

**US Army Corps  
of Engineers**  
Philadelphia District

Wanamaker Building  
100 Penn Square East  
Philadelphia, PA 19107-3390  
ATTN: CENAP-OP-R

# Public Notice

**Special Public Notice**

**Date 16 March 2012**

## **NWP Regional Conditions in NJ and DE**

In Reply Refer to:  
Regulatory Branch

### **NATIONWIDE PERMIT REGIONAL CONDITIONS FOR NJ AND DE**

On February 21, 2012 the Corps published a notice in the *Federal Register* (77 FR 10184 - 10290). In that notice, the Corps announced the reissuance of forty eight (48) of the existing forty nine (49) Nationwide Permits (NWPs), general conditions, and definitions with some modifications. The Corps has also issued two new NWPs, three new general conditions, and three new definitions. The effective date for the new and reissued NWPs will be March 19, 2012.

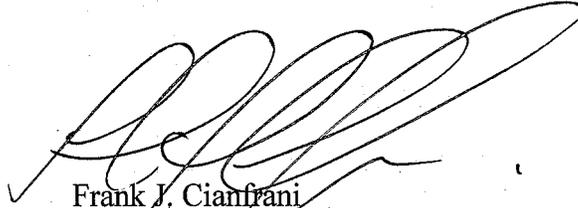
After the publication of that *Federal Register* notice, Corps districts began finalizing their regional conditions for the reissued NWPs. Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will also help ensure protection of high value waters within the District. The Philadelphia District has the lead responsibility for the development of regional conditions for NWP activities in the States of Delaware and New Jersey. The Baltimore District has the lead responsibility for the development of regional conditions that would be applicable in the Commonwealth of Pennsylvania. The enclosed regional conditions (Enclosures 1 and 2) have been approved for the States of Delaware and New Jersey, and will become effective with the New NWPs on **March 19, 2012**. The Philadelphia District initiated the development of these regional conditions in a public notice dated February 21, 2011. These regional conditions are also posted on the Philadelphia District Internet home page. The URL address for these regional conditions is: <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

The publication of the *Federal Register* notice on February 21, 2012 began a 60-day period for the States to complete their water quality certification (WQC) process for the NWPs. The 60-day period for WQC will end on April 23, 2012. This *Federal Register* notice also began the 90-day period for the States to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 90-day period for CZMA consistency determinations will end on May 21, 2012.

While the States complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, while the States complete their CZMA consistency determination processes, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The February 21, 2012, *Federal Register* notice is available for viewing at the Philadelphia District or on the Internet at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> . As an alternate, Internet users can access the *Federal Register* through the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> .

Additional information concerning the nationwide permits and regional conditions in the States of Delaware and New Jersey can be obtained by contacting Mr. Edward Bonner at (215) 656-5932, by writing to the Philadelphia District at the address listed above, or by reviewing the Philadelphia District Internet Home Page at: <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.



Frank J. Cianfrani  
Chief, Regulatory Branch

Enclosures

1. Regional Conditions for New Jersey
2. Regional Conditions for Delaware

**NWP REGIONAL CONDITIONS FOR NEW JERSEY (March 16, 2012)**

**REGIONAL GENERAL CONDITION - 1(G-1).**

This regional condition is applicable to all nationwide permits (NWPs) where a preconstruction notification (PCN) is submitted to the District Engineer. This includes the following: (a) those NWPs requiring notification to the District Engineer pursuant to the language of the specific nationwide permit ; (b) those NWPs requiring notification to the District Engineer pursuant nationwide permit general conditions (conditions 16, 18, 21, 20, 22 and 31), and (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition. The NWPs that require a PCN include NWPs \*3, 7, 8, \*10, \*11, 12, \*13, 14, \*15, 17, \*18, 19, 21, \*22, 23, \*25, \*27, 28, 29, \*30, 31, 33, 34, 35, \*36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51 and 52). \*These NWP activities require notification under certain circumstances. Review the terms of the individual NWP authorization, general condition 22, or the regional conditions to identify these circumstances.

**Condition G-1:** All preconstruction notifications (PCNs) to the District Engineer shall describe all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to any other information specified in the nationwide permit itself or general conditions: Plan(s) of the proposed work on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; a location map; longitude and latitude; formal property identification such as lot and block or tax parcel number, representative photographs of the project site; a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; existing water depths; depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; the width of the waterway at the project site; the location of any mapped floodplain areas; the location of any dredged material disposal area; the distance from the edge of any navigation channel; the location of any temporary work, structures, vessels, or fills required for the construction; a copy of any previous Federal or State approvals; and, the location and nature of any submerged aquatic vegetation (e.g., eel grass Zostera, marina) or shellfish beds. All work in areas of Federal jurisdiction shall be identified on a scaled plan of the project site. Further, at the discretion of the District Engineer, the Corps may consider a PCN incomplete if it is determined that field verification of a wetland delineation is required.

The PCN shall also include the following information:

- (1) Documentation that the applicant has followed the consultation guidance published on the U.S. Fish and Wildlife Service New Jersey Field Office website <http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html> to determine if a proposed NWP activity may affect a listed species. The information presented on this web site provides a list of federally listed species by county and municipality and the habitat requirements for each federally listed threatened and endangered species found in New Jersey. If review of the above information reveals that the proposed activity is within a municipality that supports a federally listed species and that the project site supports habitat for a federally listed species, the applicant shall follow the guidance provided on the website and, if necessary, contact the U.S. Fish and Wildlife Service New Jersey Field Office for further coordination prior to applying to the Corps for an NWP verification. If the review of the U.S. Fish and Wildlife Service New Jersey Field Office municipal and habitat information indicate that no federally listed species or their habitats are present, it can be concluded that the proposed activity will not adversely affect any federally listed species under the jurisdiction of the U.S. Fish and Wildlife Service. Additional information on State and federally listed threatened and endangered species can be found at the following websites: <http://www.nj.gov/dep/gis/newmapping.htm> and <http://www.nj.gov/dep/fgw/ensphome.htm>
- (2) Documentation from the State agency(s) indicating whether the proposed project is located on a property listed or eligible for listing on the National Register of Historic Places. The appropriate address for this program is also provided below (See Addresses in Special Note 3 below). (For further information see NWP general conditions 20 and 21)
- (3) A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.

**REGIONAL GENERAL CONDITION - 2(G-2).**

This regional condition is applicable to those nationwide permit activities that require coordination by the District Engineer with the Federal and State resource agencies under the terms of general condition 30. This would include any NWP activities where the loss of wetlands or waters of the United States would exceed 0.5 acres. **It should be further noted that certain NWPs have been regionally conditioned to require coordination with the National Marine Fisheries Service only.**

**Condition G-2:** As a part of the PCN to the District Engineer, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below. **(See Addresses in Special Note 4 below.)**

**REGIONAL GENERAL CONDITION - 3(G-3).**

This regional condition is applicable to all nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a "study river" for possible inclusion in the system. (For further information see General Condition 16.)

**Condition G-3:** The applicant shall provide written notification to the National Park Service prior to performing the activity, and shall not begin work until notified by the National Park Service in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. A copy of this approval from the National Park Service shall be forwarded to the District Engineer. All notifications to the National Park Service required by this regional general condition shall include the information identified in regional condition G-1 above. The appropriate addresses for the National Park Service are provided below.

(i) For all projects, the applicant shall notify: Mr. Chuck Barscz, National Rivers Program, Northeast Region, National Park Service, 200 Chestnut Street, Third Floor, Philadelphia, Pennsylvania 19106.

(ii) If the proposed project is located in the Upper Delaware River, notification shall also be sent to Mr. Don Hamilton, Upper Delaware National Scenic and Recreational River, R.R. 2, Box 2428, Beach Lake, Pennsylvania, 18405-9737.

The following list includes the waterway locations that are currently subject to this regional condition.

(1) Upper Delaware River; from the confluence of the East and West Branches (below Hancock, New York) downstream to Cherry Island near Millrift in Westfall Township, Pike County (Sparrow Bush, New York), approximately five miles above Port Jervis).

(2) Delaware Water Gap National Recreation Area; Pennsylvania and New Jersey; within the boundaries of the National Recreation Area, beginning approximately four miles below Port Jervis, extending downstream approximately to the boundary between Monroe and Northampton Counties in Pennsylvania (just below the Interstate 80 bridge).

(3) Lower Delaware River; Pennsylvania and New Jersey; from the town of Washington Crossing in Bucks County, Pennsylvania, upstream to Upper Mount Bethel Township in Northampton County, Pennsylvania, plus Tinicum, Paunacussing, and Tohickon Creeks (tributaries). The towns of Belvidere, Phillipsburg, and Easton, as well as existing power plants, water supply intakes and wastewater outfalls are not included in the designated area.

(4) Great Egg Harbor River; New Jersey; from the mouth of Patcong Creek upstream approximately 40 miles plus several tributaries, in Atlantic, Cape May, Gloucester and Camden Counties. This includes Patcong Creek extending upstream from its confluence with Great Egg Harbor River to the Garden State parkway bridge, approximately 2.8 miles.

(5) Maurice River; New Jersey; the Maurice River, from Shell Pile approximately 17 miles upstream to the Millville sewage treatment plant, and portions of Menantico Creek, Manumuskin River and Muskee Creek, in Cumberland and Atlantic Counties.

(6) White Clay Creek; Pennsylvania and Delaware; from the headwaters in Pennsylvania to the confluence with the Christina River in Delaware and all tributaries, including the East, West and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries.

**REGIONAL GENERAL CONDITION - 4(G-4).**

This regional condition is applicable to any nationwide permit (NWP) activities in New Jersey where a preconstruction notification (PCN) is not required or submitted to the District Engineer.

**Condition G-4:** Prior to conducting any work, the applicant shall follow the consultation guidance published on the U.S. Fish and Wildlife Service New Jersey Field Office website <http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html> to determine if a proposed NWP activity may affect a listed species. The information presented on this web site provides a list of federally listed species by county and municipality and the habitat requirements for each federally listed threatened and endangered species found in New Jersey. If review of the above information reveals that the proposed activity is within a municipality that supports a federally listed species and that the project site supports habitat for a federally listed species, the applicant shall follow the guidance provided on the website and, if necessary, contact the U.S. Fish and Wildlife Service New

Jersey Field Office for further coordination prior to applying to the Corps for an NWP verification. If the review of the U.S. Fish and Wildlife Service New Jersey Field Office municipal and habitat information indicate that no federally listed species or their habitats are present, it can be concluded that the proposed activity will not adversely affect any federally listed species under the jurisdiction of the U.S. Fish and Wildlife Service. The NWP's that do not require a PCN to the District Engineer include NWP's 1, 2, \*3, 4, 5, 6, 9, \*10, \*11, \*13, \*15, 16, \*18, 20, \*22, 24, \*25, \*27, \*30, and \*36, \*These NWP activities require notification to the District Engineer under certain circumstances, and under those circumstances this regional condition is not applicable. Review the NWP authorization, general condition 22, or regional conditions to identify these circumstances.

**REGIONAL GENERAL CONDITION – 5 (G-5)** This regional condition is applicable to all NWP activities within the State of New Jersey that would occur in designated shellfish habitat, as defined in the State of New Jersey Department of Environmental Protection “Coastal Permit Program Rules” N.J.A.C. 7:7E-3.2(a)(1-4).

**Condition G-5:** All permanent structures, including piers and docks (piles, stringers, whalers and decking), utility poles, boat lifts, mooring piles, breakwaters, and replacement bulkheads must be constructed with non-polluting material, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products in those cases where the proposed activity would occur in designated shellfish habitat, as defined in State of New Jersey Department of Environmental Protection “Coastal Permit Program Rules” N.J.A.C. 7:7E-3.2(a)(1-4). Creosote and pressure-treated lumber (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.)(wolmanized) which is susceptible to leaching are considered polluting materials and are not acceptable for the purpose of this permit.

**REGIONAL CONDITIONS FOR NWP (3) MAINTENANCE:**

Condition (a): Any dredging on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers.

Condition (b): Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

Condition (c): A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

**REGIONAL CONDITION FOR NWP (5) SCIENTIFIC MEASUREMENT DEVICES:**

Condition (a): Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes.

Condition (b): The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

**REGIONAL CONDITION FOR NWP (6) SURVEY ACTIVITIES:**

Condition (a): Work cannot preclude the passage of anadromous fishes.

Condition (b): The use of in-water explosives is prohibited.

**REGIONAL CONDITION FOR NWP (7) OUTFALL STRUCTURES:**

**Condition (a):** Any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meets or exceeds the “wedge wire” design technology.

Condition (b): The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

**REGIONAL CONDITIONS FOR NWP (10) MOORING BUOYS:**

Condition (a): Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.

Condition (b): Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat.

**REGIONAL CONDITIONS FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES.**

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): All temporary structures must be located with sufficient water depths so that the structures float at all stages of the tide.

Condition (c): This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV).

Condition (d): A PCN shall be submitted to the District Engineer for activities proposed on any waterway containing an authorized Federal or State navigation channel (See Regional General Condition G-1).

**REGIONAL CONDITIONS FOR NWP (12) UTILITY LINES.**

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways within the Philadelphia District boundaries: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal. This nationwide permit is **not** applicable to activities on the following waterways within the New York District boundaries: (1) Arthur Kill; (2) Hudson River; (3) Kill Van Kull; (4) Newark Bay; (5) Raritan Bay; (6) Sandy Hook Bay; (7) Upper New York Bay.

Condition (b): A PCN shall be submitted to the DE for all activities in waters of the United States under the terms of this NWP

Condition (c): Any dredging or excavation in the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers.

Condition (d): Any dredging or filling in all other waters of the United States must comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers: March 1 – June 30 for a Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

Condition (e): Any PCN to the District Engineer, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (f): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as “frack out”.

Condition (g): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (h): Any excavated or stockpiled materials shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland.

Condition (i): Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

Condition (j): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

**Condition (k):** If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN to the Corps of Engineers.

**For Aerial Transmission Lines Across Navigable Waters:**

**Condition (l):** The following minimum clearances are required. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances, which would be required by the U.S. Coast Guard for new fixed bridges in the vicinity of the proposed transmission line. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal System Voltage, (kv)	Minimum additional clearance (feet) above clearance required for bridges
115 and below .....	20 feet
136 .....	22 feet
161 .....	24 feet
230 .....	26 feet
350 .....	30 feet
500 .....	35 feet
700 .....	42 feet
750 – 765 .....	45 feet

**Condition (m):** Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

**Condition (n):** Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

**For Buried Cables and Pipelines Across Navigable Waters:**

**Condition (o):** The top of the cable or pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

**Condition (p):** Within 60 days after completion of the work, the permittee shall furnish the Corps and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a “drawing of record” if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

**Condition (q):** There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the District Engineer as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the District Engineer.

**For Buried Cables or Pipelines Across Federal Navigation Channels(Except Those Listed in Condition (a) above):**

Condition (r): The top of the cable or pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of cable or pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

**REGIONAL CONDITION FOR NWP (13) BANK STABILIZATION**

Condition (a): Any PCN to the Corps of Engineers that does not utilize a non-structural bank stabilization method (e.g. vegetation or combinations of vegetation and rock) must include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b) Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (d): This NWP may not be used to authorize any stabilization activity where no demonstrable erosion is evident.

**REGIONAL CONDITION FOR NWP (14) LINEAR TRANSPORTATION CROSSINGS**

Condition (a): A PCN shall be submitted to the DE for all activities in waters of the United States under the terms of this NWP

Condition (b): A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): On the Delaware River, any dredging or excavation associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers.

Condition (d) Any in-water work for other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

Condition (e): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or water body to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

**REGIONAL CONDITION FOR NWP (18) MINOR DISCHARGES**

Condition (a): Any activities on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

Condition (b): A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with

the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

#### **REGIONAL CONDITION FOR NWP (19) MINOR DREDGING**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activities on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITION FOR NWP (22) REMOVAL OF VESSELS**

Condition (a): A PCN must be submitted to the Corps of Engineers under certain circumstances. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activities on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITIONS FOR NWP (23) CATEGORICAL EXCLUSIONS**

Condition (a): ): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the authorization of this NWP.

Condition (b): Activities associated with this NWP shall not cause the loss of more than one acre of waters of the United States, including wetlands.

#### **REGIONAL CONDITION FOR NWP (25) STRUCTURAL DISCHARGES**

Condition (a): A PCN is only required for activities in designated critical resource waters pursuant to general condition 22. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): On the Delaware River, any dredging or excavation associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITIONS FOR NWP (27) AQUATIC HABITAT RESTORATION, AND ENHANCEMENT**

Condition (a): A PCN must be submitted to the Corps of Engineers under certain circumstances. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activity involving shellfish seeding, such as, the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that water body.

#### **REGIONAL CONDITION FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS.**

Condition (a): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

Condition (b): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): On the Delaware River, any dredging or excavation associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITIONS FOR NWP (29) RESIDENTIAL DEVELOPMENTS**

Condition (a): A PCN must be submitted to the DE for all activities in waters of the United States under the terms of this NWP.

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential development will be considered an adverse affect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and/or preserved in perpetuity.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (f): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

#### **THE FOLLOWING REGIONAL CONDITIONS FOR NWP 29 ARE APPLICABLE TO THE CONSTRUCTION OR EXPANSION OF A SINGLE FAMILY RESIDENCE:**

Condition (g): This NWP may be used only once by an individual.

Condition (h): This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.

Condition (i): This NWP may only be used on residential lots with access to a central sewage system which is in place and operational at the time of notification, except in instances where the discharge is for expansion of an existing residence.

Condition (j): This NWP does not authorize the discharge of fill into waters of the United States, including wetlands, for the purpose of installing or expanding an on-lot sewage disposal system.

Condition (k). This NWP does not authorize the discharge of dredged or fill material in wetlands located within a 100-year floodplain. Absent any established maps or other information to the contrary, the 100-year floodplain is assumed to extend fifty (50) feet landward from the top of the stream bank.

Condition (l). Any notification to the District Engineer shall include a sketch plan depicting the proposed footprint of fill. The sketch plan shall also include the property dimensions, building setbacks, wetland boundaries, acreage of the proposed wetland loss, location and acreage of any previously permitted wetland fills, location(s) of any streams, drainage courses, and floodplain limits, location of proposed house, driveway, and utilities.

Condition (m). Individuals who wish to use this NWP may be required to compensate for the loss of waters of the United States including wetlands by one of the following, where the loss of waters of the United States would be greater than 0.05 acres:

- a.) construct a replacement wetland in accordance with a plan approved by the Corps of Engineers;
- b.) participate in a wetland mitigation bank approved by the Corps of Engineers.
- c.) participate in an "in lieu fee" program approved by the Corps of Engineers.

#### **REGIONAL CONDITIONS FOR NWP (33) TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING**

Condition (a): On the Delaware River, any in-water work associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITIONS FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS.**

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal.

Condition (b): A PCN shall be submitted to the Corps of Engineers for activities on all other waterways not listed above. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

#### **REGIONAL CONDITION FOR NWP (36) BOAT RAMPS.**

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal.

Condition (b): On the Delaware River, any in-water work associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

Condition (c): Any discharge of poured concrete must be contained within cells or forms until the concrete has set.

#### **REGIONAL CONDITIONS FOR NWP (38) CLEANUP OF HAZARDOUS AND TOXIC WASTE**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): On the Delaware River, any dredging or excavation associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

#### **REGIONAL CONDITIONS FOR NWP (39) COMMERCIAL & INSTITUTIONAL ACTIVITIES.**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Under the terms of this NWP, any wetlands that are located within the plotted lot lines of any commercial or institutional development will be considered an adverse affect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and/or preserved in perpetuity.

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is not authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of NWP 18 or NWP 29.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (f): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (g): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

#### **REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES.**

Condition (a): This NWP does not authorize any activities located in any perennial stream.

#### **REGIONAL CONDITIONS FOR NWP (41) RESHAPING EXISTING DRAINAGE DITCHES.**

Condition (a): A PCN shall be submitted to the Corps of Engineers for any proposed activity in waters of the United States, including wetlands, under the terms of this NWP.

#### **REGIONAL CONDITIONS FOR NWP (42) RECREATIONAL FACILITIES.**

Condition (a): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (b): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (c): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (d): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (e): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

**REGIONAL CONDITIONS FOR NWP (43) STORMWATER MANAGEMENT FACILITIES.**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

**REGIONAL CONDITIONS FOR NWP (45) REPAIR OF UPLANDS DAMAGED BY DISCRETE EVENTS**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): On the Delaware River, any dredging or excavation associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and approved by the Corps of Engineers. Any in-water work in other waters of the United States shall comply with the following seasonal restrictions unless otherwise specifically approved by the Corps of Engineers:

March 1 – June 30 for all Atlantic coastal waters and Delaware River tributaries up to and including the Delaware Memorial Bridge and above the Delaware Memorial Bridge from March 15 – June 30.

**REGIONAL CONDITIONS FOR NWP (48) COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES.**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): A complete copy of any PCN to the Corps of Engineers shall be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): A complete of any PCN to the Corps of Engineers shall be forwarded to the U.S. Fish and Wildlife Service, Field Supervisor, 927 North Main Street (Building D), Pleasantville, New Jersey 08232. The Corps of Engineers will coordinate review of the PCN with the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act.

Condition (d): This NWP does not authorize expansion activities into any areas mapped as SAV.

Condition (e): Any introduced shellfish must be certified under New Jersey standards as being disease and parasite free.

Condition (f): All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

**REGIONAL CONDITIONS FOR NWP (52) WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS.**

Condition (a): Any activity associated with this NWP will require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies. As a part of the required PCN to the District Engineer, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below. (See Addresses in Special Note 4 below.)

**SPECIAL NOTES:**

(1) Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

(2) Effective March 2, 1994, the State of New Jersey assumed the Federal Section 404 permit program from the U. S. Army Corps of Engineers. As such, these nationwide permits including all regional conditions developed for waters of the United States within the State of New Jersey are only effective for those waters which have not been assumed by the State of New Jersey.

(3) The following address shall be used for contacting the appropriate State agency to obtain information relating to historic resources that are described above in **Regional General Conditions G-1**.

New Jersey Department of Environmental Protection  
Historic Preservation Office  
5 Station Plaza  
501 East State Street, 4<sup>th</sup> Floor  
Trenton, New Jersey 08625

(4) The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer. These addresses are required for **Regional General Conditions G-2**.

National Marine Fisheries Service  
Habitat Conservation Division  
74 Magruder Road, Sandy Hook  
Highlands, New Jersey 07732

Field Supervisor  
U.S. Fish and Wildlife Service  
927 North Main Street (Building D)  
Pleasantville, New Jersey 08232

U.S. Environmental Protection Agency, Region II  
Water Programs Branch  
290 Broadway  
New York, New York 10007-1866

Administrator  
Land Use Regulation Program  
NJ Department of Environmental Protection  
5 Station Plaza  
501 East State Street, 2<sup>nd</sup>. Floor  
Trenton, New Jersey 08625

NJ Department of Environmental Protection  
Historic Preservation Office  
5 Station Plaza  
501 East State Street  
Trenton, New Jersey 08625

**NWP REGIONAL CONDITIONS FOR DELAWARE (March 16, 2012)**

**REGIONAL GENERAL CONDITION - 1(G-1).**

This regional condition is applicable to all nationwide permits (NWPs) where a preconstruction notification (PCN) must be submitted to the District Engineer. This includes the following: (a) those NWPs requiring notification to the District Engineer pursuant to the language of the specific nationwide permit ; (b) those NWPs requiring notification to the District Engineer pursuant nationwide permit general conditions (conditions 20, 21, 22 and 31); and (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition (Required PCN). The NWPs that require a PCN include NWPs \*3, 7, 8, \*10, \*11, 12, \*13, 14, \*15, 17, \*18, 19, 21, \*22, 23, \*25, \*27, 28, 29, \*30, 31, 33, 34, 35, \*36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51 and 52. **\*These NWP activities require notification under certain circumstances. Review the terms of the individual NWP authorization, general condition 22, or the regional conditions to identify these circumstances.**

**Condition G-1:** All required preconstruction notifications (PCNs) to the District Engineer shall describe all activities that the applicant plans to undertake that are reasonably related to the same project. All required PCNs to the District Engineer shall include the following information, where applicable, in addition to any other information specified in the nationwide permit itself or general conditions:

Plan(s) of the proposed work on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; a location map; longitude and latitude; formal property identification such as lot and block or tax parcel number, representative photographs of the project site; a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; existing water depths; depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; the width of the waterway at the project site; the location of any mapped floodplain areas; the location of any dredged material disposal area; the distance from the edge of any navigation channel; the location of any temporary work, structures, vessels, or fills required for the construction; a copy of any previous Federal or State approvals; and, the location and nature of any submerged aquatic vegetation (e.g., eel grass Zostera marina) or shellfish beds. All work in areas of Federal jurisdiction shall be identified on a scaled plan of the project site. Further, at the discretion of the District Engineer, the Corps may consider a PCN incomplete if it is determined that field verification of any wetland delineation is required.

The required PCN shall also include the following information:

- (1) Documentation that the applicant has already contacted and received a response from the U.S. Fish and Wildlife Service (USFWS) concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. The information provided to USFWS should include the information described above in this condition and any other information specifically requested by the federal agencies to conduct their evaluation for threatened and endangered species and essential fish habitat. The addresses for these agencies are provided below. **(See Special Note 2 below)**
- (2) Documentation from the State agency(s) indicating whether the proposed project is located within a State Natural Heritage site, or National Estuarine Research Reserve. This documentation shall also indicate whether the project is located on a property listed or eligible for listing on the National Register of Historic Places. The appropriate addresses for these programs are also provided below **(See Special Note 2 below)**. (For further information see NWP general conditions 20, 22 and 31)
- (3) A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.

**REGIONAL GENERAL CONDITION - 2(G-2).**

This regional condition is applicable to those nationwide permit activities that require coordination by the District Engineer with the Federal and State resource agencies. This would include any NWP activities where the loss of wetlands or waters of the United States would exceed 0.5 acres. Some NWPs have been regionally conditioned to provide for coordination with the National Marine Fisheries Service (NMFS) only.

**Condition G-2:** As a part of the required PCN to the District Engineer, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below. **(See Addresses in Special Note 3 below.)**

**REGIONAL GENERAL CONDITION - 3(G-3).**

This regional condition is applicable to all nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a "study river" for possible inclusion in the system (See General Condition 16).

**Condition G-3:** The applicant shall provide written notification to the National Park Service prior to performing the activity, and shall not begin work until notified by the National Park Service in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. A copy of this approval from the National Park Service shall be forwarded to the District Engineer. All notifications to the National Park Service required by this regional general condition shall include the information identified in regional condition G-1 above. The appropriate addresses for the National Park Service are provided below.

(i) For all projects, the applicant shall notify: Mr. Chuck Barszcz, National Rivers Program, Northeast Region, National Park Service, 200 Chestnut Street, Third Floor, Philadelphia, Pennsylvania 19106.

The following list includes the waterway locations in Delaware that are currently subject to this regional condition.

(1) White Clay Creek; Pennsylvania and Delaware; from the headwaters in Pennsylvania to the confluence with the Christina River in Delaware and all tributaries, including the East, West and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries.

#### **REGIONAL GENERAL CONDITION - 4(G-4).**

**This regional condition is applicable to any nationwide permit (NWP) activities where a preconstruction notification (PCN) is not required or submitted to the District Engineer.**

Condition G-4: The applicant shall contact the U.S. Fish and Wildlife Service prior to conducting the proposed work to verify compliance with NWP general condition 17 (Threatened and Endangered Species). The NWPs that do not require a PCN to the District Engineer include NWPs 1, 2, \*3, 4, 5, 6, 9, \*10, \*11, \*13, \*15, 16, \*18, 20, \*22, 24, \*25, \*27, \*30, and \*36. \*These NWP activities require notification to the District Engineer under certain circumstances. Review the NWP authorization, general conditions, or regional conditions to identify these circumstances. The appropriate address for the US Fish and Wildlife Service is provided below. If no response is received from the U.S. Fish and Wildlife Service after 30 days of their receipt of this notification, the applicant may assume that the proposed work would not affect any federally listed threatened or endangered species. This lack of agency response would also be applicable to any notification to the U.S. Fish and Wildlife Service pursuant to Regional General Condition G-1 above. (See Special Note 3 below for the appropriate address.)

#### **REGIONAL GENERAL CONDITION 5 (G-5)**

**This regional condition is a modification of general condition 22 (Critical Resource Waters)**

**Condition G-5:** In the State of Delaware, State Natural Heritage Sites are included as critical resource waters and are subject to the terms and limitations specified in general condition 22. General Condition 22 is included here for added information.

Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

#### **REGIONAL CONDITIONS FOR NWP (3) MAINTENANCE:**

Condition (a): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (b): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (c): A complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

#### **REGIONAL CONDITION FOR NWP (5) SCIENTIFIC MEASUREMENT DEVICES:**

Condition (a): Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes.

Condition (b): The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

#### **REGIONAL CONDITIONS FOR NWP (6) SURVEY ACTIVITIES:**

Condition (a): Work cannot preclude the passage of anadromous fishes.

Condition (b): The use of in-water explosives is prohibited.

#### **REGIONAL CONDITION FOR NWP (7) OUTFALL STRUCTURES:**

Condition (a): Any proposed intake structures must include "wedge wire" screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meets or exceeds the "wedge wire" design technology.

Condition (b): The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

#### **REGIONAL CONDITIONS FOR NWP (10) MOORING BUOYS:**

Condition (a): Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.

Condition (b): Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat.

#### **REGIONAL CONDITIONS FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES.**

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): All temporary structures must be located with sufficient water depths so that the structures float at all stages of the tide.

Condition (c): This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV).

Condition (d): A PCN shall be submitted to the District Engineer for activities proposed on any waterway containing an authorized Federal or State navigation channel (See Regional General Condition G-1).

#### **REGIONAL CONDITIONS FOR NWP (12) UTILITY LINES.**

Condition (a): This nationwide permit is not applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Chesapeake and Delaware Canal; (3) Lewes and Rehoboth Canal.

Condition (b): For all waterways not listed in condition "a" above, a PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP

Condition (c): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (d): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (e): Any PCN to the District Engineer, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (f): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (g): Any excavated or stockpiled materials shall be stabilized in accordance with Delaware's Sediment and Stormwater Regulations (October 2006 or as subsequently amended) to prevent reentry into any waterway or wetland.

Condition (h): Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

Condition (i): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frack out".

Condition (j): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

Condition (k): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN for this NWP (See Condition b above).

**For Aerial Transmission Lines Across Navigable Waters:**

Condition (l): The following minimum clearances are required. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances, which would be required by the U.S. Coast Guard for new fixed bridges in the vicinity of the proposed transmission line. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal System Voltage, (kv)	Minimum additional clearance (feet) above clearance required for bridges
115 and below .....	20 feet
136 .....	22 feet
161 .....	24 feet
230 .....	26 feet
350 .....	30 feet
500 .....	35 feet
700 .....	42 feet
750 – 765 .....	45 feet

Condition (m): Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

Condition (n): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

**For Buried Cables and Pipelines Across Navigable Waters:**

Condition (o): The top of the cable or pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (p): Within 60 days after completion of the work, the permittee shall furnish the Corps and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (q): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the District Engineer as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the District Engineer.

**For Buried Cables or Pipelines Across Federal Navigation Channels:**

Condition (r): The top of the cable or pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of cable or pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

**REGIONAL CONDITION FOR NWP (13) BANK STABILIZATION**

Condition (a): Any PCN to the Corps of Engineers that does not utilize a non-structural bank stabilization method (e.g. vegetation or combinations of vegetation and rock) must include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b) Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (d): This NWP may not be used to authorize any stabilization activity where no demonstrable erosion is evident.

**REGIONAL CONDITION FOR NWP (14) LINEAR TRANSPORTATION CROSSINGS**

Condition (a): A PCN shall be submitted to the DE for all activities in waters of the United States under the terms of this NWP

Condition (b): A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (d): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (e): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or waterbody to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

#### **REGIONAL CONDITION FOR NWP (18) MINOR DISCHARGES**

Condition (a): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (b): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (c): A complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

#### **REGIONAL CONDITION FOR NWP (19) MINOR DREDGING**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

#### **REGIONAL CONDITION FOR NWP (22) REMOVAL OF VESSELS**

Condition (a): A PCN must be submitted to the Corps of Engineers under certain circumstances. A complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

#### **REGIONAL CONDITIONS FOR NWP (23) CATEGORICAL EXCLUSIONS**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the authorization of this NWP.

Condition (b): Activities associated with this NWP shall not cause the loss of more than one acre of waters of the United States, including wetlands.

#### **REGIONAL CONDITION FOR NWP (25) STRUCTURAL DISCHARGES**

Condition (a): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (b): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (c): A PCN is required for activities in critical resource waters in accordance with general condition 22. A complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

#### **REGIONAL CONDITIONS FOR NWP (27) STREAM and WETLAND RESTORATION ACTIVITIES**

Condition (a): A PCN must be submitted to the Corps of Engineers under certain circumstances. A complete copy of any required PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activity involving shellfish seeding, such as, the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.

#### **REGIONAL CONDITION FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS.**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (d): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

#### **REGIONAL CONDITIONS FOR NWP (29) RESIDENTIAL DEVELOPMENTS**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential development will be considered an adverse affect on waters of the United States, unless the wetlands are protected by conservation easement, deed

conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and/or preserved in perpetuity.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the U. S.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): In the State of Delaware, this NWP does not authorize the discharge of dredged or fill material for the construction or expansion of a single-family residential structure, including any attendant features or structures. This type of activity may be eligible for some other type of authorization.

Condition (f): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

#### **REGIONAL CONDITIONS FOR NWP (33) TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING**

Condition (a): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (b): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

#### **REGIONAL CONDITIONS FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS.**

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Chesapeake and Delaware Canal; (3) Lewes and Rehoboth Canal.

Condition (b): A PCN shall be submitted to the Corps of Engineers for activities on all other waterways not listed above. A complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

#### **REGIONAL CONDITION FOR NWP (36) BOAT RAMPS.**

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Chesapeake and Delaware Canal; (3) Lewes and Rehoboth Canal.

Condition (b): Any activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries that require a PCN to the Corps of Engineers, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

Condition (d): Any discharge of poured concrete must be contained within cells or forms until the concrete has set.

#### **REGIONAL CONDITIONS FOR NWP (38) CLEANUP OF HAZARDOUS AND TOXIC WASTES.**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any in-water activity on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

#### **REGIONAL CONDITIONS FOR NWP (39) COMMERCIAL & INSTITUTIONAL ACTIVITIES.**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the plotted lot lines of any commercial or institutional development will be considered an adverse affect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and/or preserved in perpetuity.

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is not authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of other NWPs or individual permit.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (f): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

#### **REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES.**

Condition (a): This NWP does not authorize any activities located in any perennial stream.

#### **REGIONAL CONDITIONS FOR NWP (41) RESHAPING EXISTING DRAINAGE DITCHES.**

Condition (a): A PCN shall be submitted to the DE for any proposed activity in waters of the United States, including wetlands, under the terms of this NWP. (See Regional General Condition G-1)

#### **REGIONAL CONDITIONS FOR NWP (42) RECREATIONAL FACILITIES.**

Condition (a): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (b): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (c): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (d): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

#### **REGIONAL CONDITIONS FOR NWP (43) STORMWATER MANAGEMENT FACILITIES.**

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

**REGIONAL CONDITIONS FOR NWP (45) REPAIR OF UPLANDS DAMAGED BY DISCRETE EVENTS.**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A complete copy of any PCN to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (b): Any in-water activities on the Delaware River associated with this NWP shall comply with the dredging windows previously developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers.

Condition (c): For those activities in all other waters within the State of Delaware, including tributaries of the Delaware River and Bay, and the Delaware Inland Bays and their tributaries, any in-water work associated with this NWP shall be subject to the following seasonal restriction unless otherwise approved by the Corps of Engineers: March 1 - June 30.

**REGIONAL CONDITIONS FOR NWP (48) COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES.**

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under this NWP.

Condition (b): A complete copy of any PCN to the Corps of Engineers shall be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to Magnuson Stevens Fishery Conservation and Management Act.

Condition (c): This NWP does not authorize activities in any areas mapped as SAV.

Condition (d): Any introduced shellfish must be certified under Delaware standards as being disease and parasite free.

Condition (e): All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

**REGIONAL CONDITIONS FOR NWP (52) WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS.**

Condition (a): Any activity associated with this NWP will require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies. As a part of the required PCN to the District Engineer, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below. **(See Addresses in Special Note 3 below.)**

**SPECIAL NOTES:**

**(1)** Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

DE Department of Natural Resources and Environmental Control  
Division of Water  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901  
(302) 739-9943

DE Department of Natural Resources and Environmental Control  
Office of the Secretary  
Delaware Coastal Management Program  
5 East Reed St., Suite 201

Dover, Delaware 19901  
(302) 739-9283

(2) The following addresses shall be used for contacting the appropriate Federal and State agencies to obtain information relating to threatened and endangered species, state natural heritage sites, or historic resources that are described above by **Regional General Conditions G-1**.

Field Supervisor  
U.S. Fish and Wildlife Service  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

Delaware Natural Heritage Program  
4876 Hay Point Landing Road  
Smyrna, Delaware 19977  
ATTN: Karen Bennett

Delaware Division of Historic and Cultural Affairs  
21, The Green  
Dover, DE 19901  
ATTN: Mr. Craig Lukezic

(3) The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer. These addresses are required for **Regional General Conditions G-2**. **The US Fish and Wildlife Service address listed below should also be used for any notification required by Regional General Condition G-4, if condition G-4 is applicable.**

Field Supervisor  
U.S. Fish and Wildlife Service  
177 Admiral Cochrane Drive  
Annapolis, Maryland 21401

Delaware Department of Natural Resources and Environmental Control  
Division of Water  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901  
(302) 739-9943

U.S. Environmental Protection Agency, Region III  
Wetlands and Marine Policy Section, 3ES30  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

National Marine Fisheries Service  
Habitat Conservation Division  
74 Magruder Road, Sandy Hook  
Highlands, New Jersey 07732

Delaware Division of Historic and Cultural Affairs  
21, The Green  
Dover, Delaware 19901  
ATTN: Mr. Craig Lukezic

Delaware Department of Natural Resources and Environmental Control  
Office of the Secretary  
Delaware Coastal Management Program  
5 East Reed Street, Suite 201  
Dover, Delaware 19901  
(302) 739-9283