings of separate and distant waters of the United States authorized by NWPs 12 or 14) or non-linear projects authorized with two or more different NWPs (*e.g.,* an NWP 28 for reconfiguring an existing marina plus an NWP 19 for minor dredging within that marina), the district engineer will evaluate the cumulative effects of the applicable NWP authorizations within the geographic area that she or he determines is appropriate for assessing cumulative effects caused by the activities authorized by that NWP.

In accordance with GS 23 *Mitigation*, 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 (.e.g., on-site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse environmental effects are no more than minimal. The Corps may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects. Compensatory mitigation at a minimum of one-for-one ratio will be required for all tidal wetland losses that require a PCN and exceed 1/10 acre, unless the Corps determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement. The Corps may also exercise discretionary authority to require an individual permit if high value wetlands will be affected by the activity and the activity will result in more than minimal adverse environmental effects. The Corps may also add case-specific special conditions to the NWP authorization to reduce impacts to wetlands or require compensatory mitigation to offset losses of wetlands.

Consultation pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for proposed NWP activities that may adversely affect essential fish habitat. Consultation may occur on a case-by-case or regional programmatic basis. The Corps may impose regional and special conditions to ensure that activities authorized by the NWPs will result in only minimal adverse effects on essential fish habitat, including anadromous fish and submerged aquatic vegetation. RCs in both Baltimore and Philadelphia Districts' require a PCN to the Corps for an activity-specific review for activities proposed within 50 feet of SAV identified using the last five verified years of mapped SAV surveys derived from the Virginia Institute of Marine Science.

Some activities authorized by a NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to, activities that result in discharges of dredged or fill material into waters of the United States and

require a Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce under the Coastal Zone Management Act. In such cases, a provision of the NWPs states than a NWP does not obviate the need to obtain other authorizations required by law (33 CFR 330.4(b)(2)). Furthermore, all NWP verification letters state that the use of the NWP is contingent upon obtaining a State 401 water quality certification (WQC) and Coastal Zone Management Act (CZMA) consistency determination and that all required Federal, state, and/or local authorizations must be obtained before proceeding with the authorized work.

Adverse effects to the chemical composition of the aquatic environment will be controlled by GC 6 that states the material used for construction must be free from toxic pollutants in toxic amounts. GC 12 requires the permittee to stabilize exposed soils and other fill, which will help reduce turbidity and siltation. GC 9 requires the authorized activity to be designed to withstand expected high flows and to maintain the course, condition, capacity, and location of open waters to the maximum extent practicable. Please see additional information on impacts to tidal wetlands addressed in policies above.

B.3. Non-Tidal Wetlands- NWPs 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, and D:

1. Removal, excavation, grading, dredging, dumping, or discharging of, or filling a non-tidal wetland with materials of any kind, including the driving of piles and placing of obstructions; changing existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics; disturbing the water level or water table; or removing or destroying plant life that would alter the character of a non-tidal wetland is prohibited unless: o The proposed project has no practicable alternative; o Adverse impacts are first avoided and then minimized based on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions; o Comprehensive watershed management plans are considered; and o The proposed project does not cause or contribute to an individual or cumulative effect that degrades: o Aquatic ecosystem diversity, productivity, and stability, o Plankton, fish, shellfish, and wildlife, o Recreational and economic values, and o Public welfare; o Surface water quality; or o Ground water quality.

   Mitigation measures are required to replace the ecological values associated with non-tidal wetlands that are impaired by activities described above. MDE (C3) COMAR 26.23.01.01; COMAR 26.23.02.04, .06; COMAR 26.23.04.02.

   The Maryland Department of the Environment Permit program administered by MDE includes protection of wetlands -both tidal and non-tidal. MDE is a state permit which governs wetlands, surface water, and surface water withdrawals/impoundments. It also serves as § 401 certification of the federal *Clean Water Act* § 404 permits for dredge and fill activities in waters of the U.S.

Corps' Response: NWPs 12, 14, 21, 29, 34, 39, 40, 42, 43, 44, 50, 51, 52 (except in tidal navigable waters), C, and D are proposed for suspension in Maryland except for the C & D Canal. NWPs 20, 23 27, 30, 31, 32, 37, 38, and 48 are available for use throughout Maryland. NWPs 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, and D are available for use in the C & D canal.

In accordance with GS 23 *Mitigation*, 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 (.e.g., on-site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse environmental effects are no more than minimal. The Corps may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects. Compensatory mitigation at a minimum of one-for-one ratio will be required for all wetland and stream losses that require a PCN and exceed 1/10 acre, unless the Corps determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal and provides an activity-specific waiver of this requirement.

GC 2 *Aquatic Life Movements* will reduce adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the movement of indigenous aquatic species, unless the primary purpose of the activity is to impound water. GC 2 requires all permanent and temporary crossings of waterbodies to 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. Compliance with GCs 5 and 3 will ensure that the authorized activity has no more than minimal adverse effects on shellfish beds and spawning areas, respectively.

The Baltimore District's RC #2 *Aquatic Life Movement* requires a time-of-year restriction for activities in all anadromous fish use areas of Maryland unless waived by the Corps in consultation with the National Marine Fisheries Service (NMFS). This RC 2 also requires culverted road crossings of perennial and intermittent streams to meet depression criteria or a PCN is required for review and coordination with NMFS. Philadelphia District requires a RC for NWP 14 requiring all crossings to be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns.

GC 22 prohibits the use of NWPs to discharge dredged or fill material in designated critical resource waters and adjacent wetlands, which may include high value wetlands. GC 28 *Use of Multiple Nationwide Permits* addresses the use of an NWP with other NWPs to authorize a single and complete project, to ensure that the acreage limits of each of the NWPs used to authorize that project are not exceeded. If an NWP verification includes multiple authorizations using a single NWP (*e.g.,* linear projects with crossings of separate and distant waters of the United States authorized by NWPs 12 or 14) or non-linear projects authorized with two or more

different NWPs (*e.g.,* an NWP 28 for reconfiguring an existing marina plus an NWP 19 for minor dredging within that marina), the district engineer will evaluate the cumulative effects of the applicable NWP authorizations within the geographic area that she or he determines is appropriate for assessing cumulative effects caused by the activities authorized by that NWP.

As part of the programmatic NWP issuance process, the Corps' decision making process involves consideration of the benefits and detriments that may result from the activities authorized by the NWPs, including recreational and economic values and public welfare. In general, activities authorized by the NWPs are likely to have a positive impact on the local economy. During construction, these activities may generate jobs and revenue for local contractors as well as revenue for building supply companies that sell construction materials. Certain projects may also change land values, by providing access or opening up new land areas for development.

In some cases, activities authorized by a NWP may require other federal, state, or local authorizations. Examples of such cases include, but are not limited to, activities that result in discharges of dredged or fill material into waters of the United States and require a Clean Water Act Section 401 water quality certification; or activities in a state operating under a coastal zone management program approved by the Secretary of Commerce under the Coastal Zone Management Act. In such cases, a provision of the NWPs states than a NWP does not obviate the need to obtain other authorizations required by law (33 CFR 330.4(b)(2)). Furthermore, all NWP verification letters state that the use of the NWP is contingent upon obtaining a State 401 water quality certification (WQC) and that all required Federal, state, and/or local authorizations must be obtained before proceeding with the authorized work.

B.4. Forests – NWPs 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, D.

1. The Forest Conservation Act and its implementing regulations, as approved by NOAA, are enforceable policies. Generally, before developing an area greater than 40,000 square feet, forested and environmentally sensitive areas must be identified and preserved whenever possible. If these areas cannot be preserved, reforestation or other mitigation is required to replace the values associated with them. This policy does not apply in the Critical Area. DNR (C5) Md. Code Ann., Nat. Res. §§ 5-1601 to -1613; COMAR 08.19.01-.06.

4. Any highway construction project may only cut or clear the minimum amount of trees and other woody plants necessary to be consistent with sound design principles. If over an acre of forest is lost as a result of the project, an equivalent area of publicly owned property shall be reforested. DNR/MDOT (C5) Md. Code Ann., Nat. Res. § 5-103.

Corps' Response: NWPs 12, 14, 21, 29, 34, 39, 40, 42, 43, 44, 50, 51, 52 (except activities in tidal navigable waters of the U.S.), C, and D have been proposed for suspension in Maryland except for the C & D Canal. NWPs 20, 23 27, 30, 31, 32, 37, 38,

and 48 are available for use throughout Maryland. NWPs 12, 14, 20, 21, 23, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 42, 43, 44, 48, 50, 51, 52, C, and D are available for use in the C & D canal.

NWP GC 12 *Soil Erosion and Sediment Controls* applicable to all NWPs requires appropriate soil erosion and sediment controls to be used and maintained in an effective operating condition during construction within waters of the U.S., including jurisdictional wetlands and all exposed soils and fills to be permanently stabilized at the earliest practicable date. In addition, permittees are encouraged to perform in-stream work at periods of low flow or no-flow, or during low tides. GC 11 *Equipment* requires that heavy equipment working in wetlands or mudflats must be placed on mats, or other measures to minimize soil disturbance. These GCs ensure minimal adverse impacts to surface waters.

In accordance with GS 23 *Mitigation*, 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 (.e.g., on-site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse environmental effects are no more than minimal. The Corps may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects.

Potential adverse impacts and compliance with related laws are controlled by the terms and conditions of each NWP; general, regional and case-specific conditions; and the review process that is undertaken prior to the issuance of the NWPs. Land use decisions for activities outside the Corps control and responsibility are the responsibility of the state and local governments. In addition, habitat alterations may occur as a result of activities not regulated by the Corps (e.g., removal of vegetation from upland riparian areas or without a discharge of fill material, indirect effects of changes in upland land use, etc.). In addition, forestry activities are exemptions under Section 404(f)(1).

B.5. Historical and Archeological Sites – All NWPs 1, 2, 5, 6, 9, 10, 11, 13, 15, 16, 18, 28, 33, 35, 36, 45, 46.

1. Unless permission is granted by the Maryland Historical Trust, activities that excavate, remove, destroy, injure, deface, or disturb submerged archaeological historic property are generally prohibited. MDP (C8) Md. Code Ann., State Fin. & Proc. §§ 5A-341, -333.

2. Unless permission is granted by the Maryland Historical Trust, activities that excavate, remove, destroy, injure, deface, or disturb cave features or archeological sites under State control are generally prohibited. MDP (C8) Md. Code Ann., State Fin. & Proc. §§ 5A-342 to -343. 14

3. Neither human remains nor funerary objects may be removed from a burial site or cemetery, unless permission is granted by the local State's Attorney. Funerary objects

may not be willfully destroyed, damaged, or defaced. MDP (C8) Md. Code Ann., Crim. Law §§ 10-401 to -404

Corps' Response: NWPs 7, 12, 14, 19, 21, 29, 34, 39, 40, 41, 42, 43, 44, 49, 50, 51, 52 (except in tidal navigable waters), and 53 have been proposed to be suspended in Maryland except for the C & D Canal. NWPs 3, 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, and 48 are available for use throughout Maryland. NWPs 3, 4, 7, 8, 12, 14, 17, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 41, 42, 43 44, 48, 50, 51, and 52 are available for use in the C & D canal.

NWPs may authorize activities that may impact historical and archeological sites. The NWP regulations at 33 CFR 330.4(g) and the ''Historic Properties'' GC 20, ensure that all activities authorized by NWPs comply with section 106 of the National Historic Preservation Act. A PCN is required for any activity that might have the potential to cause effects to any historic properties listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. The Corps then reviews the PCN and makes and effect determination for the purposes of NHPA section 106. Applicable to all NWPs, GC 20 states that in cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in 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.6. Living Aquatic Resources – All NWPs excluding 1, 2, 5, 6, 7, 9, 10, 11, 13, 15, 16, 18, 28, 33, 35, 36, 45, 46.

3. Any land or water resource acquired by the State to protect, propagate, or manage fish shall not be damaged. DNR (A4) Md. Code Ann., Nat. Res. § 4-410.

4. No activity will be permitted that impedes or prevents the free passage of any finfish, migratory or resident, up or down stream. DNR (A4) Md. Code Ann., Nat. Res. § 4-501 to -502.

6. Riparian forest buffers adjacent to waters that are suitable for the growth and propagation of self-sustaining trout populations shall be retained whenever possible. MDE (C5) COMAR 26.08.02.03-3F.

7. Projects in or adjacent to non-tidal waters shall not adversely affect aquatic or terrestrial habitat unless there is no reasonable alternative and mitigation is provided. MDE (C2) COMAR 26.17.04.11B(5).

8. The harvest, cutting, or other removal or eradication of submerged aquatic vegetation may only occur in a strip up to 60 feet wide surrounding a pier, dock, ramp, utility crossing, or boat slip to point of ingress in a marina, otherwise the activity must receive the approval of the Department of Natural Resources. No chemical may be used for this purpose, and the timing and method of the activity shall minimize the adverse impact on

water quality and on the growth and proliferation of fish and aquatic grasses. MDE (A4) Md. Code Ann., Nat. Res. § 4- 213.

11. An organism into which genetic material from another organism has been experimentally transferred so that the host acquires the genetic traits of the transferred genes may not be introduced into State waters. DNR (A4) COMAR 08.02.19.03.

12. Vectors for the introduction of nonnative aquatic organisms must be appropriately controlled to prevent adverse impacts on aquatic ecosystems. DNR (A4) Md. Code Ann., Nat. Res. § 4-205.1.

Corps Response**:** NWPs 3 (except storm events), 12, 14, 19, 21, 29, 34, 39, 40, 41, 42, 43, 44, 49, 50, 51, 52 (except in tidal navigable waters), and 53 in Maryland except for the C & D Canal are proposed to be suspended. NWPs 3, 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, and 48 are available for use throughout Maryland. NWPs 3, 4, 8, 12, 14, 17, 19, 20, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 34, 37, 38, 39, 40, 41, 42, 43 44, 48, 50, 51, and 52 are available for use in the C & D canal.

The NWPs may authorize activities that can impact living aquatic resources and habitat to many species of fish and wildlife. NWP GC 18 requires case-by-case review of all activities that may adversely affect Federally-listed endangered or threatened species). Consultation pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as necessary for the proposed NWP activities that may adversely affect essential fish habitat, including submerged aquatic vegetation. Consultation may occur on a case-by-case or programmatic basis. Regional or special conditions may be added to ensure that activities authorized by the NWPs will result in only minimal adverse effects on essential fish habitat.

GC 2 will reduce the adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the movement of indigenous aquatic species unless the primary purpose of the activity is to impound water. Compliance with GCs 3 and 5 will help ensure that activities authorized by the NWPs have only minimal adverse effects on spawning areas and shellfish beds, respectively. NWP activities cannot have more than minimal adverse effects on breeding areas for migratory birds, due to the requirements of GC 4. RCs in both Baltimore and Philadelphia Districts' require a PCN to the Corps for an activity-specific review for activities proposed within 50 feet of SAV identified using the last five verified years of mapped SAV surveys derived from the Virginia Institute of Marine Science.

The permittee may remove non-native plant species to improve the quality of the fish and wildlife habitat under NWP 27. RCs in both Baltimore and Philadelphia District for NWP 27 restricts any shellfish seeding activity, such as the placement of shell material or any other habitat development or enhancement to native shellfish species. NWP 48 requires that the cultivation of a nonindigenous species is not authorized unless that species has been cultivated in the waterbody previously. In addition, NWP 48 does not authorize the cultivation of an aquatic nuisance species as defined in the

Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990. RC for NWP 54 in Baltimore District requires native, hydrophytic species coverage of at least 85% for 3 consecutive years.

C. Coastal Uses

C.1.Mineral Extraction – NWPs 14, 43, and 44.

2. Surface mining activities must be conducted in a manner that protects birds and wildlife; decreases soil erosion; prevents pollution of rivers, streams, and lakes; prevents loss or waste of valuable mineral resources; and prevents and eliminates hazards to health. MDE (D5) Md. Code Ann., Envir. §§ 15-802, -807(d), -822(c), -828(b).

3. Surface mining activities must not have an unduly adverse effect on wildlife or freshwater, estuarine, or marine fisheries; constitute a substantial physical hazard to a neighboring house, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of application for the permit; or significantly adversely affect the uses of a publicly owned park, forest, or recreation area in existence at the time of application for the permit. MDE (D5) Md. Code Ann., Envir. §§ 15-802(a), -810(b).

12. A mining and reclamation plan for a mineral extraction activity must outline mining methods, intended reclamation practices, land uses before and after mining, areas to be affected by the mining, and measures to protect other uses and the environment. MDE (D5) Md. Code Ann., Envir. §§ 15-807(d), -808(d), -822, -828(b).

29. If water is pumped out of a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington counties, the project proponent shall replace a water supply if it fails as a result of declining ground water levels and pay compensation for property damage from land subsidence. MDE (D5) Md. Code Ann., Envir. § 15-813.

Corp's Response: NWPs 14, 43, and 44 are proposed for suspension in Maryland, except for the C & D canal. NWPs 14, 43, and 44 are available for use in the C & D canal. In Maryland, other than the C & D canal, all mining extraction activities, except NWP 8 *Oil and Gas Structures on the Outer Continental Shelf* have been suspended in the State of Maryland.

All NWP 43 *Stormwater Management* Facilities and 44 *Mining Activities* require a PCN to the Corps prior to commencing the activity for a project-specific verification. A copy of the final reclamation plan must be submitted with the PCN. In addition, this activity may not cause the loss of greater than ½ acre of non-tidal wetlands and the mined area, including temporary and permanent impacts due to discharges of dredged or fill material into jurisdictional non-tidal open waters must not exceed ½ acre. If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted

with the PCN. NWP 14 requires a PCN to the Corps prior to commencing the activity for a project-specific review when proposed in the C & D canal.

Applicable to all NWPs, GC 2 will reduce the adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the movement of indigenous aquatic species unless the primary purpose of the activity is to impound water. Compliance with GCs 3 and 5 will help ensure that activities authorized by the NWPs have only minimal adverse effects on spawning areas and shellfish beds, respectively. NWP activities cannot have more than minimal adverse effects on breeding areas for migratory birds, due to the requirements of GC 4. GC 9 requires the maintenance of pre-construction course, condition, capacity, and location of open waters to the maximum extent practicable, which will help minimize adverse impacts to fish, shellfish, and other aquatic organisms in the food web. GC 12 requires the permittee to stabilize exposed soils and other fills, which will reduce turbidity.

GC 18 requires all NWP activities to comply with Section 7 of the Endangered Species Act (ESA) and ensure that activities authorized by this NWP are not likely to jeopardize the continued existence or any listed threatened and endangered species or result in the destruction or adverse modification of critical habitat. Current local procedures in Corps districts are effective in ensuring compliance with ESA. Those local procedures include regional programmatic consultations and the development of Standard Local Operating Procedures for Endangered Species (SLOPES).

C.2. Electrical Generation and Transmission – NWPs 14, 17, C and E.

1. Power plants shall be sited, constructed, and operated in a manner which minimizes their impacts on tidal wetlands, aquatic resources, terrestrial resources, significant wildlife habitat, public open space, recreational, and natural areas, air and water quality, and the public health, safety, and welfare. DNR/PSC (D2) Md. Code Ann., Nat. Res. §§ 1-302, 3-303, 3-304, 3-306; Md. Code Ann., Pub. Util. Cos. § 7-208.

2. Proposals for new power plants and transmission lines must account for their impact on the physical, biological, aesthetic, and cultural features of the site and adjacent areas; identify contributions to air and water pollution; recommend mitigation opportunities; and adequately consider recommendations of local government. PSC (D2) Md. Code Ann., Pub. Util. Cos. § 7- 207(e); COMAR 20.79.03.02(B); COMAR 20.79.04.04.

3. Proposals for new transmission lines must estimate the capital and annual operating costs of each alternative route considered and explain why each alternative route was rejected. PSC (D2) COMAR 20.79.04.03.

4. Utilities shall maintain the vertical clearances of overhead electric supply lines that cross water surfaces suitable for sailing. PSC (D2) COMAR 20.50.02.05(B).

5. The location, design, construction, and capacity of cooling water intake structures shall reflect the best technology available for minimizing adverse environmental impact, specifically impingement and entrainment losses. MDE (D4) COMAR 26.08.03.05.

Corps Response: NWP 17 *Hydropower Projects* is available for use throughout Maryland. All NWPs, including NWP 14, 17, C and E are available for use in the C & D canal. NWPs 14, C, and E are proposed to be suspended in Maryland except for the C & D Canal.

Potential adverse impacts and compliance with federal laws cited in 33 CFR 320.3 are controlled by the terms and conditions of each NWP, regional, and case-specific conditions, and the review process that is undertaken prior to the issuance of NWPs. All NWPs that authorize activities that may result in discharges into waters of the United States require compliance with the water quality certification requirements of Section 401 of the Clean Water Act.

GCs and RCs require a PCN for a project-specific Corps' review for all these NWPs in the C and D canal and for unsuspended NWP 17 in the remainder of Maryland. The PCN requirement allows the Corps to review proposed activities on a case-by-case basis to ensure that the individual and cumulative adverse environmental effects of those activities are no more than minimal. Minimum clearances of aerial transmission lines across navigable waters are required in regulation and by RCs throughout Maryland. Further, buried lines and cables must meet minimum depths across navigable waters and federally-authorized navigation channels.

Applicable to all NWPs, GC 2 will reduce adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the movement of indigenous aquatic species, unless the primary purpose of the activity is to impound water. Compliance with GCs 3 and 5 will ensure that the authorized activity has no more than minimal adverse effects on spawning areas and shellfish beds, respectively. The authorized activity cannot have more than minimal adverse effects on breeding areas for migratory birds, due to requirements of GC 4.

GC 19 states that the permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity. GC 20 states that in cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied.

GC 22 prohibits the use of NWPs to discharge dredged or fill material in designated critical resource waters and adjacent wetlands, which may include high value wetlands. GC 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands, at the project site. Compensatory mitigation may be required to

offset losses of waters of the United States so that the net adverse environmental effects are no more than minimal. The Corps may regionally condition NWPs to restrict the use of NWPs in high value wetlands and may also add case-specific special conditions to the NWP authorization to reduce impacts to wetlands or require compensatory mitigation to offset losses of wetlands. The Corps may also exercise discretionary authority to require an individual permit if high value wetlands will be affected by the activity and the activity will result in more than minimal adverse environmental effects.

C.3. Tidal Shore Erosion Control – NWPs 3, 13, and 54.

3. Beach nourishment projects shall meet the following requirements: o The fill material grain size shall be equal to or greater in grain size and character to the existing beach material, or determined otherwise to be compatible with existing site conditions and acceptable to the Department; o The fill material shall be relatively free of organic material, floating debris, or other objects; o Silt and clay fills that change the sandy nature of the existing beach materials are not acceptable; o Gravel fill may be acceptable, if particle sizes are equal to or greater than the existing beach materials; and o Fill material shall be placed above the mean high water line before final grading to achieve the desired beach profile, unless site conditions prohibit the placement of fill material above the mean high water line and specific measures are designed to prevent material from washing away from the site. MDE (C1) COMAR 26.24.03.06D.

5. Encroachment into state tidal wetlands for shore erosion control shall be limited to that which is structurally necessary. Bulkheads that encroach into tidal wetlands in excess of 3 feet beyond the mean high water line are prohibited, unless a design report verifies the necessity for the encroachment, and that other structural and nonstructural alternatives have been considered and determined to be impractical. The design report shall distinguish between shore erosion and bank stabilization requirements. MDE (C1) COMAR 26.24.04.01.

6. Tidal shore erosion control measures are listed below beginning with measures that are most consistent with State policy and ending with measures that are least consistent with State policy. o No action and relocation of structure o Nonstructural shoreline stabilization, including beach nourishment, marsh creation, and other measures that encourage the preservation of the natural environment o Shoreline revetments, breakwaters, groins, and similar structures designed to ensure the establishment and long-term viability of nonstructural shoreline stabilization projects 21 o Shoreline revetments o Breakwaters o Groins o Bulkheads MDE (C1) COMAR 26.24.04.01C.

7. Tidal shore erosion control projects shall not occur when: o There is no evidence of erosion; o Existing tidal wetlands are adequately serving as a buffer against erosion; o Adjacent properties may be adversely affected by the proposed method of erosion control; o Navigation may be adversely affected by the project and the applicant has not made provisions to offset these impacts; o Threatened or endangered species, species in need of conservation, or significant historic or archaeological resources may

be adversely affected by the project; or o Natural oyster bars or private oyster leases may be adversely affected by the project. MDE (C1) COMAR 26.24.04.01.

Corps' Response: Activities authorized by NWPs 3, 13, and 54 may provide tidal shore erosion control measures. NWPs 3 (except for repairs due to storm or other discrete events) and 13 are proposed to be suspended in Maryland except for the C & D Canal. NWP 3 for repair, rehabilitation, or replacement in-kind of any previously authorized, currently serviceable structure or fill destroyed or damaged by storms, floods, fires, or other discrete events is available for use throughout Maryland. NWPs 3, 13, and 54 are available for use in the C & D canal. NWP 13 activities must be the minimum needed for erosion protection. Material may not impair surface water flow into or out of any waters of the U.S. In addition, no materials shall be placed in a manner that will be eroded by normal or expected high flows. NWP 13 does not authorize discharges of dredged or fill material into special aquatic sites, unless a PCN is provided and the Corps waives this criteria by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. Baltimore District's regional conditions for NWP 54 requires that wetland components are maintained as a wetlands with areal coverage of native hydrophytic, non-nuisance species of at least 86% for 3 consecutive years. In addition, NWP 54 authorizes no net loss of wetlands.

NWP 13 and 54 requires that native plans appropriate to the current site conditions, including salinity, must be used for vegetative bank stabilization and living shorelines, respectively. In addition, the activity must be properly maintained, which may require repairing it after severe storms or erosion events. NWP 13 and 54 authorizes those maintenance and repair activities if they require authorization.

GC 2 is expected to reduce the adverse effects to fish and other aquatic species by prohibiting activities that substantially disrupt the necessary life cycle movements of indigenous aquatic species, unless the primary purpose of the activity is to impound water. Compliance with GC 3 and 5 will help ensure that the authorized activity has only minimal adverse effects on spawning areas and shellfish beds, respectively. The authorized activity cannot have more than minimal adverse effects on breeding areas for migratory birds, due to the requirements of GC 4. GC 6 states that the material used for construction must be free from toxic pollutants in toxic amounts.

GC 23 requires mitigation to minimize adverse effects to the aquatic environment through avoidance and minimization at the project site. When a PCN is required, compensatory mitigation may be required by the Corps to ensure that the net adverse environmental effects are no more than minimal.

The Corps' current regulations and procedures for the NWPs, including GC 18, result in compliance with Section 7 of the Endangered Species Act (ESA) and ensure that activities authorized by this NWP are not likely to jeopardize the continued existence or any listed threatened and endangered species or result in the destruction or adverse modification of critical habitat. Current local procedures in Corps districts are effective

in ensuring compliance with ESA. GC 19 requires the permittee to comply with the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act. Consultations pursuant to the essential fish habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act will occur as appropriate for the proposed NWP activities to ensure that the activities will result in no more than minimal adverse effects on essential fish habitat.

C.4. Oil and Natural Gas Facilities – NWPs 8, 12, 14, and 20.

2. To detect and control oil spills, all private tank vessels transporting oil in the State must either be equipped with a cargo level monitoring system, have double hulls, have a plan for inspecting load lines approved by the Department of the Environment, or be accompanied by an all-weather escort vessel for the purpose of continuously checking for evidence of an oil discharge from the escorted tank vessel. MDE (A2) Md. Code Ann., Envir. § 4-405 (b)(1); COMAR 26.10.01.23B.

3. Through bond or other form of security, the operator of a private tank vessel transporting more than 25 barrels of oil as cargo must be able to prove the financial ability to cover the cost of oil spill cleanup and recovery before entering waters of the State. MDE (A2) COMAR 26.10.01.24A. 22

4. No person may discharge oil in any manner, including through bilge and ballast water, or deposit it in an area where it may enter waters of the State. MDE (A2) Md. Code Ann., Envir. § 4-410(a); COMAR 26.10.01.02B.

Corp's Response: NWP 12 and 14 are proposed to be suspended in Maryland, except for use in the C and D canal. NWP 8 and 20 are available for use throughout Maryland.

All NWPs in the C & D canal require a PCN for a project-specific review by the Philadelphia District Corps. NWP 8 requires a PCN for a project-specific Corps' review throughout Maryland. NWP 20 *Response Operations for Oil or Hazardous Substances* does not require a PCN and authorizes activities subject to the National Oil and Hazardous Substances Pollution Contingency Plan. These activities are those that are required for cleanup of oil releases in waters of the U.S. and for use of temporary structures and fills for spill response training exercises. There is no acreage limit for this NWP, but the activity must done in accordance with: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts.

GC 22 prohibits the use of NWPs to discharge dredged or fill material in designated critical resource waters and adjacent wetlands, which may include high value wetlands. GC 23 requires avoidance and minimization of impacts to waters of the United States, including wetlands, at the project site. These activities will generally enhance the natural resource characteristics of the project area through the removal of oil and hazardous

substances that have been released from their containers. Compensatory mitigation, if necessary or required for activities authorized by this NWP, will result in the restoration, enhancement, establishment, or preservation of aquatic habitats that will offset losses of conservation values.

In some cases, activities authorized may require other federal, state, or local authorizations, including Section 401 water quality certification or coastal zone management programs.

C.5. Dredging and Disposal of Dredged Material – NWPs 16, 19, and 23.

1. A person may not dredge for projects that are non-water-dependent unless there is no practicable alternative. MDE (A3) Md. Code Ann., Envir. § 5-907(a); COMAR 26.24.03.02D

2. Dredging for sand, gravel, or fill material, including material for beach nourishment, is prohibited unless an environmental analysis determines that there will be no adverse impact on the environment and no alternative material is available. MDE (A3) COMAR 26.24.03.02C.

8. New disposal sites for dredged material shall be selected based on the following hierarchy of criteria: (i) beneficial use and innovative reuse of dredged material; (ii) upland sites and other environmentally sound confined capacity; (iii) expansion of existing dredged material disposal capacity other than the Hart-Miller Island Dredged Material Containment Facility and areas collectively known as Pooles Island. MDE (A3) Md. Code Ann., Envir. § 5-1104.2(d).

11. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portion of any of the Chesapeake Bay's tributaries except when the project is undertaken to restore islands or underwater grasses, stabilize eroding shorelines, or create or restore wetlands or fish and shellfish habitats. MDE (A3) Md. Code Ann., Envir. § 5-1101(a), 5-1102.

12. A person may not redeposit in an unconfined manner dredged material into or onto any portion of the bottomlands or waters of the Chesapeake Bay known as the deep trough. MDE (A3) Md. Code Ann., Envir. §§ 5-1101(a), -1102.

13. No material dredged from Baltimore Harbor shall be disposed of in an unconfined manner in the open water portion of Chesapeake Bay, or the tidal portions of its tributaries outside of Baltimore Harbor. MDE (A3) Md. Code Ann., Envir. § 5-1102(a).

Corp's Response: NWP 16 & 19 are proposed for suspension in Maryland except for the C & D canal. NWP 23 is available for use throughout Maryland. All NWPs are available for use in the C & D canal.

NWP 19 does not authorize dredging in submerged aquatic vegetation, anadromous fish spawning areas, and wetlands. GC 6 requires that materials used for construction be free from toxic pollutants in toxic amounts. Depending on the method of dredging, soil erosion and sediment control measures, equipment, composition of the bottom substrate, and wind and current conditions during construction, these activities will temporarily increase water turbidity. Particulates will be resuspended in the water column during dredging activities. The turbidity plume will normally be limited to the immediate vicinity of the disturbance and should dissipate shortly after each phase of the dredging activity. GC 12 requires the permittee to stabilize exposed soils and other fills, which will reduce turbidity. NWP activities cannot create turbidity plumes that smother important spawning areas downstream (see GC 3).

GC 23 requires mitigation to minimize adverse effects to the aquatic environment through avoidance and minimization at the project site. Compensatory mitigation may be required by district engineers to ensure that the net adverse environmental effects are no more than minimal.

The activities authorized by these NWPs are subject to Federal, state, and local laws and regulations and are required to obtain all required permits and authorizations. Including Section 401 CWA certification and CZMA consistency.

C.6. Navigation – NWP 22.

1. Navigational access projects shall when possible be designed to use piers to reach deep waters rather than dredging. MDE (B2) COMAR 26.24.03.02.

2. Navigational access channels to serve individual or small groups of riparian landowners shall be designed to prevent unnecessary channels. A central access channel with short spur channels shall be considered over separate access channels for each landowner. MDE (B2) COMAR 26.24.03.02.

3. Navigational access channels shall be designed to minimize alteration of tidal wetlands and underwater topography. MDE (B2) COMAR 26.24.03.02.

5. The location of buoys for the mooring of boats shall not be located in designated private or public shellfish areas, cable-crossing areas, navigational channels, in other places in where general navigation would be impeded or obstructed, or public ship anchorage. The location of mooring buoys should not obstruct the riparian access of adjacent property owners or hinder the orderly access to or use of the waterways by the general public. DNR (A1) COMAR 08.04.13.02.

Corp's Response: Certain NWPs having statutory authority under Section 10 of the Rivers and Harbors Act of 1899 may authorize activities that can impact navigation. NWP 22 is available for use throughout Maryland.

NWP GC 1 *Navigation* states that no activity may cause more than a minimal adverse effect on navigation. As a condition of the NWP 22, if a removed vessel is disposed of in waters of the U.S., a permit from the U.S. EPA and a separate Department of the Army permit may be required. Overall, activities authorized by NWP 22, such as the removal of a wrecked, abandoned, or disabled vessel as well as the removal of another man-made obstruction to navigation helps restore navigation and improves safety within the waterway.

PCNs are required for activities authorized by this NWP when the vessel is listed, or eligible for listing in the National Register of Historic Places, or if the activity is in special aquatic sites. The PCN requirements allow the Corps to review proposed activities, on a case-by-case basis to ensure that the individual and cumulative adverse environmental effects are no more than minimal, as well as ensuring compliance with Section 106 of the National Historic Preservation Act.

The activities authorized by these NWPs are subject to Federal, state, and local laws and regulations and are required to obtain all required permits and authorizations. Including Section 401 CWA certification and CZMA consistency.

C.7. Transportation – NWPs 14.

5. Access to and use of transportation facilities by pedestrians and bicycle riders must be enhanced by any transportation development or improvement project, and best engineering practices regarding the needs of bicycle riders and pedestrians shall be employed in all phases of transportation planning. MDOT (D8) Md. Code Ann., Transp. § 2-602.

Corp's Response: NWP 14 is proposed for suspension in Maryland, except for the C & D canal. NWP 14 is to remain available for use in the C & D canal. A PCN is required for all activities proposed in the C & D canal for a case-by-case review by the Corps to ensure that the activities authorized under this NWP result in no more than minimal adverse environmental effects to the aquatic environment. A PCN is required for NWP 14 for activities resulting in greater than 1/10 acre of loss of waters of the U.S. and all discharges into special aquatic sites.

Permittees are required to obtain all appropriate federal, state, and local approvals and permits prior to commencing work. State and local permits may be required that would address the needs of bicycle riders and pedestrians. Requirements for bicycle or pedestrian needs is outside the Corps regulatory authority. The Corps would review any such proposed linear transportation activity in accordance with the Corps' NWP terms and conditions.

C.8. Agriculture – NWP 34, 40, and 41.

1. Agricultural land management practices may not add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State unless a plan is being implemented on the property that is designed to conserve soil and protect water quality. MDA (C4) Md. Code Ann., Envir. § 4- 213.

3. Animal feeding operations shall use best management practices designed and approved by a local soil conservation district to limit livestock access to surface water. MDA (C4) COMAR 26.08.03.09. 25

5. Agricultural drainage projects shall provide substantial agricultural benefits, prevent direct over bank flow into the ditch, be truncated as far upstream as possible, minimize adverse environmental impacts, and implement and maintain approved soil conservation district conservation plans. MDE (C3) COMAR 26.17.04.11.

Corp's Response: NWPs 34, 40, 41 may authorize activities that may impact the agriculture policy. NWPs 34, 40, and 41 are proposed for suspension in Maryland except for the C & D Canal. NWPs 34, 40, and 41 are available for use in the C & D canal. NWP 34 and 40 require a PCN to the Corps for all activities. A PCN is required for all activities in the C & D canal in Maryland.

GCs 25 and 26 require that these NWPs obtain a water quality certification and coastal zone consistency determination issued by a state, or a waiver thereof, which will ensure that activities do not violate applicable water quality standards. NWP GC 12 *Soil Erosion and Sediment Controls* applicable to all NWPs requires appropriate soil erosion and sediment controls to be used and maintained in an effective operating condition during construction within waters of the U.S., including jurisdictional wetlands and all exposed soils and fills to be permanently stabilized at the earliest practicable date.

Philadelphia District RCs for NWP 40 prohibits any activities located in any perennial stream. Adverse effects to the chemical composition of the aquatic environment will be controlled by general condition 6, which states that the material used for construction must be free from toxic pollutants in toxic amounts. General condition 23 requires mitigation to minimize adverse effects to the aquatic environment through avoidance and minimization at the project site. Compensatory mitigation may be required by district engineers to ensure that the net adverse environmental effects are no more than minimal.

C.9. Development – NWPs 12, 14, 17, 19, 29, 32, 39, 41, 43, 47, 48, 51, 52, and A-E.

2. Development must avoid and then minimize the alteration or impairment of tidal and non- tidal wetlands; minimize damage to water quality and natural habitats; minimize the cutting or clearing of trees and other woody plants; and preserve sites and structures of historical, archeological, and architectural significance and their appurtenances and environmental settings. MDE/DNR/CAC (D6) Md. Code Ann., Envir. §§ 4-402, 5-907(a),

16-102(b); Md. Code Ann., Nat. Res. §§ 5-1606(c), 8-1801(a); Md. Code Ann., Art. 66B § 8.01(b); COMAR 26.24.01.01(A).

3. Any proposed development may only be located where the water supply system, sewerage system, or solid waste acceptance facility is adequate to serve the proposed construction, taking into account all existing and approved developments in the service area and any water supply system, sewerage system, or solid waste acceptance facility described in the application and will not overload any present facility for conveying, pumping, storing, or treating water, sewage, or solid waste. MDE (C9) Md. Code Ann., Envir. § 9-512.

4. A proposed construction project must have an allocation of water and wastewater from the county whose facilities would be affected or, in the alternative, prove access to an acceptable well and on-site sewage disposal system. The water supply system, sewerage system, and solid waste acceptance facility on which the building or development would rely must be capable of handling the needs of the proposed project in addition to those of existing and approved developments. MDE (D6) Md. Code Ann., Envir. § 9-512.

5. Any residence or commercial establishment that is served or will be served by an on-site sewage disposal system or private water system must demonstrate that the system or systems are capable of handling the existing and reasonably foreseeable sewage flows or water demand prior to construction or alteration of the residence or commercial establishment. MDE (D6) COMAR 26.04.02.02D.

7. Industrial facilities must be sited and planned to insure compatibility with other legitimate beneficial water uses, constraints imposed due to standards of air, noise and water quality, and provision or availability of adequate water supply and waste water treatment facilities. MDE (D4) Md. Code Ann., Envir. §§ 2-102, 4-402, 9-224(b), 9-512(b); COMAR 26.02.03.02; COMAR 26.11.02.02B.

9. Development shall protect existing community character and be concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

10. Development shall be located near available or planned transit options. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

11. Whenever possible, communities shall be designed to be compact, contain a mixture of land uses, and be walkable. MDP (D6) Md. Code Ann., St. Fin. & Proc. §§ 5-7A-01 to -02.

12. To meet the needs of existing and future development, communities must identify adequate drinking water and water resources and suitable receiving waters and land areas for stormwater management and wastewater treatment and disposal. MDE (D6) Md. Code Ann., Art. 66B § 3.05.

Corp's Response: NWPs 12, 14, 19, 29, 39, 41, 43, 47, 51, 52 (except for activities is tidal navigable waters of the U.S.), C, D, and E are proposed to be suspended in Maryland except for the C & D Canal. All the subject NWPs are available for use in the C & D canal in Maryland. NWPs 17, 32, and 48 are available for use in the remainder of the State of Maryland. PCNs are required for all NWP activities proposed in the C & D canal within Maryland. All activities proposed under NWP 17 require a PCN. Certain NWP 48 activities require a PCN to the Corps.

The terms of this NWP, including any acreage limits or any other quantitative limits in the text of the NWP, the protections provided by many of the NWP general conditions, plus any regional conditions imposed by Corps and activity-specific conditions imposed by district engineers will help ensure that the activities authorized by this NWP result in no more than minimal individual and cumulative adverse environmental effects. An additional safeguard is the ability of the Corps to exercise discretionary authority and require project proponents to obtain individual permits for proposed activities whenever the Corps determines that a proposed activity will result in more than minimal individual or cumulative adverse environmental effects after considering any mitigation proposed by the applicant.

GC 23 requires mitigation to minimize adverse effects to the aquatic environment through avoidance and minimization at the project site. Compensatory mitigation may be required by district engineers to ensure that the net adverse environmental effects are no more than minimal. The adverse effects of these NWPs on general environmental concerns will be minor, since the NWPs authorize only those activities with no more than minimal adverse environmental effects.

NWPs may authorize activities that may impact historical and archeological sites. The NWP regulations at 33 CFR 330.4(g) and the ''Historic Properties'' GC 20, ensure that all activities authorized by NWPs comply with section 106 of the National Historic Preservation Act. GC 20 states that in cased where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied. NWP GC 12 *Soil Erosion and Sediment Controls* applicable to all NWPs requires appropriate soil erosion and sediment controls to be used and maintained in an effective operating condition during construction within waters of the U.S., including jurisdictional wetlands and all exposed soils and fills to be permanently stabilized at the earliest practicable date.

In some cases, activities authorized by an NWP may require other federal, state, or local authorizations. Activities authorized by this NWP may also affect the quality of water supplies by adding pollutants to surface waters and groundwater, but many causes of water pollution, such as discharges regulated under Section 402 of the Clean Water Act, are outside the Corps' control and responsibility. Some water pollution concerns can be addressed through the Section 401 water quality certification required for activities authorized by this NWP. The quantity and quality of local water supplies

may be enhanced through the construction of water treatment facilities. GC 7 prohibits discharges in the vicinity of public water supply intakes.

This NWP requires a Clean Water Act section 401 water quality certification, since it authorizes discharges of dredged or fill material into waters of the United States. Most water quality concerns are addressed by the state or tribal certifying authority. In accordance with general condition 25, the permittee may be required to develop and implement water quality management measures that minimizes the degradation of the downstream aquatic environment, including water quality.

C.10. Sewage Treatment – NWPs 29, 39, 40, and D.

22. On-site sewage disposal systems are prohibited: o If they may pollute well water supplies, water supply reservoirs, shellfish growing waters, bathing beaches, lakes, or tidewater areas, including within 25 feet of drainage and spring seeps, flood plain soils, gullies, rock outcroppings, or slopes in excess of 25 percent; 50 feet from water well systems in confined aquifers; o 100 feet from water well systems in unconfined aquifers, water bodies not serving as potable water supplies, and a stream bank when further than 3,000 feet upstream of an intake for a potable water supply; and o 200 feet from a stream bank when closer than 3,000 feet upstream of such an intake. MDE (D7) COMAR 26.04.02.04. 29

23. Facilities capable of berthing vessels 22 feet or larger with more than 10 slips must have a wastewater collection and treatment system and an on-site pump-out station adequate to handle existing and increased flow and increased sewage capacity, respectively. MDE (D7) Md. Code Ann., Env. § 9-333.

Corp's Response: NWPs 29, 39, 40, and D are proposed to be suspended in Maryland except for the C & D Canal. NWPs 29, 39, 40, and D are available for use in the C & D canal. A PCN is required for all NWPs proposed within the C & D canal. Nationally, NWPs 29, 39, and 40 require a PCN, while NWP D requires a PCN to the Corps when a section 10 permit is required or when discharges result in the loss of greater than 1/10 acre of waters of the U.S.

Water quality certification is required for activities authorized by these NWPs that result in discharges of dredged or fill material into waters of the United States, which will help ensure that the activities do not violate applicable water quality standards. Permittees may be required to implement water quality management measures to ensure t at the authorized activities do not result in more than minimal degradation of water quality. In addition, local and state permits may also be required that ensure compliance with local and state land use requirements. Water quality certification conditions are included in NWPs regional conditions.

Philadelphia District RCs for NWPs 29 and 39 restrict the construction of sewage disposal systems in waters of the United States. NWPs 29, 39, and 40 do not authorize

discharges into tidal waters of the U.S., or non-tidal wetlands adjacent to tidal waters. Therefore, these 3 NWPs will not affect #23 of the subject coastal enforceable policies.

The Baltimore District finds that the 2020 NWPs with our Regional Conditions are consistent to the maximum extent practicable with the enforceable policies of the Maryland Coastal Zone Management Program.

The coastal zone consistency determination review period for the proposed issuance of the NWPs began with the Philadelphia and Baltimore District's requests on September 25, 2020 and September 30, 2020, respectively. We are providing this document to specifically address the enforceable policies of the Maryland Coastal Zone Management program as requested in your letter dated October 8, 2020. Please send your response to:

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