UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
PROGRAM PLANNING AND INTEGRATION
Silver Spring, Maryland 20910

SEP 10 2010

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act (NEPA), an environmental review has been performed on the following action.

TITLE: Adoption of U.S. Army Corps of Engineers' (ACOE) Environmental Assessment for the *Norfolk District's 2008 Regional Permit Number 19*

LOCATION: Norfolk, Virginia

SUMMARY: NOAA's Office of the Chief Administrative Officer (OCAO) proposes to: (1) install an approximately 830-foot bulkhead in front of the existing bulkhead (2 feet into the water) and (2) repair existing associated utilities and pavement at the Marine Operations Center – Atlantic. OCAO has reviewed ACOE's EA, and concludes that the impacts evaluated by ACOE are substantially the same as the impacts of the alternatives considered for installing a new bulkhead. Additionally, OCAO consulted with NOAA's National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS). Based on written confirmations from NMFS and USFWS, it was determined unlikely that any Endangered Species Act (ESA) listed species and marine mammals would occur in the action area for this proposed action. Therefore, it was determined that consultation under Section 7 of the ESA or an Incidental Harassment Authorization (under the Marine Mammal Protection Act) are not necessary. OCAO concludes that the proposed action will have minimal individual or cumulative impacts on the human environment.

RESPONSIBLE OFFICIAL: William F. Broglie
Chief Administrative Officer
National Oceanic and Atmospheric Administration
1305 East-West Highway, Room 8431
Silver Spring, MD 20910
(301) 713-0836

The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an Environmental Impact Statement will not be prepared. A copy of the finding of no significant impact (FONSI) and the supporting ACOE EA adopted by NOAA is enclosed for your information. Although NOAA is not soliciting comments on this EA/FONSI, we will consider any comments submitted that would assist us in preparing future NEPA documents. Please submit any written comments to the responsible official named above.

Sincerely,

Paul N. Doremus, Ph.D.
NOAA NEPA Coordinator

Enclosure

Printed on Recycled Paper

U.S. Army Corps
Of Engineers
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

CENAO-REG
08-RP-19

REGIONAL PERMIT

Effective date: August 14, 2008 **Expiration Date: August 14, 2013**

I. AUTHORIZED ACTIVITIES:

The following activities may be authorized under 08-RP-19, Regional Permit 19 ("RP"), subject to the conditions, limitations and descriptions set out further herein:

1. **Aerial transmission lines and other overhead lines.**
2. **Groins, jetties, spurs and/or baffles and associated beach nourishment.**
3. **Maintenance dredging for previously authorized projects.**
4. **Bulkheads, riprap and associated backfill and/or excavation, including bulkhead repair and/or replacement, and bioengineering projects to prevent erosion.**
5. **Open-pile piers at community, commercial or government facilities for recreational or commercial use.**
6. **Boat ramps and accessory structures, including any fill or excavation for installation.**
7. **Recreational or Commercial boathouses and covered boat lifts.**
8. **Mooring piles/dolphins, fender piles and camels.**
9. **Crab pounds.**
10. **Submerged sills and associated beach nourishment.**
11. **Low breakwaters and associated beach nourishment.**
12. **Aquaculture/Mariculture activities.**
13. **Commercial moorings associated with a permitted project and temporary in nature.**

II. AUTHORITIES:

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform certain work in waters of the Commonwealth as described further herein strictly subject to the conditions and limitations set out further herein.

Activities receiving written authorization under this RP do not require further authorization unless the District Commander determines that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325) for a particular

project that might generally qualify for this RP. This RP covers only those activities that comply with the general and special conditions set out below. Activities that do not comply with the conditions, terms, and limitations herein do not qualify for this RP and will require separate Department of the Army authorization.

III. STATE AND LOCAL APPROVALS:

1. In order for this RP-19 to be valid as to particular work, a person or entity seeking verification under this RP ("permittee", "applicant" or "prospective permittee") must obtain the following state and/or local approvals prior to commencement of such work in waters of the United States from:
    - Virginia Marine Resources Commission (VMRC) and/or
    - Local Wetlands Board

2. The State Water Control Board provided §401 Water Quality Certification for the 08-RP-19. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 08-RP-19.

3. Permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (the "Act") (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 07-SPGP-01 do not obviate state or local government authority or responsibilities pursuant to the Act or to any State or local law or regulation.

IV. PROCEDURES:

1. In order to obtain authorization for any of the activities covered by this RP, the applicant must complete a Joint Permit Application ("JPA"). A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link: http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/JPA.asp

2. If the proposed activity qualifies for this RP, the Corps will send the applicant a letter acknowledging the qualification and stating that the applicant must first obtain a permit (not a waiver) from the Virginia Marine Resources Commission and/or the local wetlands board before the proposed work may begin.

3. Those activities on the Potomac River extending beyond the mean low water line must be authorized by the Virginia Marine Resources Commission, the Maryland Department of Natural Resources and/or the Potomac River Fisheries Commission in order to comply with this regional permit.

4. In the event the proposed project or any portion of the project receives a waiver (or exemption under the grandfather clause), the project would not qualify for this regional permit and a different general permit or an individual permit will be required.

ACTIVITIES DO NOT QUALIFY FOR THIS REGIONAL PERMIT UNLESS, THEY SATISFY ALL OF THE SPECIAL AND GENERAL CONDITIONS LISTED BELOW:

V. ACTIVITY SPECIFIC SPECIAL CONDITIONS:

1. Aerial transmission lines and other overhead lines:

a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The 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.

Minimum additional clearance above clearance required for bridges:

Nominal system voltage (kilovolt)	Feet
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

b. Clearances for communication lines, stream gauging cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Overhead lines which require fill may need separate authorization from the Corps. Projects which require dredging for construction access will not qualify for this regional permit.

c. In addition, the Federal Aviation Administration has responsibility for the marking of aerial transmission lines. Therefore, for those projects involving such work, an appropriate application should be submitted to the Federal Aviation Administration Eastern Regional Office, Air Traffic Division, JFK International Airport Federal Building, Jamaica, New York 11430 (Telephone 212-995-3390).

d. For linear aerial transmission line projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under Section 9 of the Endangered Species Act.

2. **Groins, jetties, spurs, and/or baffles constructed along with and connected to groins and associated beach nourishment:**

   a. For this regional permit, groins are defined as structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline for the purpose of accreting sand. Groins may merely stop further erosion of a shoreline or they may actually build a sand beach by trapping sand moving in the near shore zone. A jetty is a structure constructed perpendicular to the shoreline with the primary purpose of stabilizing and/or protecting an inlet or harbor. Spurs and baffles are defined as short (less than 20 feet) structures constructed perpendicular to groins for the sole purpose of dampening diffracted wave energy. Groins and jetties may be constructed of quarry stone, gabion baskets, or concrete. As the design and location of groins and jetties are site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

   b. This RP may authorize beach nourishment landward of the groins provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this RP is one (1) acre.

   c. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

   d. The beach nourishment material will not be placed in or affect any vegetated wetlands, submerged aquatic vegetation or shellfish beds.

   e. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.

   f. Please note that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the permittee seeks to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

   g. Special Conditions for Discharges and Structures in Sections VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

3. **Maintenance dredging for previously authorized projects:**

   a. This RP authorizes maintenance dredging of projects which received a Norfolk District Letter of Permission 2 (LOP-02) or individual Department of the Army permit for the initial dredging. Areas to be dredged and dredged depths shall not exceed those specified by the original authorization or exceed controlling depths for ingress/egress whichever is less. This RP does not eliminate the requirement to

obtain a Virginia Water Protection Permit from the DEQ, Water Division for this activity.

b. For maintenance dredging to qualify under this RP, the dredged material must be disposed of in an upland area which has been properly designed to contain the material.

c. If the applicant proposes to use the Craney Island Dredged Material Management Area for placement of the dredged material, the special conditions which must be adhered to and forms which must be completed in order to use Craney Island will be added to this RP for those projects for which it applies. The permittee is advised that the prime contractor performing the dredging project must obtain a Real Estate license from the Norfolk District Real Estate Office prior to the commencement of any work which would utilize the Craney Island Dredged Material Management Area or Government Bulkhead Facilities at the Craney Island Rehandling Basin. The permittee/prime contractor should contact Mr. David Parson of the Norfolk District Real Estate Acquisition, Management, and Disposal Section at (757) 201-7736 for further information regarding the Department of the Army License. (Please note that there are restrictions on the use of Craney Island. You may call the Norfolk District at 757-201-7652 to determine if Craney Island can be used.)

d. Under this RP, periodic maintenance dredging may be performed for five (5) years from the date of the acknowledgment letter in order to coincide with the expiration of the Virginia Marine Resources Commission maintenance dredging permit which is issued for a maximum of five (5) years.

e. The Norfolk District must be advised in writing by the permittee at least two weeks before each maintenance dredging activity is undertaken so that the intended disposal area may be inspected. Disposal areas must be approved by the Norfolk District before use.

f. Barges and scows used to transport dredged material may be filled only to a point where no overflow occurs. No overflow pipes are allowed.

g. A copy of this permit must be on board the vessel used for the transportation and placement of the dredged material.

h. If the dredging is performed by hydraulic method, Special Conditions for Discharges in Section VI below apply to this activity as well as the general conditions listed in the regional permit.

4. Bulkheads, riprap revetment and associated backfill and/or excavation, including repair and/or replacement of existing deteriorated bulkheads and bioengineering projects to prevent erosion:

a. The work must be necessary to address and remediate an existing erosion problem.

b. The total amount of vegetated wetlands which may be filled, in square feet, may not exceed the length of the activity along the shoreline in linear feet (e.g. 100 square feet maximum for a 100-foot-long bulkhead.)

c. The structure and backfill must be placed as closely to the shoreline as is practicable. No material may be placed in excess of the minimum necessary for erosion protection.

d. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

e. Only clean, non-metallic, non-organic, non-floatable fill obtained from an upland source may be used as backfill material.

f. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

g. This RP also covers all bulkhead repair and/or replacement up to two feet channelward of existing deteriorated bulkheads which are still functional. For sheet pile bulkheads, this shall generally mean that at least fifty (50) percent of the sheeting must be standing. This authorization includes no limitation on length, nor does it exclude bulkheads which may result in the filling of wetland vegetation as long as there is an apparent existing erosion problem. As above, the total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet. This total does not include wetlands landward of the existing bulkhead. This portion of the work complies with Corps Nationwide Permit Number 3. The Corps Nationwide Permits and Conditions can be found in the March 12, 2007, Federal Register notice (72 FR 11092. The filling of wetlands behind free-standing bulkheads that have <u>never</u> <u>been</u> <u>backfilled</u> is prohibited as part of this permit, and will require an individual Department of the Army permit.

h. For projects where bioengineering is to be utilized in lieu of bulkheading or riprap, grading or excavating wetlands shall be limited to one (1) square foot of vegetated wetlands per linear foot of shoreline.

i. Special Conditions for Discharges in Section VI below apply to this activity as well as the general conditions listed in the regional permit.

5. Open-pile piers at community, commercial or government facilities for recreational or commercial use:

a. This authorization covers all open-pile piers, docks, wharfs associated with the construction or expansion of any community, commercial, or government facility whose primary use is commercial or recreational. This would include, but not be limited to, community fishing piers, piers at seafood processing facilities, piers at boat repair facilities, piers at marine terminals, recreational piers located on military installations or piers for military associated operational facilities utilized for training,

aggregate handling facilities, and other non-recreational facilities. (Marine railways are excluded from this regional permit.)

b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).

c. This work does not qualify for the RP if it involves any dredging or filling. In that event, an individual Department of the Army permit will be required. If dredging is proposed, it may qualify for the District's Letter of Permission 2 (08-LOP-02).

d. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

6. Boat Ramps and Accessory Structures, including associated fill and excavation necessary for installation:

a. This RP covers all boat ramps (concrete or open-pile timber), whether private, public, commercial or government-owned. For this RP, accessory structures include catwalks, pilings and small piers whose sole purpose is to make it easier to get boats into or out of the water. Permanent or semi-permanent mooring facilities are not covered.

b. This permit authorizes excavation and/or filling within the limits of the boat ramp only (e.g. for bedding). Dredging or filling for water access to the ramp is <u>not</u> covered under this regional permit and will require separate Department of the Army authorization. Authorization of the boat ramp does not imply that a future dredging proposal to provide access to the structure would be approved.

c. All boat ramps and accessory structures shall be located so as to eliminate or minimize impacts to vegetated wetlands.

d. The pouring of concrete for the construction of boat ramps must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited.

e. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

7. Recreational or Commercial Boathouses and Covered Boat Lifts:

a. This authorization covers any boathouse or covered boat lift whose purpose is recreational or commercial.

b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).

c. This work does not qualify for the regional permit if it involves any dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of the boathouse or covered boat lift does not imply that a future dredging proposal to provide access to the structure would be approved.

d. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

8. Mooring Piles/Dolphins, Fender Piles and Camels (wooden floats serving as fenders alongside piers):

a. This authorization includes all such structures, either isolated or part of large facilities, whose primary purpose is commercial or recreational. This would include, but no be limited to, mooring piles, dolphins, fender piles, and camels at community piers, seafood processing facilities, boat repair facilities, marine terminals, military installations and other commercial and/or recreational facilities. Pilings installed to establish osprey nests are also included. Should primary use of the permitted structure change, a permit modification must be requested.

b. This work does not qualify for the RP if it involves dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of such structures does not imply that a future dredging proposal to provide access would be approved.

c. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

9. Crab Pounds:

a. Crab pounds (e.g. devices used for softshell crab harvesting, etc.) are authorized by this RP, but crab pounds in Mailboat Harbor and adjacent waterways at Tangier Island, Virginia must be constructed outside the hatched areas shown on the map entitled "Structures at Mailboat Harbor" which may be obtained from the Corps Eastern Virginia Regulatory Section Eastern Shore Field Office, c/o NRCS, 22545 Center Parkway, Accomac, Virginia 23301-1330, phone number (757) 787-7567.

b. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

10. Submerged Sills and Associated Beach Nourishment:

a. For the purpose of this RP, a submerged sill is defined as a low, detached structure constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. Because a sill acts like a natural bar, it is most effective when constructed at or near the mean low water line and low enough to allow wave overtopping.

b. Submerged sills may be constructed of riprap, gabion baskets, or concrete. Alternative materials may be considered for use during the permit review process.

The materials should be of sufficient weight or adequately anchored to prevent their being dislodged and carried about by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills. As the design and location of sills is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

c. The beach nourishment area and the submerged sill shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

d. Submerged sills may <u>not</u> be connected to the upland or constructed in conjunction with groins or other erosion control structures. Such structures will require individual Department of the Army review.

e. This RP authorizes beach nourishment landward of the sills provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this Regional Permit is one (1) acre.

f. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

g. The beach nourishment material will not be placed in or affect any vegetated wetlands, submerged aquatic vegetation, or shellfish beds.

h. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.

i. Please note that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the applicant proposes to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

j. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

11. Low Breakwaters and Associated Beach Nourishment:

a. For the purpose of this RP, a breakwater is defined as a structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy.

b. This RP authorizes low breakwaters constructed close to shore for the purpose of erosion protection by reducing wave height and thereby reducing the erosive power of the waves reaching the shoreline. This permit does not include high breakwaters constructed farther offshore for the purpose of creating quiet water for the protection of a boat harbor.

c. The beach nourishment area and low breakwater shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

d. Under this RP, a breakwater may be a single structure or a series of structures separated by gaps, but may <u>not</u> be connected to the upland or constructed in conjunction with other land attached structures. Such structures will require individual Department of the Army review.

e. Breakwaters may be constructed of quarry stone, gabion baskets, or concrete. Alternative materials may be considered for use during the permit review process. However, as breakwaters are barriers to the forces of waves, they should be massive enough to resist the full power of the maximum expected wave energy. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of breakwaters. As the design and location of breakwaters is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

f. Included in this permit are floating breakwaters which filter energy from the incoming waves as they pass through the device, thereby reducing wave energy reaching a shoreline or harbor. Floating breakwaters should be adequately anchored to prevent their being dislodged by wave action.

g. This RP authorizes beach nourishment landward of the breakwaters provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this RP is one (1) acre.

h. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.

i. The beach nourishment material will not be placed in or affect any vegetated wetlands, submerged aquatic vegetation, or shellfish beds.

j. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.

k. Please be aware that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.

l. Special Conditions for Discharges and Structures in Section VI and VII, respectively, apply to this activity as well as the general conditions listed in the regional permit.

12. Aquaculture/Mariculture Activities:

a. This authorization is limited to the bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting.

b. The aquaculture activity area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.

c. No aquaculture activity shall occur within beds of submerged aquatic vegetation or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by submerged aquatic vegetation or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional permit. Information on the location of submerged aquatic vegetation can be obtained from the Norfolk District Corps of Engineers (at telephone (757) 201-7652) and from the Virginia Institute of Marine Science (at telephone (804) 642-7332).

d. An aquaculture activity will not meet the terms for this RP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.

e. An aquaculture activity will not qualify for this RP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.

f. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.

g. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

13. Commercial moorings associated with another project and temporary in nature.

a. This permit may only be used if the request is directly associated with a permitted project such as a bridge, construction, or dredging project.

b. This authorization is valid only for the duration of the associated project. Once the project is completed, the mooring must be removed.

c. Special Conditions for Structures in Section VII below apply to this activity as well as the general conditions listed in the regional permit.

VI. SPECIAL CONDITIONS FOR DISCHARGES:

1. No discharge of dredged or fill material may consist of unsuitable material (e.g. trash, debris, car bodies, asphalt etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA). All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws.

2. Discharges occurring in areas that contain submerged aquatic vegetation (SAV) may require additional avoidance and minimization measures, time of year restrictions, compensatory mitigation, and/or separate Department of the Army authorization to reduce impacts to SAV.

3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.

5. Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.

6. Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.

7. Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

8. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

9. All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

VII. SPECIAL CONDITIONS FOR STRUCTURES:

1. The permittee must install and maintain, at his/her expense, any safety lights, markers and/or signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities and/or structures. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, and telephone number (757) 398-6230.

2. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.

3. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure or time of year restrictions, may be required to reduce impacts to SAV.

VIII. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under Regional General Permits (RP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. **Compliance Certification**. A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.
3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.

6. **Single and complete projects.** This RP shall only be applied to single and complete projects. For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
7. **Multiple general permit authorizations.** This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RP) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.
8. **Permit on-site.** The permittee shall ensure that a copy of the RP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

General Conditions Related to National Concerns:

9. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Norfolk District with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Norfolk District that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects

created or permitted by the applicant. If circumstances justify granting the assistance, the Norfolk District is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Norfolk District of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

10. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. **National lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.
12. **Endangered species.** (a) No activity is authorized under any RP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any RP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district commander with the appropriate documentation to demonstrate compliance with those requirements.(c) Non-federal permittees shall notify the district commander if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district commander that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062. For activities that might affect Federally-listed rare, endangered, or threatened species or designated critical habitat, notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district commander will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. (d) As a result of formal or informal consultation with the FWS or NOAA FISHERIES the district commander may add species-specific regional endangered species conditions to the RP. (e) Authorization

of an activity by a RP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NOAA Fisheries, both lethal and non-lethal "takes" of protected species are in violation of the ESA.

13. **Essential Fish Habitat.** The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the NOAA Fisheries on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect Essential Fish Habitat (EFH). The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.
14. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a "study river" by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.
15. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
16. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
17. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
18. **Real estate.** Activities authorized under this RP do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7736 or at the address listed on the front page of this permit.
19. **Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
20. **Federal liability.** In issuing this RP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result

of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

21. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
22. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
23. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.
24. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
25. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.
26. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
27. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
28. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
29. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.

30. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

General Procedural Conditions:

31. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.
32. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
33. **Property rights.** This General Permit does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
34. **Modification, suspension, and revocation.** This RP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
35. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
35. **Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
36. **False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
37. **Abandonment.** If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.
38. **Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Norfolk District with a written request. Such

transfer is effective upon written approval by the Norfolk District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit.

39. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:

40. **Duration of Activity's Authorization.** Activities authorized under 08-RP-19 must be completed by August 14, 2013. If this RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Norfolk District will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. August 14, 2014), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by August 14, 2014, you must reapply for separate permit authorization in order to meet current permit criteria.
41. **Expiration of 08-RP-19.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2013. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of a RP which was in effect at the time the activity was completed continue to be authorized by that RP.

14 Aug 2008

Date

DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding

Statement of Findings

SUBJECT: Proposed 2008 Reissuance of Regional Permit Number 19 for various Activities that are also within the Regulatory Jurisdiction of the Virginia Marine Resources Commission and/or the Local Wetlands Board

I have evaluated, in light of the overall public interest, all available information pertaining to the reissuance of Regional Permit Number 19 (08-RP-19). The following summarizes my evaluation which reflects the national concern for both the protection and utilization of important resources and demonstrates that I have balanced the reasonably foreseeable benefits against the reasonably foreseeable detriments of the implemented project. On April 1, 2008, we issued a public notice advertising the proposed reissuance and modifications to 08-RP-19. No opposing comments were received from the public or any local, state, or federal agencies concerning the notice. The comments received were general in nature and applied mostly to clarifications regarding permit language and notification requirements. Where applicable, many of the recommendations were incorporated as suggested. Specific details addressing each of the comments can be found under "IX. Coordination" section of the Final Environmental Assessment document.

I have found that the reissuance of this regional permit will have a minimal impact on the following project resources; conservation, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, navigation, shore erosion and accretion, recreation, water quality, energy needs, safety, consideration of property ownership.

In this evaluation, I have found no unresolved conflicts concerning alternative uses of aquatic resources. In addition, I have found that the reissuance of this regional permit will not be contrary to the public interest and it complies with the Environmental Protection Agency's 404(b)(1) guidelines. Therefore, my decision is to reissue the regional permit, incorporating all practicable conditions to avoid or minimize environmental harm.

14 Aug 2008
Date

DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding

FINAL ENVIRONMENTAL ASSESSMENT FOR THE NORFOLK DISTRICT'S 2008 REGIONAL PERMIT NUMBER 19

I. **Purpose and Need:** Under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, the Corps has the authority to issue permits, as applicable, for proposed structures, dredging, and filling in waters of the United States, including wetlands. Individual permits have a detailed application process requiring the Corps to conduct a full public interest review. This oftentimes includes issuance of a public notice, coordination with adjacent property owners and state and federal regulatory and advisory agencies, and preparation of an environmental assessment and statement of findings.

Within the Corps' Norfolk District there are many similar projects that occur frequently with very minor and temporary environmental impacts. For projects such as these, it is advantageous to have a streamlined permit process that provides an appropriate and consistent level of review. A streamlined permit process also saves time and money for the applicant, the Corps, and the public while only issuing permits for projects with minimal individual and cumulative impacts on the aquatic environment. The Regional Permits issued by the Corps, Norfolk District are streamlined permits that can be obtained by the applicant when their project meets certain criteria, and specifically does not cause impacts to the human environment beyond those analyzed in the respective programmatic environmental assessment and stated in the regional permit. These regional permits can be verified without coordination with the adjacent property owners or federal and state regulatory and advisory agencies or issuance of a public notice or preparation of a project specific environmental assessment and statement of findings, as the coordination and analysis was done during preparation of the original RP.

This Regional Permit provides the people of the Commonwealth of Virginia the ability to perform a variety of activities, {i.e. (1) Aerial transmission lines and other overhead lines; (2) Groins, jetties, spurs and/or baffles and associated beach nourishment; (3) Maintenance dredging for previously authorized projects; (4) Bulkheads, riprap and associated backfill and/or excavation, including bulkhead repair and/or replacement, and bioengineering projects to prevent erosion; (5) Open-pile piers at community, commercial or government facilities for recreational or commercial use; (6) Boat ramps and accessory structures, including any fill or excavation for installation; (7) Recreational or Commercial boathouses and covered boat lifts; (8) Mooring piles/dolphins, fender piles and camels; (9) Crab pounds; (10) Submerged sills and associated beach nourishment; (11) Low breakwaters and associated beach nourishment; (12) Aquaculture/Mariculture activities; (13) Commercial moorings associated with a permitted project and temporary in nature}, if the terms and conditions specified in Regional Permit are met. Proposed work that fails to meet the terms and conditions of this Regional Permit will require an individual permit.

The Norfolk District has a need for this particular Regional Permit as it provides for a streamlined review process for the public for project while ensuring that all appropriate and practicable measures are incorporated to minimize impacts to the aquatic environment.

II. **Project Description:** On 14 August 2003, the Norfolk District reissued Regional Permit (03-RP-19) authorizing activities pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. The existing Regional Permit 19 presently covers the following:

1. Submerged utility lines and associated dredging or excavation.
2. Aerial transmission lines and other overhead lines.
3. Beach nourishment associated with groins, submerged sills, or low breakwaters
4. Maintenance dredging for previously authorized projects.
5. Bulkheads, riprap and associated backfill including bulkhead repair and/or replacement.
6. Open pile piers at community, commercial or government facilities for recreational use.
7. Boat ramps and accessory structures, including any fill or excavation for installation.
8. Recreational boathouses and covered boat lifts.
9. Mooring piles, dolphins, fender piles and camels.
10. Crab pounds.
11. Submerged sills. and associated beach nourishment
12. Low breakwaters and associated beach nourishment.
13. Aquaculture and Mariculture activities.
14. Commercial moorings associated with a permitted project and temporary in nature.
15. State owned and operated Artificial reefs within State waters.

These activities require a permit or permits from the Virginia Marine Resources Commission and/or the Local Wetlands Board. In proposing these current modifications to the existing RP-19, the Corps recognizes that in most cases, these activities result in minimal individual and cumulative impacts. This modified regional permit shall constitute the Corps authorization for all covered activities taking place entirely within the boundaries of the Norfolk District.

On 1 April 2008, we issued a public notice proposing to extend the Regional Permit and to make the following modification:

Notable changes to the RP-19 include the following:

1. Activity #1 for submerged utility lines and associated dredging or excavation has been omitted because these activities can be authorized via the Nationwide Permit #12 for Utility Line Activities.
2. Activity #2 for the construction of groins, spurs, and/or baffles constructed along with and connected to groins and associated beach nourishment has been expanded to include the construction of jetties.
3. Activity #15 for State owned and operated artificial reefs within State waters has been omitted because these activities are now authorized via Regional Permit 20 (05-RP-20).
4. Minor changes have been made to the format of the document and to provide clarity in the permit descriptions and/or conditions. The general conditions have been rewritten and reorganized for clarity purposes, but contain essentially the same information as in previous versions.

Below is my assessment of the impacts of this Regional Permit.

III. Probable Impacts of the Proposed Work on:

a. Conservation: Minimal adverse effects are anticipated as all appropriate and practicable conditions have been incorporated to minimize the effects of the authorized activities on the aquatic environment. Activities authorized under this permit, such as the construction of piers, boathouse, boat ramps, bulkheads, riprap, etc., may result in an increase in the number of structures and activity along a particular waterway. However, this permit has been conditioned to minimize the impacts to the environment and general navigation. Therefore, minimal adverse effects on conservation are anticipated.

b. Economics: The economic benefits associated with the Regional Permit are based on the goal of eliminating duplicative procedures between State and federal agencies. The economic impacts of this streamlined procedure should have beneficial effects on the regulated public. This permit authorizes numerous activities for public, commercial, governmental, and/or military use. The overall impact of these activities is anticipated to the financially beneficial for all the parties involved. Therefore, no adverse effects are anticipated.

c. Aesthetics: The aesthetic effects associated with the construction of public, private, commercial, and military facilities, as authorized under this Regional Permit, may result in changes to local view sheds, however, those changes will vary with individual tastes and the impacts will not be significant from a national perspective.

d. General Environmental Concerns: Minimal adverse effects are anticipated. Impacts to submerged aquatic vegetation, shellfish beds, and anadromous fish have been minimized through the inclusion of certain avoidance measures and time of year restriction when those avoidance measures are not appropriate or practicable.

e. Wetlands: The shoreline stabilization projects (bulkheads and riprap and associated backfill) will impact wetlands. However, the effects have been minimized through the inclusion of a condition that limits wetland impacts to less than 1 square foot per linear foot of construction provided there is an erosion problem and the encroachment is minimum necessary to combat the erosion. Wetlands may also be affected by the construction of boat ramps. However, these impacts are minimized by locating boat ramps in areas with no or minimal wetland vegetation. Those impacts that are determined to be more than minimal may require additional review, compensatory mitigation, and/or an individual Department of the Army permit. All discharges associated with the various activities authorized under the RP-19 are conditioned to either allow no or minimal impacts to wetlands, submerged aquatic vegetation, concentrated shellfish beds, etc. Therefore, it is anticipated that impacts to wetlands will be minimal.

f. Historic Properties: This Regional Permit may not be used for an activity which may affect historic properties listed or eligible for listing in the National Register of Historic Places until

the Norfolk District has complied with the provisions of 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, 16 U.S.C. 470f, and 33 CFR Part 325, Appendix C, Processing of Department of the Army Permits. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places. The permittee shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Therefore, no adverse or unmitigated impacts to historic resources are anticipated.

g. Fish and Wildlife: Minimal adverse effects are anticipated on the fisheries, benthic organisms and other aquatic species. Most of the effects of the authorized activities on fish and wildlife will be indirect effects that occur only during construction (i.e. temporary increases in turbidity). The maintenance dredging projects will convert subaqueous areas to deeper shallow water areas. Various forms of fish and wildlife have different habitat requirements, including water depths. The deeper water depths may inhibit recolonization of some benthic organisms, and may decrease the availability of feeding grounds for some shorebirds and waterfowl. However, only portions of waterways will be dredged, which will provide a greater diversity of habitat (greater variety of water depths) for various species. The authorized activities under RP-19 may remove or displace the existing benthic community, but a new community is expected to become established over time with organisms that adapt to the new structures, new depths, sediment composition and available food supply. No discharge of dredged or fill material may occur in areas of concentrated shellfish production. Intertidal areas and wetlands may be affected by the authorized projects, but the activities have been conditioned to allow only minimal adverse effects. Any projects within or adjacent to shellfish beds, submerged aquatic vegetation, or anadromous fish use areas will be performed only during certain times of the year via time of year restrictions to minimize impacts.

Minimal adverse effects are anticipated on the fisheries and benthic community. No activity is authorized by this permit that will jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or will destroy or adversely modify the critical habitat of such species. Projects which have an effect on any species of fish, wildlife or plant (or critical habitat) which is designated or proposed as endangered or threatened pursuant to Section 7 of the Endangered Species Act of 1973 (P. L. 93-305) will not qualify for this permit until the required procedures have been followed.

The bald eagle (*Haliaeetus leucocephalus*) was removed from the Federal List of Endangered and Threatened Wildlife, effective August 8, 2007, but it is still protected under the Bald and Golden Eagle Protection Act (BGEPA), the Migratory Bird Treaty Act, and the Virginia Endangered Species Laws. The US Fish and Wildlife Service (USFWS) is

currently developing regulations under the BGEPA. Therefore we will be coordinating with the USFWS, DCR, and DGIF for any proposed activities that may occur within 660 feet of the following three important eagle concentration areas:

1. The Potomac River in Fairfax, King George, Prince William, and Stafford Counties;
2. The James River in Charles City, Chesterfield, Henrico, and Prince George Counties;
3. The Rappahannock River in Caroline, Essex, King George, Richmond, and Westmoreland Counties.

With the flexibility to incorporate time of year restrictions as a special condition to a permit verification letter, we expect any effects to be minimal.

In response to our public notice, NOAA Fisheries (NOAA) commented that activities authorized under 08-RP-19 have the potential to adversely affect Essential Fish Habitat (EFH). Based upon the General and Special Conditions of 08-RP-19, NOAA has determined that activities authorized by 08-RP-19 will likely result in no significant individual or cumulative adverse effect to EFH, managed species or their prey. On August 13, 2008, NOAA issued general concurrence for 08-RP-19. NOAA's general concurrence is based upon its understanding that the U.S. Army Corps of Engineers will further consult and consider conservation recommendations on a case-by-case basis in circumstances such as those set forth in the General and Special Conditions section of 08-RP-19 (i.e., submerged aquatic vegetation, significant shellfish resources, and anadromous fish use areas).

h. Flood Hazards: Minimal adverse effects are anticipated since none of the work authorized by this Regional Permit will serve to exacerbate flooding and none of the activities included in this regional permit constitute flood hazards.

i. Floodplain Values: Minimal adverse effects are anticipated since none of the work authorized by this Regional Permit will serve to exacerbate flooding. None of the activities included in this regional permit will contribute to the degradation of floodplain values.

j. Land Use Classification: This is an issue that is primarily the responsibility of State and Local Governments. Concerns on a national level are insignificant.

k. Navigation: Safeguards have been incorporated to insure that no project has more than minimal effect on navigation and that marking or lighting requirements established by the U. S. Coast Guard are followed.

l. Shoreline Erosion or Accretion: The Regional Permit will provide the public with a more streamlined review process and aid property owners in stabilizing their shorelines while minimizing the encroachments of authorized structures, dredging impacts, and discharges of associated fill materials. Authorization of certain shoreline activities will address localized shoreline erosion problems and sediment accumulation. This will in turn minimize the impacts on the aquatic environment. Minimal adverse effects are anticipated.

m. Recreation: Minimal adverse effects are anticipated. Several of the activities authorized by this regional permit will provide the public with recreational water access; however, the effects on navigation have been minimized while still allowing continued water access for the public, commercial, and/or governmental facilities.

n. Water Supply and Conservation: No adverse effects are anticipated. None of the activities authorized by this regional permit will affect water supply and conservation.

o. Water Quality: Temporary increases with turbidity are anticipated with the construction of some of the activities associated with this permit. Historically these levels decrease rapidly once the project is complete and are insignificant with regard to water quality. Minimal adverse effects are anticipated.

   August 12, 2008, the State Water Control Board provided §401 Water Quality Certification for the 08-RP-19. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 08-RP-19.

p. Energy Needs: Minimal adverse effects are anticipated. There will be an increase in energy consumption to install the work authorized by this regional permit; however, it is negligible amount considering the overall energy consumption within the Commonwealth. This permit authorizes the installation of aerial transmission lines and other overhead lines, which have been conditioned with minimum clearance height to minimize impacts on navigation over Section 10 waters, requirements for separate authorization (i.e. Nationwide Permits) for fill associated with footings, etc., and exclusion from use under the RP-19 if dredging will be required for construction access.

q. Safety: No more than minimal adverse effects are anticipated. The installation of piers, boat ramps, boat slips, mooring piles, and maintenance dredging projects allow for greater use of the waterway for boating and other water-related recreational activities. This may increase the number of craft navigating a particular waterway and as boat usage increases, the probability of boating accidents may also increase; however, there is no information to suggest that the boating hazard will increase due to the construction of structures and/or dredging of channels. In fact, subsequent to channel construction, navigational hazards should be reduced since structure encroachments are not authorized in navigational channels and the establishment and maintenance of a channel should reduce the likelihood of boats wandering into shallows. Navigational markers along the channels, as required and approved by the US Coast Guard, may be required installed to provide for additional safety. Furthermore, "No Wake/Speed Limit" signs may be installed, per locality approval and requirements, in the waterways, which will encourage boaters to maintain appropriate speeds in the waterway.

r. Food and Fiber Production: No effects are anticipated. The work authorized by this regional permit will not result in the conversion of farms to other uses.

s. Mineral Needs: Impacts to mineral resources in associated with activities authorized under this permit are unlikely, so no adverse effects are anticipated.

t. Consideration of Property Ownership: Minimal adverse effects are anticipated. On occasion, the installation of structure can have an effect on adjacent property. However, the regional permit includes conditions to minimize those effects and the impacts are expected to be minimal. This RP is conditioned to not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.

u. Needs and Welfare of the People: No adverse effects are anticipated. This permit was created to provide a streamlined procedure, which has a beneficial effect on the regulated public by authorizing activities which will have minimal impact on the environment and to navigation of waters of the US in a timely manner.

v. Environmental Justice: No adverse impacts are anticipated. This Regional Permit has been reviewed for consistency with Executive Order 12898 (Environmental Justice). The activities authorized by this Regional Permit generally do not, by their nature, cause the kinds of adverse impacts addressed by the Executive Order.

w. Clean Air Act Requirements: The Regional Permit has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under this Regional Permit will not exceed de minimus levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not with the Corps' continuing program of responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for this permit.

IV. The relative extent of the public and private need for the proposed structure or work:
Most of the activities authorized by this regional permit address the need for shoreline stabilization or the desire for access to the water. While these activities aim to serve public, commercial and governmental needs, the regional permit has been conditioned to minimize the effects of the authorized work to individual private or the public's similar rights.

V. The extent and permanence of the benefits and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited:
The work authorized by this Regional Permit will result in the construction of permanent piers, boat ramps, shoreline stabilization structures, etc. and maintenance dredging for use for recreational and commercial navigation. These represent permanent impacts that are necessary for the projects to proceed. No discharge of dredged or fill material may occur in areas of

concentrated shellfish production. Discharges occurring in or adjacent to SAV or anadromous fish use areas require additional avoidance and minimization measures, such as time of year restrictions and/or compensatory mitigation depending upon review of impacts. All activities included in this Regional Permit have been conditioned to minimize encroachment and their navigational and environmental effects. This permit authorizes activities for public, commercial and government use within the tidal waters of the Commonwealth of Virginia. Although public, commercial and governmental facilities may have an impact on private uses in the project areas, the permit has been conditioned to minimize such impacts. This RP-19 will streamline the permitting process by eliminating the need for public, commercial or governmental officials to submit a permit application when the proposed work satisfies the Regional Permit's terms and conditions

VI. **The extent and permanence of individual and cumulative impacts resulting from the proposed work or structure:** Based on a query of our database from August 14, 2003 to present, 2165 projects have been authorized under RP-19. On average approximately 433 projects per year are authorized under this Regional Permit. No significant deviation from this trend is expected over the next five years.

The direct adverse impacts associated with this Regional Permit are minimal. The most effective means to minimize cumulative impacts is to minimize the impacts of individual projects. The Regional Permit has been designed to incorporate the measures needed to minimize the environmental impacts. All projects proposed under this Regional Permit require the applicant to notify the District before work begins and not to commence work until specifically authorized allowing the District Commander to minimize individual effects and to consider the cumulative effects of each project. The Regional Permit severely limits the amount of allowable encroachment and navigational and environmental impacts.

The following cumulative impacts have been identified associated with the work authorized by this regional permit:

Aerial Transmission Lines: The regional permit has been conditioned so as to incorporate the clearances required by the National Electrical Safety Code. No dredging or filling is authorized by the regional permit. Therefore, the individual and cumulative impacts are minimal.

Groins, jetties, spurs, and/or baffles: These structures serve to stabilize shorelines with minimal individual and cumulative impacts on adjacent shorelines. Such structures will only be installed in areas where there is a demonstrated erosion problem and a clear need for shoreline stabilization in order to combat current and future erosion of the shoreline.

Maintenance Dredging: The dredging authorized by this regional permit is limited to that previously authorized and requires the placement of all resulting dredged material in an upland site. Turbidity generated by the dredging should be temporary and the individual and cumulative impacts should be minimal.

Bulkhead, riprap and associated backfill: The activities will have impacts to wetlands and intertidal mudflats. These impacts will be minimized by insuring that permits are only issued for projects where there is a demonstrated erosion problem and the authorized encroachment is minimized to the extent necessary to address the problem. While the regional permit did not require that these impacts be mitigated, I believe they are minimal individually and cumulatively. If a proposed project is determined to have more than minimal individual or cumulative impacts, discretionary authority will be exercised.

Open-pile Community, Commercial, and Government Piers: The navigation impacts of these activities have been minimized individual and cumulatively through the addition of specific conditions. Turbidity generated during the installation of these structures should be temporary and have minimal individual and cumulatively impacts.

Boat Ramps and Accessory Structures: Through the review conducted by the Virginia Marine Resources Commission and the local wetland board, the impacts to wetlands and intertidal mudflats are avoided and minimized to maximum extent practicable by locating them in non-vegetated areas and minimizing the footprint of the ramp.

Recreational and Commercial Boathouses and Covered Boat Lifts: The navigational impacts of these projects are minimal, both individually and cumulatively, based on the following conditions in the permit:

1. This authorization covers any boathouse or covered boat lift whose purpose is recreational or commercial.
2. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).
3. This work does not qualify for the regional permit if it involves any dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of the boathouse or covered boat lift does not imply that a future dredging proposal to provide access to the structure would be approved.
4. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure or time of year restrictions, may be required to reduce impacts to SAV.
5. The permittee must install and maintain, at his/her expense, any safety lights, markers and/or signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities and/or structures. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, and telephone number (757) 398-6230.
6. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and

agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.

The conditions are intentionally left vague as to construction limits because in order for this permit to be valid a VMRC permit must be issued as well, which regulates the design of recreational and commercial boathouses. The Corps will ensure that the proposed boathouse or covered boatlift will not impact the general navigation of the subject waterway nor have a more than minimal impact on the environment. Turbidity generated during the installation of these structures should be temporary and have minimal individual and cumulative impacts.

Mooring Piles/Dolphins, Fender Piles and Camels: The navigational impacts of these projects are minimal, both individually and cumulatively, based on the conditions in the permit:

1. This authorization includes all such structures, either isolated or part of large facilities, whose primary purpose is commercial or recreational. This would include, but no be limited to, mooring piles, dolphins, fender piles, and camels at community piers, seafood processing facilities, boat repair facilities, marine terminals, military installations and other commercial and/or recreational facilities. Pilings installed to establish osprey nests are also included. Should primary use of the permitted structure change, a permit modification must be requested.
2. This work does not qualify for the RP if it involves dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of such structures does not imply that a future dredging proposal to provide access would be approved.
3. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure or time of year restrictions, may be required to reduce impacts to SAV.
4. The permittee must install and maintain, at his/her expense, any safety lights, markers and/or signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities and/or structures. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, and telephone number (757) 398-6230.
5. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.

Turbidity generated during the installation of these structures should be temporary and have minimal individual and cumulative impacts.

Crab Pounds: The navigational impacts of these projects are minimal, both individually and cumulatively, based on the following conditions in the permit:

1. Crab pounds (e.g. devices used for softshell crab harvesting, etc.) are authorized by this RP, but crab pounds in Mailboat Harbor and adjacent waterways at Tangier Island, Virginia must be constructed outside the hatched areas shown on the map entitled "Structures at Mailboat Harbor" which may be obtained from the Corps Eastern Virginia Regulatory Section Eastern Shore Field Office, c/o NRCS, 22545 Center Parkway, Accomac, Virginia 23301-1330, phone number (757) 787-7567.
2. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure or time of year restrictions, may be required to reduce impacts to SAV.
3. The permittee must install and maintain, at his/her expense, any safety lights, markers and/or signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities and/or structures. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, and telephone number (757) 398-6230.
4. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.

Turbidity generated during the installation of these structures should be temporary and have minimal individual and cumulative impacts.

Submerged Sills and Low Breakwaters and Associated Beach Nourishment: These structures and associated beach nourishment are designed to protect shorelines. While there are impacts to sand and intertidal mudflats and unvegetated wetlands, they are minimized to the extent needed to address the erosion problem. In addition, the regional permit does not authorize beach nourishment in vegetated wetlands. The individual and cumulative effect of these projects will be minimal because the overall purpose of constructing such structures is to combat an existing erosion problem. Beach nourishment activities are limited to one (1) acre and cannot be placed in or affect any vegetated wetlands, SAV, or shellfish beds. The structures and associated beach creation will add beneficial habitat for a variety of aquatic species.

Aquaculture/Mariculture Activities: These facilities have some navigational impacts, but they have been minimized, both individually and cumulatively, by the following conditions contained in the permit:

1. This authorization is limited to the bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting.

2. The aquaculture activity area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
3. No aquaculture activity shall occur within beds of submerged aquatic vegetation or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by submerged aquatic vegetation or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional permit. Information on the location of submerged aquatic vegetation can be obtained from the Norfolk District Corps of Engineers (at telephone (757) 201-7652) and from the Virginia Institute of Marine Science (at telephone (804) 642-7332).
4. An aquaculture activity will not meet the terms for this RP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.
5. An aquaculture activity will not qualify for this RP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.
6. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.

Commercial Moorings Associated with a Permitted Project and Temporary in Nature: Such moorings are only installed to assist in the construction of an authorized project. They are located to minimize effects on navigation and there installation will generate minimal turbidity. Hence, their individual and cumulative impacts are minimal. This authorization is valid only for the duration of the associated project. Once the project is completed, the mooring must be removed.

VII. Alternatives Considered: In this evaluation, I have found no unresolved conflicts concerning alternative uses. The only alternative to the use of this Regional Permit would be the issuance of an individual permit, which involves a timely evaluation process. This would not be in the best interest of the public nor achieve the Corps' goal of fair and efficient permit review. A streamlined permit process also saves time and money for the applicant, the Corps, and the public while only issuing permits for projects with minimal individual and cumulative impacts on the aquatic environment.

VIII. Conclusions: Based on my review of the type of projects, the terms and conditions contained in this Regional Permit and the impacts authorized, I have determined that its individual and cumulative impacts on navigation and the aquatic environment will be minimal. Projects that do not meet the conditions of this Regional Permit will require additional scrutiny through other permit review processes.

IX. <u>Coordination</u>: The reissuance of Regional Permit 19 was coordinated with interested parties by public notice on April 1, 2008. No opposing comments from the public and/or state, local, or federal agencies were received. Here are the following agencies comments and how they were addressed (shown in *italics*):

U.S. Environmental Protection Agency (EPA) – Email response (April 11, 2008): EPA responded, "At this time EPA has no additional comments or questions regarding this action."

Virginia Department of Historic Resources – Email response (April 23, 2008): VDHR responded, "We have reviewed the proposed modifications to Regional Permits 19 and 22, LOP-1 and 2, and the Modified General Conditions document (RPs 15, 17, 18 and 40 are categorically excluded from review by our agency under a preexisting agreement between the Department of Historic Resources and the Norfolk District). Based upon the information provided, we have no concerns or objections to the proposed amendments."

Virginia Department of Environmental Quality (DEQ), Office of Wetland and Water Protection – Written response (April 30, 2008): DEQ responded, "We support the proposed changes to RP-17 – Private Piers and Mooring Piles, RP-18 – Private Piers not covered by RP-17, RP-19 – Certain Activities covered by VMRC and/or Local Wetlands Board."

On August 12, 2008, the State Water Control Board provided §401 Water Quality Certification for the 08-RP-19. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 08-RP-19.

U.S. Fish and Wildlife Service (USFWS) – Written response (May 30, 2008):

USFWS provided general comment to provide clarification regarding the sentence under authorities that states that "Activities…authorized under this RP do not require further authorization under the provisions contained in 33 CFR 325…" so the public is aware of their notifications requirements. USFWS is concerned that the language implies that a Joint Permit Application is not required.

To avoid confusion, we have modified the permit language to clarify to the permittee when written authorization is required verses when the permit is non-reporting.

Comments regarding the Endangered Species Act included:

- A recommendation that "General Condition 12…Endangered Species" use the same language found under the 2007 Nationwide Permit General Conditions for consistency.
  To maintain consistency, the language under General Condition No. 12 has been updated to coincide with that of 2007 Nationwide Permits.
- When the Corps conducts the review for the applicant, the PM should be consulting VDGIF and DCR databases during it review of all permits, including RP-18, to ensure all available resources and the information they provide are being considered during the Corps evaluation of potential effects.
  This comment has no bearing on permit language or its reissuance, but rather is a policy matter that will be addressed to staff reminding them that we must be checking all available resources and databases during our permit verification process.

Virginia Department of Conservation and Recreation Division of Natural Heritage (DCR) – Written response (April 30, 2008): DCR recommends including State listed species under General Condition #12 (Endangered Species). Their concerns are that some activities permitted under various RP's and/or LOP's may have a potential impact on the resource that will not be addressed if DEQ 401 Certifications are issued.

When making a permit decision we are only obligated to consider Federal species; therefore state listed species are not included as a requirement under General Condition No. 12. Understanding their importance, out of courtesy staff will coordinate state listed species when a separate DEQ permit is not being issued. Currently we are working on developing a Memorandum of Understanding with DCR, VDGIF, and USFWS that will provide clarification to all parties regarding this matter.

NOAA's National Marine Fisheries Service (NMFS) – Written response (April 17, 2008):

NMFS commented that activities authorized under the RPs and LOPs have the potential to adversely affect Essential Fish Habitat (EFH) designated within waters under the jurisdiction of the Norfolk District. The EFH final rule at 50 CFR Section 600.810 defines an adverse effect as "any impact which reduces the quality and/or quantity of EFH." Activities such as dredging, pier construction and filling including that for groin and jetty construction may cause cumulative impacts to EFH, federally managed species or their forage base. Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires all federal agencies to consult with NMFS on any action authorized, funded, or undertaken by that agency that may adversely affect EFH. NMFS requested the preparation of an EFH assessment to provide necessary information on which to consult. Specifically, NMFS commented that activities authorized under RP-19 have the potential to adversely affect EFH.

In response to our public notice, NOAA Fisheries (NOAA) commented that activities authorized under 08-RP-19 have the potential to adversely affect Essential Fish Habitat (EFH). Based upon the General and Special Conditions of 08-RP-19, NOAA has determined that activities authorized by 08-RP-19 will likely result in no significant individual or cumulative adverse effect to EFH, managed species or their prey. On August 13, 2008, NOAA issued general concurrence for 08-RP-19. NOAA's general concurrence is based upon its understanding that the U.S. Army Corps of Engineers will further consult and consider conservation recommendations on a case-by-case basis in circumstances such as those set forth in the General and Special Conditions section of 08-RP-19 (i.e., submerged aquatic vegetation, significant shellfish resources, anadromous fish use areas).

Virginia Department of Environmental Quality, Office of Environmental Impact Review – Written Federal Consistency Determination (July 17, 2008): The Commonwealth of Virginia has completed its review of the Federal Consistency Determination for RP-19. After coordination with participating state agencies and the Hampton Roads Planning District Commission, the Department of Environmental Quality Division of Environmental Impact Review has concurred that the proposed activities authorized by this permit are consistent with the Virginia Coastal Resources Management Program, provided the Corps, and its permit holders, comply with all applicable requirements and recommendation outlined in the July 17, 2008 letter.

Based on review of their requirements and recommendations, which summarizes comments received directly from other state agencies, we have taken the necessary actions to ensure compliance. The only unresolved issue is the recommendation by VDGIF and DCR to consider

state-listed protected species for those general permits for which DEQ issues unconditional §401 certification. Since this recommendation is not part of one of the state's enforceable policies, compliance will have no bearing on the VCP consistency determination. However, the Corps recognized the importance of all threatened and endangered species, whether state or federally listed. Therefore, we are currently working on developing a Memorandum of Understanding with DCR, VDGIF, and USFWS that will provide clarification to all parties regarding this matter.

FONSI

(Finding of No Significant Impact)

I have determined that the decision on the reissuance of this Regional Permit is not a major Federal action significantly affecting the quality of the human environment. Therefore, no Environmental Impact Statement will be prepared. This finding is based on information contained in the Final Environmental Assessment of the proposed reissuance and modifications and comments received from Federal, State and local agencies and the general public.

14 Aug 2006
Date

DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding

Final Evaluation of 404(b)(1) Guidelines
Contained in Vol. 45 No. 249 of the
Federal Register dated 24 December 1980

Subject: Reissuance and Modification of the Norfolk District's State Program Regional Permit (RP-19)

1. Review of Compliance (230.10(a)-(d) (Subpart B)

A review of the proposed RP-19 indicates that:

a. The discharge represents the least environmentally damaging practicable alternative and if in a special aquatic site, the activity associated with the discharge must have direct access or proximity to, or be located in the aquatic ecosystem to fulfill its basic purpose (if no, see section 2 and information gathered for EA alternative);
YES ☒ NO ☐

b. The activity does not appear to 1) violate applicable state water quality standards or effluent standards prohibited under Section 307 of the CWA; 2) jeopardize the existence of Federally designated marine sanctuary (if no, see section 2b and check responses from resource and water quality certifying agencies; YES ☒ NO ☐

c. The activity will not cause or contribute to significant degradation of waters of the U.S. including adverse effects on human health, life stages of organisms dependent on the aquatic ecosystem, ecosystem diversity, productivity and stability, and recreational, aesthetic, and economic values (if no, see section 2); YES ☒ NO ☐

d. Appropriate and practicable steps have been taken to minimize potential adverse impacts of the discharge on the aquatic ecosystem (if no, see section 5);
YES ☒ NO ☐

The proposed discharge of fill material will constitute the least environmentally damaging practicable alternative. Impacts will be minimized through type of material discharge and the permitted location.

2. Technical Evaluation Factors

a. Physical and Chemical Characteristics of the Aquatic Ecosystem (230.20-230.25)(Subpart C)

	N/A	Not Significant	Significant
(1) Substrate impacts	☐	☒	☐
(2) Suspended particulates/turbidity impacts	☐	☒	☐

(3) Water Quality Control	☐	☒	☐
(4) Alteration of current patterns and water circulation	☐	☒	☐
(5) Alteration of normal water fluctuations/hydroperiod	☐	☒	☐
(6) Alteration of salinity gradients	☐	☒	☐

Fill associated with the activities authorized by this Regional Permit have been minimized to the maximum extent practicable.

b. Biological Characteristics of the Aquatic Ecosystem (230.30-230.32) (Subpart D)

	N/A	**Not Significant**	**Significant**
(1) Effect on threatened/endangered species and their habitat	☐	☒	☐
(2) Effect on the aquatic food web	☐	☒	☐
(3) Effect on other wildlife (mammals, birds, reptiles, and amphibians)	☐	☒	☐

Upon receipt of a permit application, the Corps project manager will conduct a search of our endangered species database and, if necessary, coordinate with the U.S. Fish and Wildlife Service. All required consultation with the Service pursuant to Section 7 of the Endangered Species Act will be concluded before any work in waters of the United States, including wetlands is allowed to commence. No more than minimal adverse effects to listed species are anticipated.

The proposed fill material will affect wildlife habitat and the aquatic food web. However, all appropriate and practicable measures to avoid and minimize those impacts have been incorporated as conditions to the Regional Permit. The District retains the option on a case-by-case basis to further condition the Regional Permit authorization.

c. Special Aquatic Site (230.40-230.45) (Subpart E)

	N/A	Not Significant	Significant
(1) Sanctuaries and refuges	☒	☐	☐
(2) Wetlands	☐	☒	☐
(3) Mud flats	☐	☒	☐
(4) Vegetated shallows	☐	☒	☐
(5) Coral reefs	☒	☐	☐
(6) Riffle and pool complexes	☒	☐	☐

The Regional Permit requires time of year restrictions when work is authorized adjacent to shellfish or submerged aquatic vegetation areas. It minimizes the encroachment allowed affecting wetlands.

d. Human Use Characteristics (230.50-230.54) (Subpart F)

	N/A	Not Significant	Significant
(1) Effects on municipal and private water supplies	☒	☐	☐
(2) Recreational and Commercial fisheries impacts	☐	☒	☐
(3) Effects on water-related recreation	☐	☒	☐
(4) Aesthetic impacts	☐	☒	☐
(5) Effects on parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar preserves	☒	☐	☐

The fill material will be stabilized so as to minimize turbidity. While activities authorized by this Regional Permit will affect the aesthetic character of the property, this change is not considered to be nationally significant.

3. <u>Evaluation of Dredged or Fill Material (230.60) (Subpart G)</u>

a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material. (Check only those appropriate)

☒ (1) Physical characteristics
☒ (2) Hydrography in relation to known or anticipated sources of contaminants
☐ (3) Results from previous testing of the material in the vicinity of the project
☐ (4) Known, significant, sources of persistent pesticides from land runoff or percolation
☐ (5) Spill records for petroleum products or designated (Section 311 of CWA) hazardous substances
☐ (6) Other public records of significant introduction of contaminants from industries, municipalities or other sources
☐ (7) Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge
☐ (8) Other sources (specify)

Fill material used by associated with the activities authorized by this Regional Permit will be from an upland source and therefore testing will not be necessary.

b. An evaluation of the appropriate information in 3a above indicated that there is reason to believe the proposed dredged or fill material is not a carrier of contaminants, of that levels of contaminants are substantively similar at extraction and disposal sites and not likely to exceed constraints. The material meets the testing exclusion criteria.

YES ☒ NO ☐

4. Disposal Site Delineation (Section 230.11(f))

a. The following factors, as appropriate, have been considered in evaluating the disposal site.

- ☒ (1) Depth of water at disposal site
- ☒ (2) Current velocity, direction, and variability at disposal site
- ☐ (3) Degree of turbulence
- ☐ (4) Water volume stratification
- ☐ (5) Discharge vessel speed and direction
- ☐ (6) Rate of discharge
- ☒ (7) Dredged material characteristics (constituents, amount, and type of material, settling velocities)
- ☐ (8) Number of discharges per unit of time
- ☐ (9) Other factors affecting rates and patterns of mixing (specify)

The proposed fill material to be discharged into wetlands and shallow water areas will be contained in such a manner to minimize sedimentation and turbidity.

b. An evaluation of the appropriate factors in 4a above indicates that the disposal site and/or size of mixing zone are acceptable. YES ☒ NO ☐

5. Actions to Minimize Adverse Effects (Section 230.70-230.77)(Subpart H)

All appropriate and practicable steps have been taken, through application of recommendation of Section 230.70-230.77 to ensure minimal adverse effects of the proposed discharge. YES ☒ NO ☐

Impacts to wetlands, anadromous fish use areas, shellfish beds, and submerged aquatic vegetation have been minimized through the incorporation of specific permit conditions (e.g., exclusion of work in shellfish beds, time of year restrictions, a maximum amount of wetlands that can be impacted, revegetation of wetlands temporarily disturbed, compensatory mitigation, were required, etc.). Specific project conditions can be found in the main permit document via Section V. Activity Specific Special Conditions and Special Conditions for Discharges and Structures in Sections VI and VII, respectively, as well as the general conditions.

6. Factual Determination (Section 230.11)

A review of appropriate information as identified in items 2-4 above indicates that there is minimal potential for short or long-term environmental effects of the proposed discharge as related to:

- ☒ a. Physical substrate at the disposal site (review sections 2a, 3, 4, & 5)
- ☒ b. Water circulation, fluctuation and salinity (review sections 2a 3, 4, & 5)
- ☒ c. Suspended particulates/turbidity (review sections 2a, 3, 4, & 5)

☒ d. Contaminant availability (review sections 2a, 3, & 4)
☒ e. Aquatic ecosystem structure and function (review sections 2b & c; 3, & 5)
☒ f. Disposal site (review sections 2, 4, & 5)
☒ g. Cumulative impact on the aquatic ecosystem
☒ h. Secondary impacts on the aquatic ecosystem

Impacts will be minimized through type of material discharge and the permitted location.

7. <u>Findings</u>

☐ a. The proposed disposal site for discharge of dredged or fill material complies with the Section 404 (b)(1) guidelines

☒ b. The proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) guidelines with the inclusion of the following conditions:

Impacts to wetlands, anadromous fish, shellfish beds, and submerged aquatic vegetation have been minimized through the incorporation of specific permit conditions (e.g., time of year restrictions, maximum amount of wetlands that can be impacted, and revegetation of wetlands temporarily disturbed). Specific project conditions can be found in the main permit document via Section V. Activity Specific Special Conditions and Special Conditions for Discharges and Structures in Sections VI and VII, respectively, as well as the general conditions.

☐ c. The proposed disposal site for discharge of dredged or fill material does not comply with the Section 404(b)(1) guidelines for the following reason(s):

☐ (1) There is a less damaging practicable alternative

☐ (2) The proposed discharge will result in significant degradation of the aquatic ecosystem

☐ (3) The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem

14 Aug 2008
Date

DIONYSIOS ANNINOS
Colonel, Corps of Engineers
Commanding

National Oceanic and Atmospheric Administration
Marine Operations Center-Atlantic
Bulkhead Replacement

FINDING OF NO SIGNIFICANT IMPACT

The Council on Environmental Quality (CEQ) Regulations state that the determination of significance using an analysis of effects requires examination of both context and intensity, and lists ten criteria for intensity (40 CFR 1508.27). In addition, NOAA Administrative Order (NAO) 216-6, Section 6.01(b) 1 – 11, provides eleven criteria, the same ten as the CEQ Regulations and one additional for determining whether the impacts of a proposed action are significant. Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

1. Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

No. As analyzed in the U.S. Army Corps of Engineers (ACOE) environmental assessment (EA), the proposed action will have minimal individual and cumulative impact on navigation and the aquatic environment. NOAA must conform to the ACOE permit, which is conditioned to minimize the impacts to the environment and general navigation.

2. Can the proposed action reasonably be expected to significantly affect public health or safety?

No. Public health and safety effects are not expected to be significant. Minimal adverse effects are anticipated. Any construction activities have the potential to adversely affect public health and safety (e.g., noise and dust); however, in this case these effects are not anticipated to be significant as the construction activities will be performed in compliance with standard industry practice and permitting requirements. The installation of piers, boat ramps, boat slips, mooring piles, and maintenance dredging projects allow for greater use of the waterway for boating and recreational activities. These activities may increase the number of craft navigating a particular waterway and it is possible that the increase in boat usage may increase the number of boating accidents; however, there is no information to suggest that the boating hazard will increase due to the construction of structures.

3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

No. No known historic, archaeological or cultural resources were identified on-site. The MOC-A is not in close proximity to park lands, prime farmlands or wild and scenic rivers. The project area is not within and/or does not contain any environmentally sensitive habitats (ESH) or other ecologically critical areas.

4. Are the proposed action's effects on the quality of the human environment likely to be highly controversial?

No. The proposed action involves: (1) installing an approximately 830-foot steel bulkhead in front of the existing bulkhead (2 feet into the water); and (2) replacing existing associated utilities and pavement at MOC-A. The height for the new bulkhead is the same as the existing one, which has proven to be effective in minimizing the flood risks to the property and surrounding areas. NOAA and the ACOE issued a public notices and invited public comments on the EA and this adopted EA and received no opposing comments from the public and/or state, local, or federal agencies. As such, it is not anticipated to be highly controversial.

5. Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

No. The U.S. Army Corps of Engineers (ACOE) has done numerous projects in Norfolk, VA similar to the NOAA's proposed action and has performed an Environmental Assessment (EA) specifically for bulkheads, riprap and associated backfill including bulkhead repair and/or replacement. Based on the ACOE's EA analysis of surrounding environment and ACOE's vast experience in doing similar projects, it is unlikely to encounter highly uncertain effects and unique or unknown risks.

6. Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

No. The proposed action is consistent with applicable regulatory requirements. The proposed action is not expected to establish a precedent for future actions with significant effects nor does it represent a decision in principle about a future consideration.

7. Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?

No. The proposed action is not reliant upon or connected to other actions, nor is it relied upon for the occurrence of other actions. For each of the subject areas analyzed in the ACOE EA, the contribution of the proposed project to a cumulatively significant impact is not considerable, provided the conditions as outlined in the ACOE's EA are met. The proposed action conforms to the conditions of the ACOE EA and therefore, will not result in a significant cumulative impact to the human environment.

8. Can the proposed action reasonably be expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?

No. No known historic, archaeological or cultural resources were identified on-site. Therefore, there is no expectation that the proposed action will have adverse effects on these resources.

9. Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?

No. For the purposes of this adoption, NOAA's Safety and Environmental Office consulted with NOAA's National Marine Fisheries Service (NMFS) and the United States Fish and Wildlife Service (USFWS). Based on written confirmations from NMFS and USFWS, it was determined unlikely that any Endangered Species Act (ESA) listed species and marine mammals would occur in the action area for this proposed action. Therefore, it was determined that consultation under Section 7 of the ESA or an Incidental Harassment Authorization (under the Marine Mammal Protection Act) are not necessary.

10. Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?

No. The proposed action is consistent with applicable regulatory requirements. No regulatory violations or other significant environmental effects are expected to result provided the conditions as outlined in the ACOE's EA are met.

11. Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

No. No transport, release, propagation or spread of non-indigenous species is associated with the proposed action. NOAA policies to prevent the introduction of non-indigenous species due to the release of bulge water or other opportunities for transport will continue to be followed.

DETERMINATION

In view of the information presented in this document and the analysis contained in the adopted ACOE EA, I have hereby determined that the undertaking of the proposed action will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. As a result of this review, I have determined that it is not necessary to prepare a separate EA, supplemental EA, or environmental impact statement and that adoption of ACOE's EA is appropriate.

SEP - 9 2010

William F. Broglie
NOAA Chief Administrative Officer

Date