



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
FORT NORFOLK
803 FRONT STREET
NORFOLK VA 23510-1011

March 6, 2024

Southern Virginia Regulatory Section
NAO-2016-00122 / VMRC #24-V0340 (Shell Dredging)
NAO-2000-03926 / VMRC #24-V0340 (Shell Planting)

Virginia Marine Resource Commission
Fisheries Management Division
Mr. Andrew Button
380 Fenwick Road, Bldg. 96
Fort Monroe, Virginia 23651

Dear Mr. Button:

This is in reference to the Department of the Army application submitted by VMRC for 2024 Lower James River oyster shell dredging and shell planting activities on existing reefs located in the Tangier/Pocomoke Sound, Great Wicomico River, York River, Rappahannock River, Mobjack Bay, and James River as specified in Joint Permit Application 24-V0340. The proposed project as described above and depicted on the attached exhibits, stamped received by our office on February 13, 2024 and February 14, 2024 satisfies the terms and conditions of Norfolk District's Regional Permit 20 (23-RP-20). Provided that VMRC follows the general and special terms and conditions of the 23-RP-20, as well as all other special conditions included below, no further authorization will be required from the Corps.

To clarify the extent of authorized work, the permit application included a range of impacts, based in part on funding, and in part on needed shell planting. Therefore, this verification is to hydraulic dredge approximately 30,000 – 60,000 cubic yards of fossil shell from the Lower James River for transport via barge to existing public oyster bottom reefs where shell will be washed overboard at a rate of 1000 bushels per acre at a maximum thickness of 1 inch. Under this 2024 proposal, VMRC will plant on 17 sites covering approximately 717.0 acres of existing oyster reef.

Special Conditions:

1. VMRC must adhere to a Time or Year Restriction (TOYR) prohibiting all in-water activities between February 15th and June 1st of any given year to protect anadromous fish and EFH.
2. As stipulated by VMRC, the dredge barge shall have 4 elephant trunk discharge pipes -- 2 forward and 2 aft on the barge. The trunks shall extend under the barge, and return the sediments and fine bits of shell back into the excavated trench. The pipes feeding the trunks shall have doors over them that open and

close, to allow regulation of the flow through each pipe. At the beginning of the shell dredging process, the operator shall normally discharge the majority of return sediments through the bow pipes, allowing the material to be evenly discharged back into the excavated area. The return sediments shall not be discharged over the stern in a manner that causes a "wind row" of return sediments at a depth less than adjacent undisturbed river bottom. After the dredge has advanced in the cut and has excavated to the permitted depth, the stern pipes shall be opened somewhat to create a less uniform profile to the excavated bottom, and the opening of four discharge pipes will reduce the velocity of the discharge and lessen turbidity. The use of the stern discharge should create a more natural and functional bottom in the final dredge cut.

3. You are required to notify Fifth District USCG of the fossil shell dredging, for publication in the Local Notice to Mariners (LNTM). Two weeks before dredging, submit the notice to matthew.e.kearney@uscg.mil at (757) 398-6552 and CGD5Waterways@uscg.mil of the dredge location and duration, and discussion of expected barge and tug traffic needed to support the fossil shell recovery and transport. See <http://www.uscg.mil/d5/waterways/> for the most recent LNTM and contact information.
4. No dredging and/or discharge activities shall not take place within a 200 foot buffer radius from 36.939726° N, -76.4346142° W.
5. A Plan of Action (POA) for historical and archaeological finds is required. The contractor will implement measures to add additional awareness for the dredge operation to prevent damage in the event that there is an encounter with unidentified archaeological or cultural resources while dredging fossil oyster shell.

The contractor will:

- a) Monitor the cutter head hydraulic pressure for spikes in pressure and set the hydraulic pressure relief value to stall the cutter head if it encounters debris.
- b) Alert the oiler on the top deck to watch where materials enter the shell shorting area for potential archeological debris.
- c) Alert the barge handlers to watch the conveyor deposits of shell on the barge for potential archeological debris.
- d) Should chain, metal, or wood be observed at any location, the shell dredging will be stopped at that location and the Virginia Marine Resources Commission, Conservation and Replenishment Department will be contacted immediately (757-247-2121), and the Corps project manager at randy.l.steffey@usace.army.mil or call him at (757) 201-7579.

6. In accordance with federal regulations, should unexpected archaeological resources be encountered during project implementation, all work in the immediate area should cease and DHR contacted to provide guidance on the treatment of the discovery. The contractor should record the location of the finds, and the archaeological debris must be retained for evaluation. The federal agency that approved the undertaking should contact our office within 48 hours of the discovery. DHR's Review and Compliance Division can be contacted at (804) 367-2323.

Enclosed is a "compliance certification" form, which must be signed and returned within 30 days of completion of the project. Your signature on this form certifies that you have completed the work in accordance with the regional permit terms and conditions.

Activities authorized under this RP must be completed by May 12, 2028. 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 Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. May 12, 2028), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR Part 325.7(a-e). If work cannot be completed by May 12, 2028, you must reapply for separate permit authorization in order to meet current permit criteria.

The State Water Control Board provided unconditional §401 Water Quality Certification for this RP. 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 this RP. You will not be required to obtain a separate 401 Water Quality Certification from DEQ. Please note that you should obtain all required State and local authorizations before you proceed with the project. This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of Environmental Quality Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP on December 2, 2022 and provided concurrence that this RP is consistent with the VCP. Therefore, no further coordination with the VCP is

required. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to any State or local laws or regulations.

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 authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, 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.

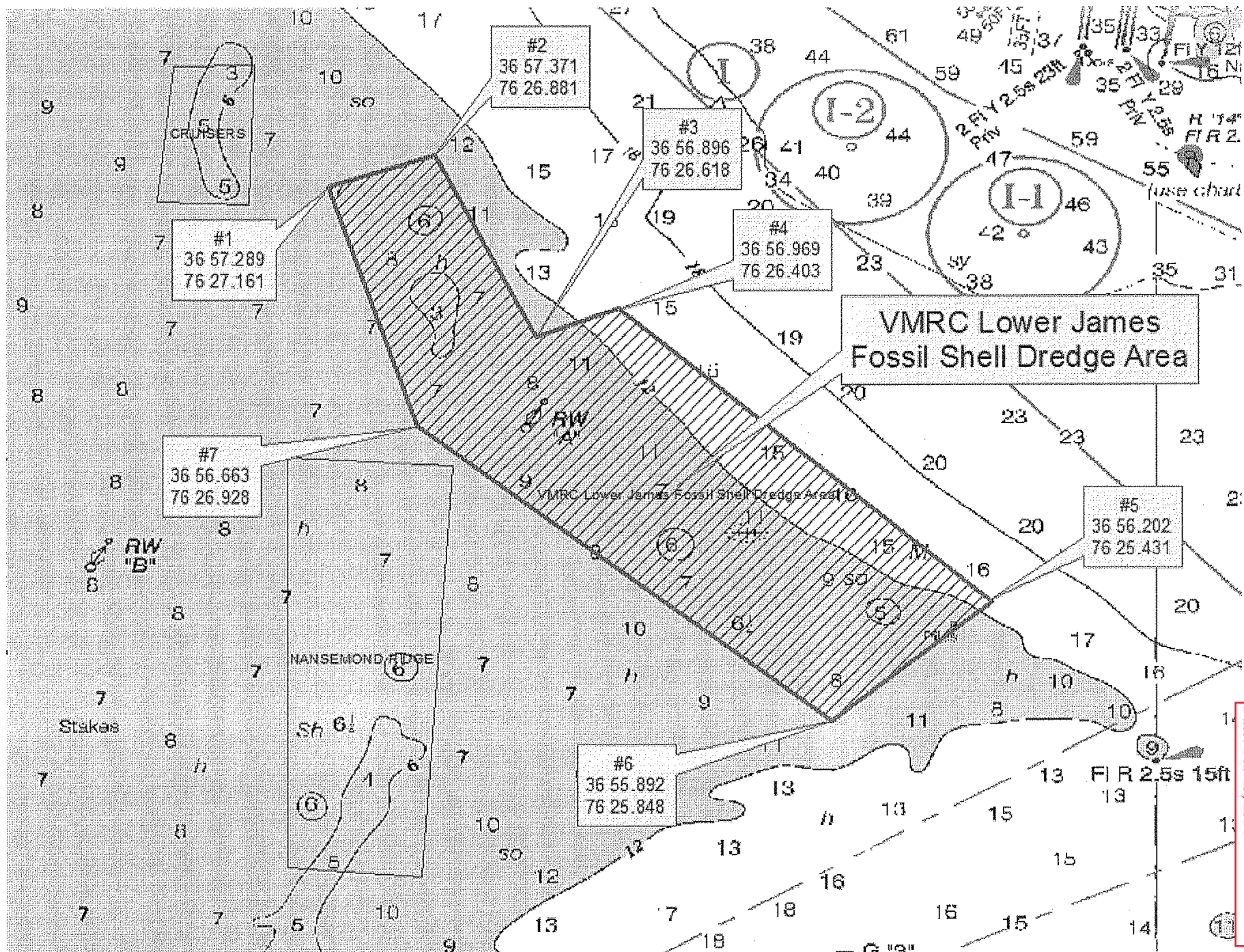
In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.

If you have any questions and/or concerns about this permit authorization, please contact me at (757) 201-7579 or via email at randy.l.steffey@usace.army.mil.

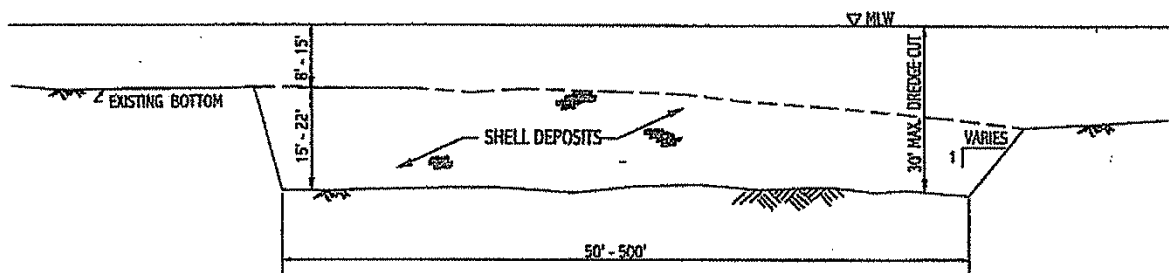
Sincerely,

Randy L. Steffey
Project Manager, Southern Virginia
Regulatory Section

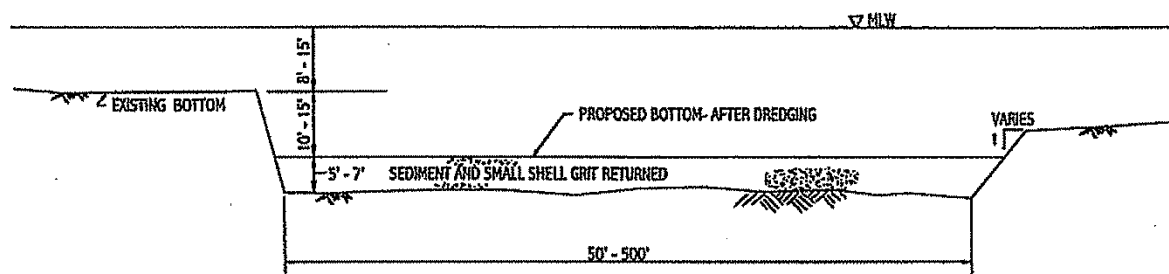
Attachments: Project Drawings
Certificate of Compliance
23-RP-20



US Army Corps of Engineers
 Norfolk District Regulatory
 Branch
 Received by: ADMIN
 Date: Feb 13, 2024



TYPICAL CUT SECTION NOT TO SCALE



TYPICAL SECTION - AFTER DREDGING NOT TO SCALE

FOSSIL SHELL DREDGING DREDGING DETAILS

VMRC - CONSERVATION & REPLENISHMENT DEPARTMENT

SHEET 1 of 1

DATE: NOVEMBER, 2000

US Army Corps of Engineers
Norfolk District Regulatory
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Date: Feb 13, 2024

Table 1. 2024
Potential Shell Replenishment Areas

Tangier/Pocomok	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
1	PG07 H-4 Thoroughfare	37.861	-75.924	4.00	3.67	4,000	258	22000
2	PG08 H-3 California	37.821	-75.926	7.00	4.25	7,000	452	22000
3	Marshall's Rock	37.864	-75.832	7.00	5.4	7,000	452	22000
4	Byrd Rock	37.851	-75.797	13.00	7.00	13,000	839	22000
5	Onancock	37.748	-75.86	11.00	6.5	11,000	710	22000
Subtotals						42,000	2,710	
Great Wicomico	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
6	Ingrams (North)	37.799	-76.292	21.00	7.00	21,000	1,355	3000
7	Dameron Marsh East/ Ingrams (South)	37.79263	-76.29	8.00	1.83	8,000	516	3000
8	Mill Creek East	37.79372	-76.30734	2.00	2.00	2,000	129	3000
Subtotals						31,000	2,000	
York	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
9	Pages Rock	37.31308	76.58477	113.0	7.3	113,000	7,290	4000
Subtotals						113,000	7,290	
Rappahannock	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
10	Morattico	37.785	-76.659	50.00	6.30	50,000	3,226	6000
11	Monaskon Bluff	37.728955	-76.57164	60.00	5.00	60,000	3,871	6000
12	Punch Bowl	37.743	-76.61	20.00	unknown	20,000	1,290	6000
13	Bush Park	37.579	-76.378	4.00	7.00	4,000	258	6000
14	North End	37.588	-76.398	10.00	5.5	10,000	645	6000
						144,000	9,290	
Subtotals								

2/14/2024

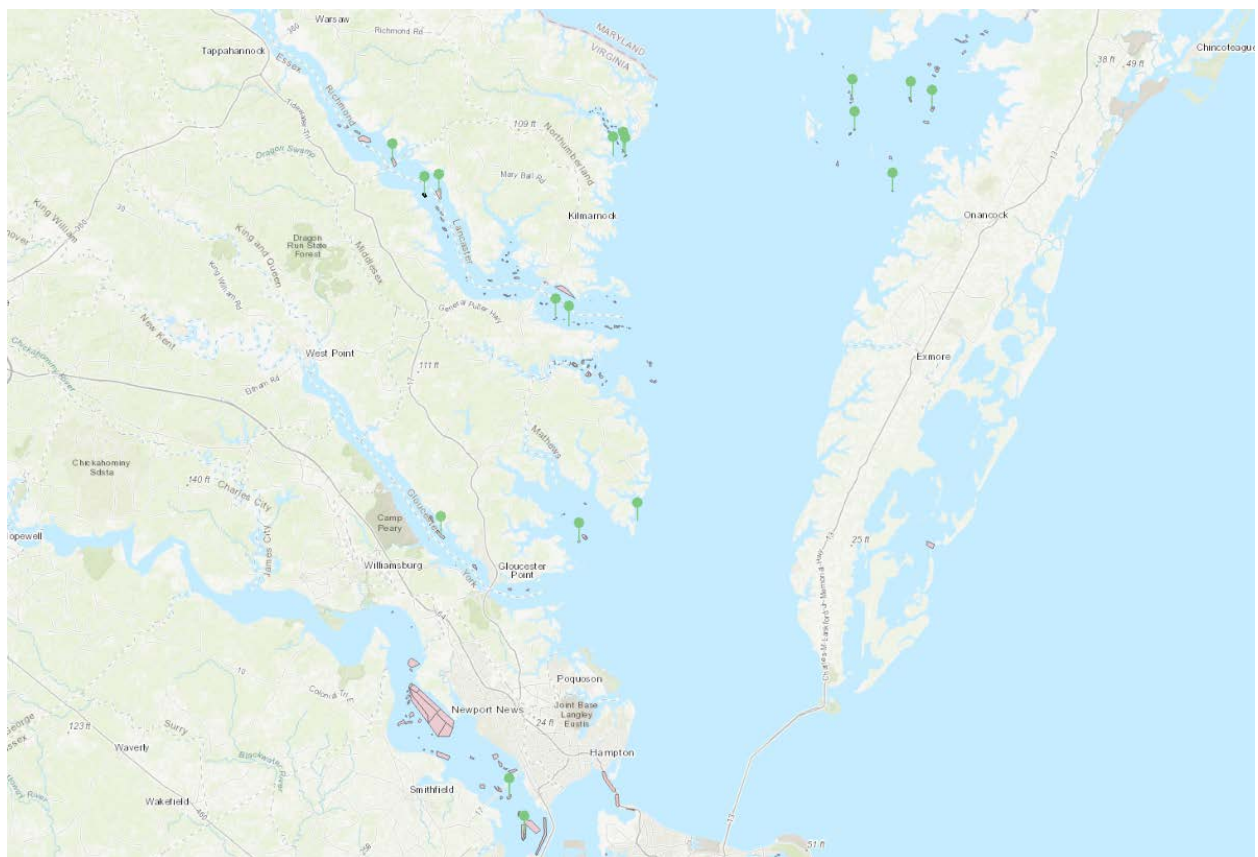
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Date: Feb 14, 2024

Table 1. 2024
Potential Shell Replenishment Areas

	Bar	Lat	Long	Acreage	Cultch/per meter ²	Total Bu	Total Cu yds	Width (m)
Mobjack (fines)								
15	Browns Bay	37.310047	-76.35314	100.0	0.0	100,000	6,452	3000
Subtotals				100.0		100,000	6,452	
Lower James								
16	Nansemond Ridge	36.95655	76.45139	284	4.9	284,000	18,323	7500
17	High Shoal	36.977	-76.474	34	6.4	34,000	2,194	7500
Subtotals				318.0		318,000	20,516	
Grand Total				717.0		717,000	46,258	
	Previously Permitted,18,19,20,21,22,23							

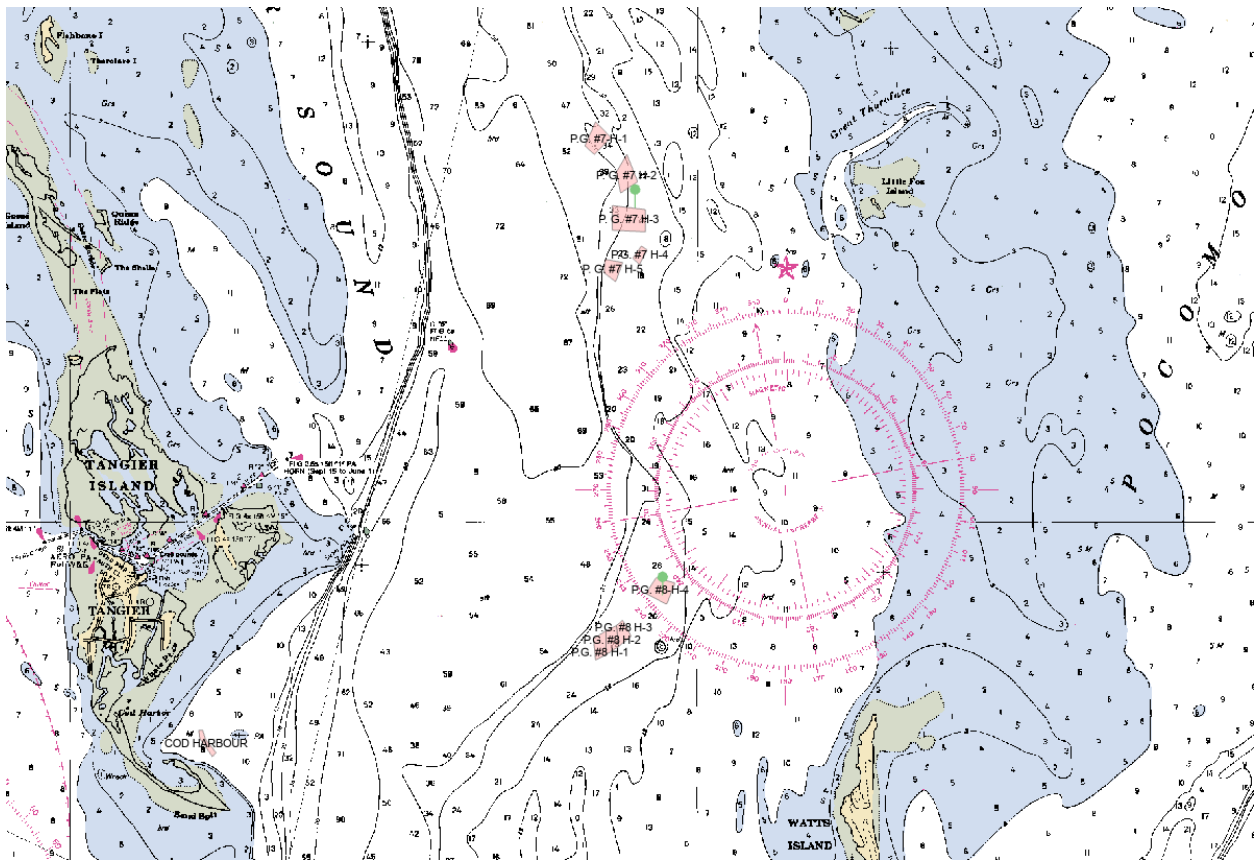
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Over View Map



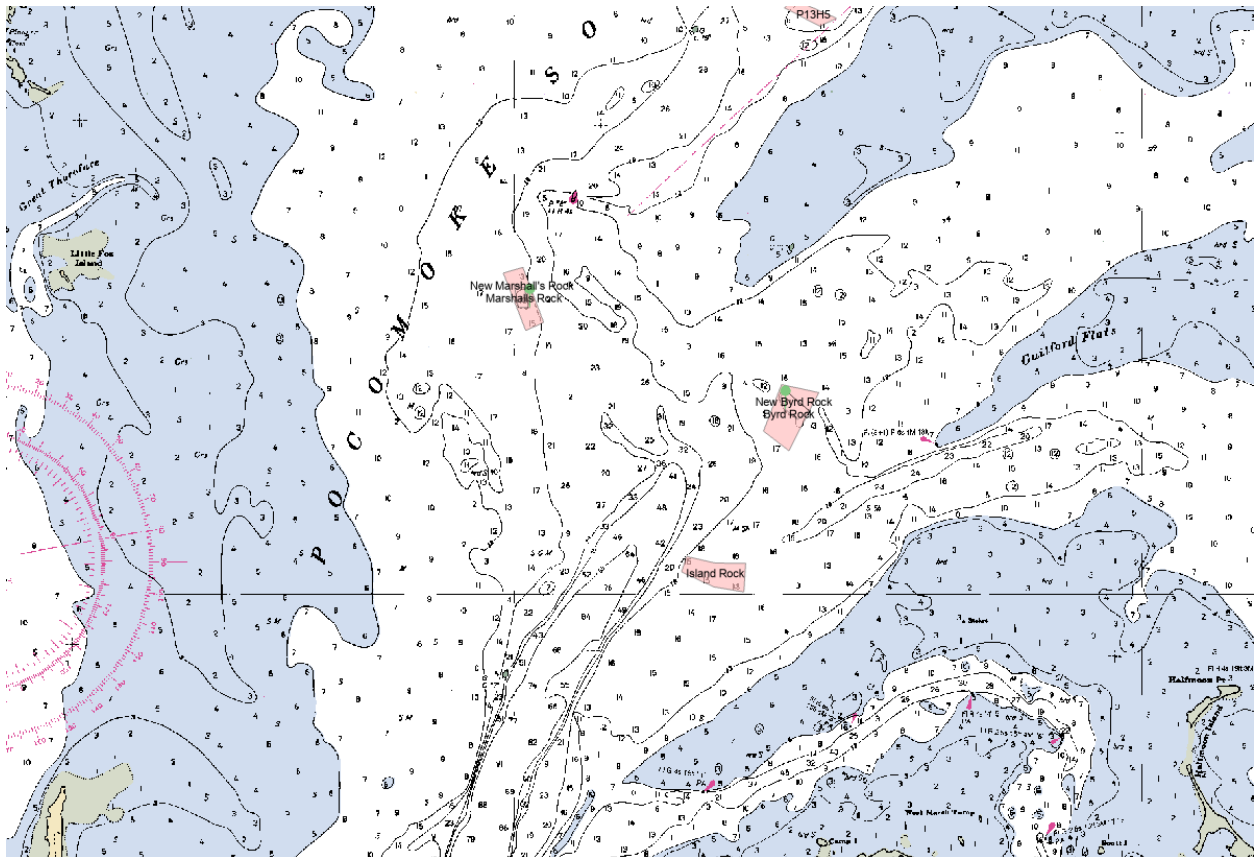
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Tangier Site 1,2



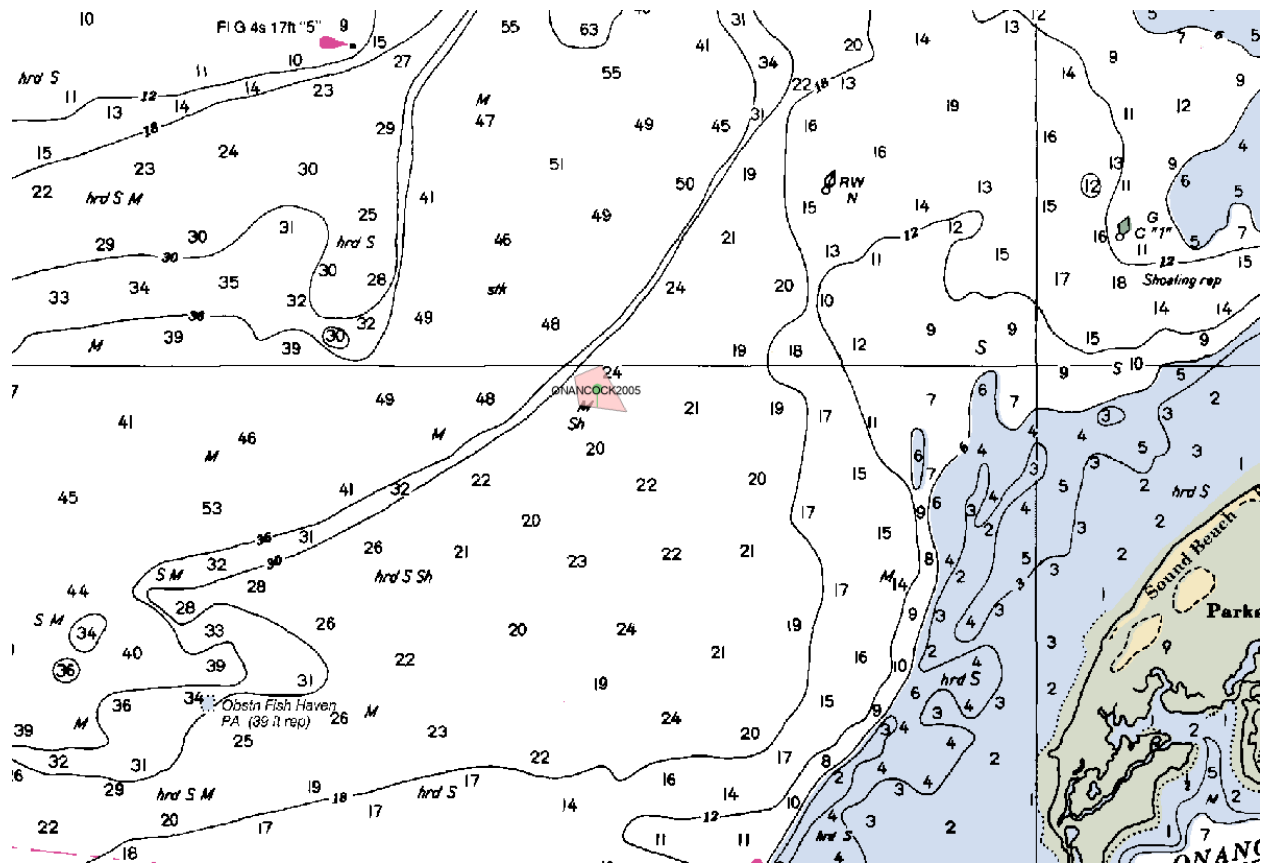
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Pocomoke Site 3,4



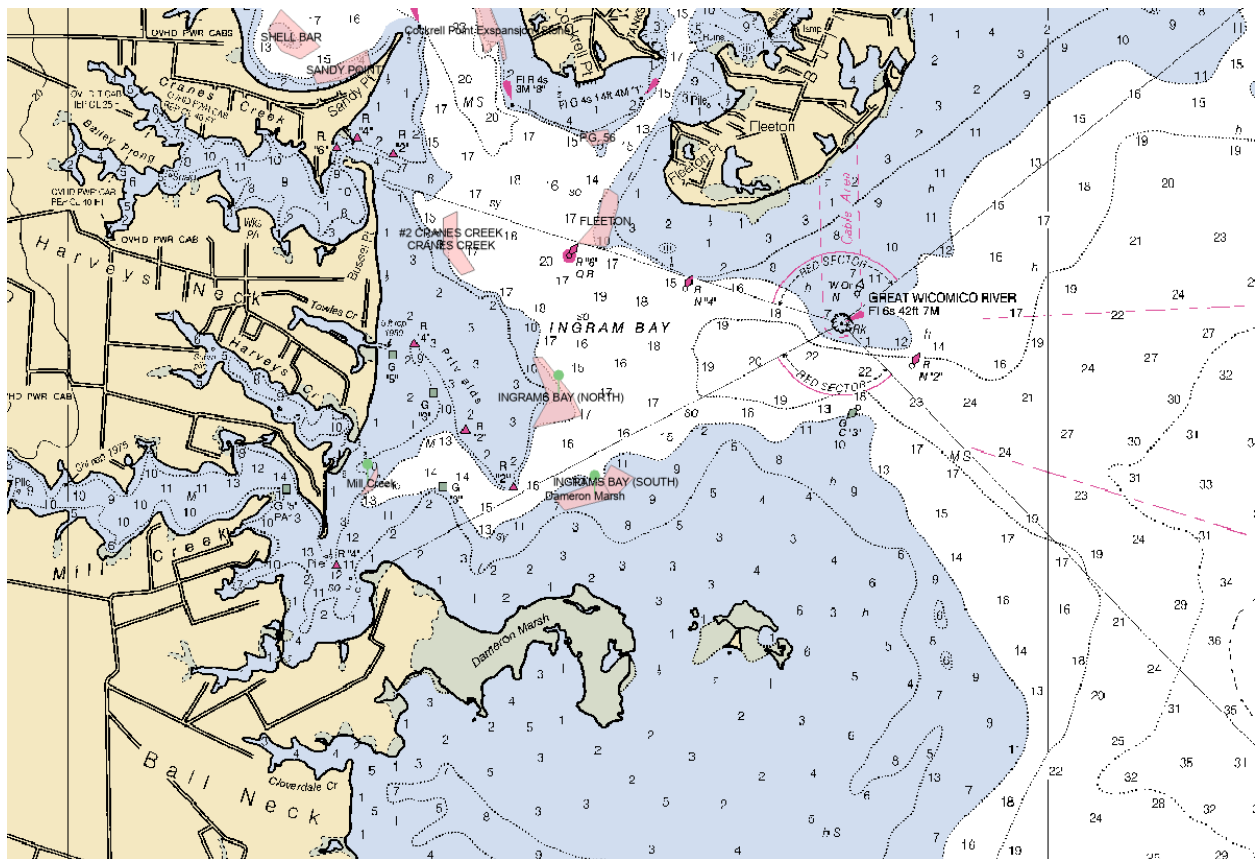
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Pocomoke Site 5



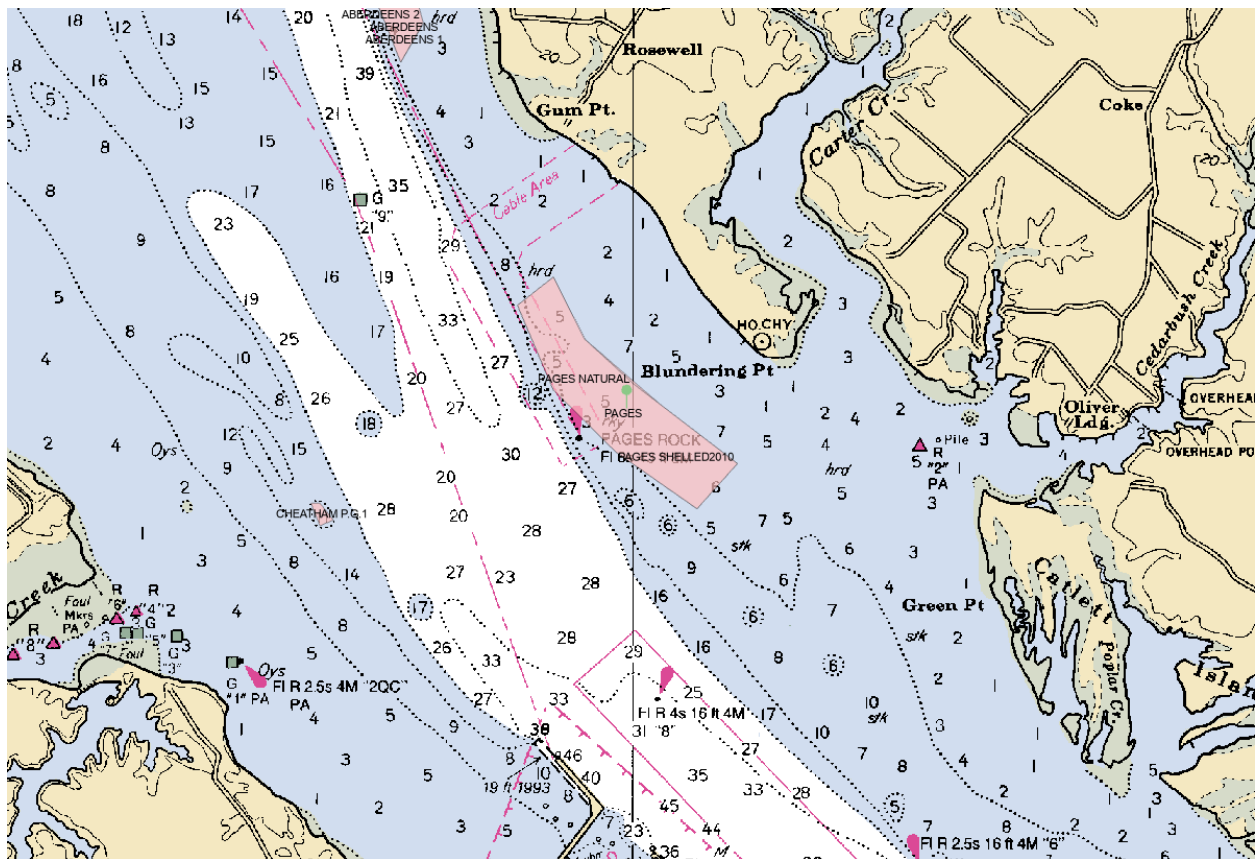
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Great Wicomico Site 6,7,8



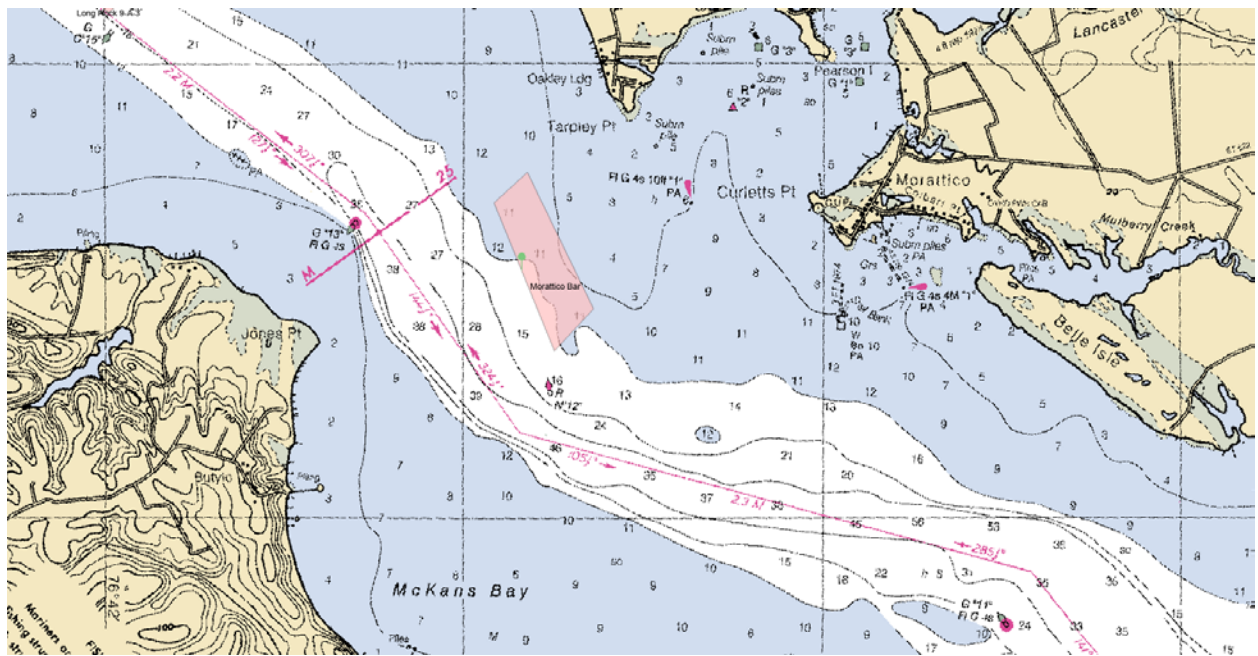
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York Site 9



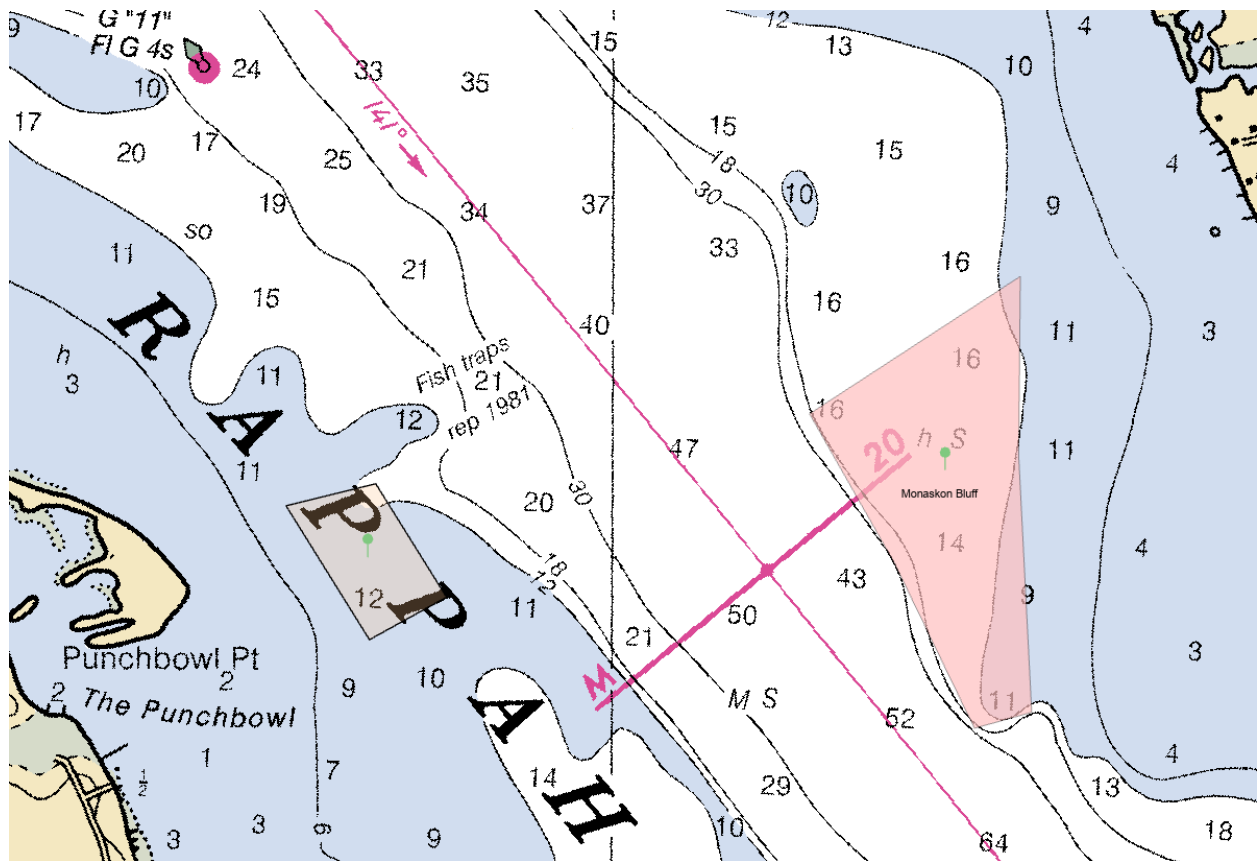
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Rappahannock Site 10



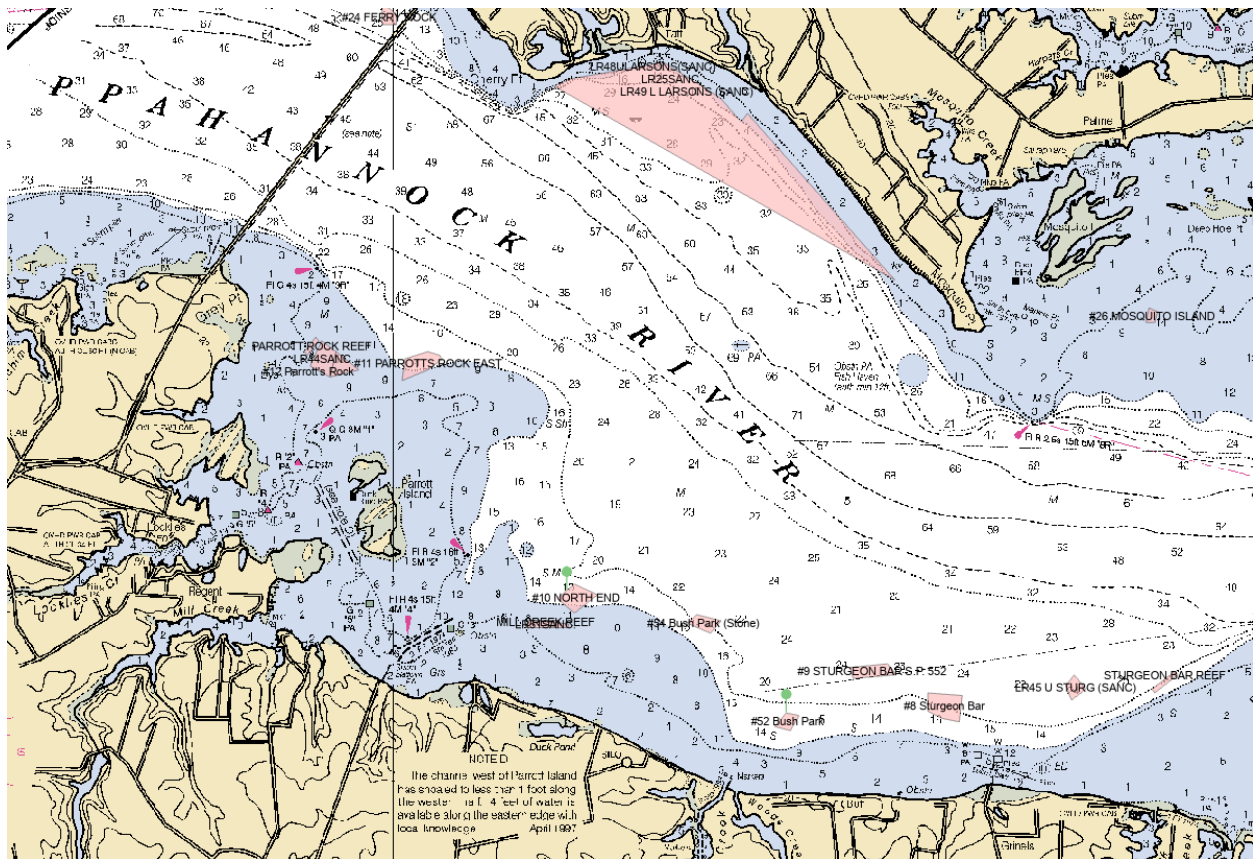
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Rappahannock Site 11,12



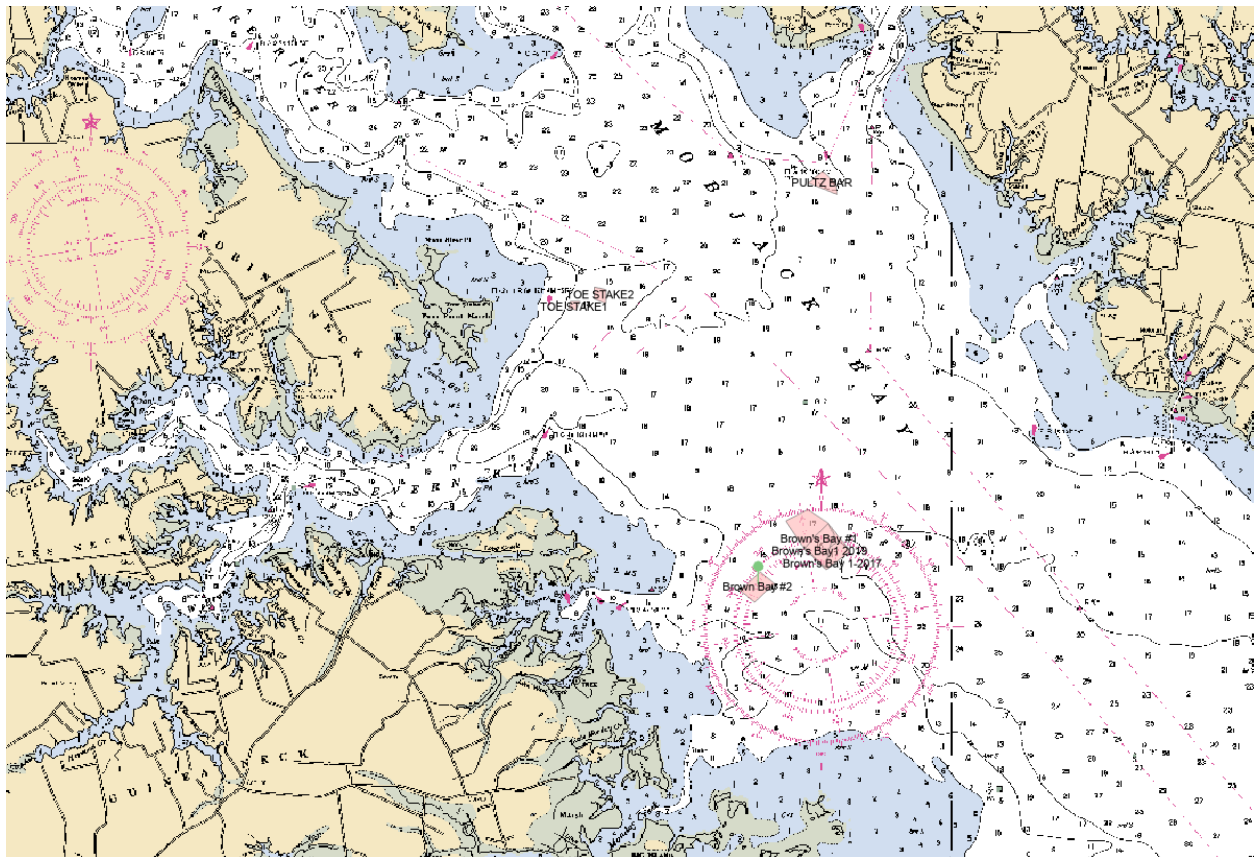
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Rappahannock Site 13,14



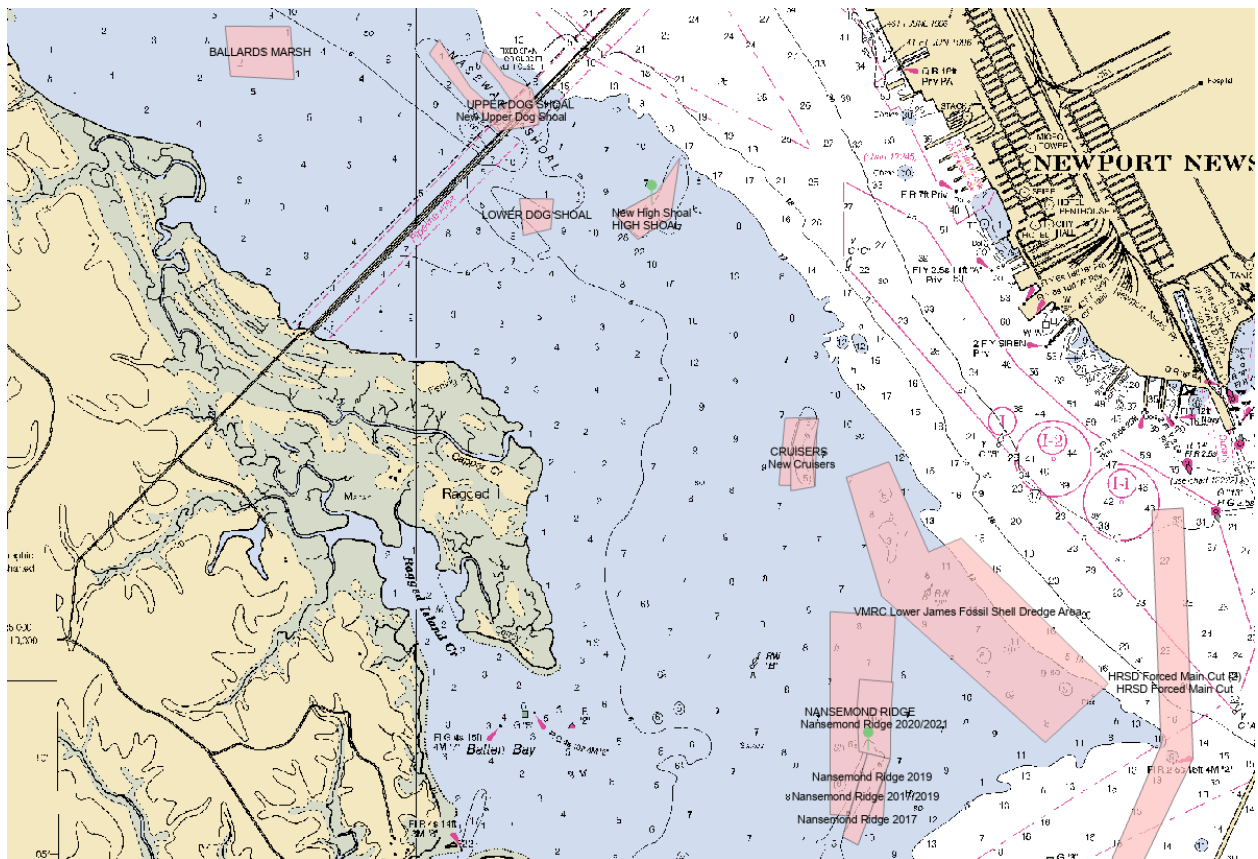
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Mobjack Site 15



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Date: Feb 14, 2024

Lower James Site 16,17



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Date: Feb 14, 2024



U.S. Army Corps
Of Engineers
Norfolk District

**CERTIFICATE OF COMPLIANCE
WITH
ARMY CORPS OF ENGINEERS PERMIT**

Permit Numbers: NAO-2016-00122 & NAO-2000-03926
VMRC Number: 24-V0340

Corps Contact: Randy L. Steffey

Name of Permittee: VMRC Fisheries Management Division; Mr. Andrew Button

Date of Issuance: March 6, 2024

Permit Type: 23-RP-20

Within 30 days of completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers - Norfolk District
CENAO-WR-RS
Attn: Randy L. Steffey
803 Front Street
Norfolk, VA 23510-1096

Or scan and send via email to randy.l.steffey@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation has been completed in accordance with the permit conditions.

Signature of Permittee

Date



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

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

**CENAO-WRR
23-RP-20**

REGIONAL PERMIT

Effective Date: May 12, 2023

Expiration Date: May 12, 2028

I. AUTHORITIES:

23-RP-20, Regional Permit 20 (RP), authorizes the creation of artificial reefs (oyster and fish haven) and dredging of old shellfish reefs, when the material, dredge shell or structural, will be used to create new or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia.

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

This permit is authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia; and to dredge historical shellfish reefs (including the in-situ discharge of washed sediments) and as directed by the Virginia Marine Resources Commission to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth, provided the project complies with the provisions and conditions set forth below.

The placement of this structure material within designated offshore fish havens is excluded from regulation by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401) at 40 CFR 220.1 (c)(2), within the definition of dumping at 40 CFR 220.2(e) where the material is deposited for developing, maintaining, or harvesting fisheries resources.

NOT AUTHORIZED: This permit does not authorize the construction of reefs that will be used for the introduction of non-native species (shell or finfish).

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

for a particular project that might generally qualify for this RP. This RP covers only those activities that strictly comply with all descriptions, general and special conditions set out below. Any work that does not comply with the following terms, conditions, standards, and limitations does not qualify for this RP and will require separate Department of the Army authorization.

II. PROCEDURES:

Prospective permittees (permittees or applicants) must notify the Corps' District Engineer, via the submission of a Joint Permit Application (JPA) and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP (the permit verification). No work is authorized unless and until the Corps issues a permit verification. A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link:

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

III. STATE AND LOCAL APPROVALS:

1. The State Water Control Board provided §401 Water Quality Certification for the 17-RP-20. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit (VWPP) Regulation, provided that the permittee abides by the conditions of 23-RP-20.

2. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia DEQ Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP and provided concurrence that this RP is consistent with the VCP.

3. Permittees should ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation 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.).

4. Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act or to any State or local law or regulation.

IV. SPECIAL CONDITIONS:

1. No portion of the reef will be constructed in areas of known submerged aquatic vegetation (SAV) beds.

2. Any proposed new artificial reef (oyster or fish haven) shall be coordinated with and have no objection from U.S. Coast Guard (USCG) Sector Virginia, Waterways Management Chief, and USCG District Five Waterways Management Branch.
3. Vessels or mechanized vehicles shall be inspected by the USCG to ensure hazardous material will not enter the watershed.
4. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the USCG shall be installed and maintained at the expense of the permittee. 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 23704-5004, telephone number (757) 398-6230.
5. If the 23-RP-20 activity also requires permission from the Corps pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project ("USACE project"), the activity that requires Section 408 permission is not authorized until the Norfolk District Corps grants the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer issues a written 23-RP-20 verification. Contact a Norfolk District Regulatory Project Manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps of Engineers Civil Works project.

Locations of the Norfolk District Civil Works projects can be found at:
<https://www.nao.usace.army.mil/408Review/> .

For projects located within the Civil Works boundary of the Baltimore, Huntington, Nashville, or Wilmington District, please contact a Norfolk District Project Manager for assistance.

6. Prior to authorization of artificial reefing for fish havens (*i.e.*, ocean sinking) of any ships, vessels, or mechanized vehicles and to ensure the project is conducted in an environmentally sound manner, such ships, vessels, and mechanized vehicles shall be prepared for reefing consistent with Environmental Protection Agency (EPA) guidance entitled *Best Management Practice for Preparing Vessels Intended to Create Artificial Reefs*, EPA842-B-06-002 (May 2006). The permittee must notify the United States EPA Region III Coastal Science Team Leader, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2029, 215-814-2137 at least 60 days prior to the proposed reefing activity and allow EPA reasonable opportunity upon request to inspect the ship, vessel, or mechanized vessel prior to reefing. This provision does not supersede any of EPA's existing statutory authorities to inspect the ship, vessel, or mechanized vessel.

a. Failure to comply with the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (TSCA) is a violation of this permit.

b. All material used in the construction of the reefs shall be of clean suitable material and free of petroleum and other hydrocarbons (oil, grease, asphalt, and creosote), toxic residues (including but not limited to mercury, cadmium, and lead), and loose, free-floating material and other deleterious substances. Reefing preparations for all vessels and mechanized vehicles shall include the removal of: all liquid fuels, oils and greases; all asbestos that is loose or may become loose during vessel sinking; all manufactured products containing greater than or equal to (\geq) 50 parts per million (ppm) of solid PCBs, all liquid PCBs regardless of concentration and all materials contaminated by PCB spills where the concentration of the original PCB source is \geq 50ppm; all harmful exterior hull anti-fouling systems that are determined to be active; all exfoliating (peeling) and exfoliated paint; all loose debris, including materials or equipment that are not permanently attached to the vessel that could be transported into the water column during a sinking event; and all other materials that may negatively impact the biological, physical, or chemical characteristics of the marine environment. Such preparation also shall include the removal, or sealing, of all accessible friable asbestos. Vessel owners must also document that no PCBs at concentrations greater than 50ppm remain on board the vessel. This may require representative PCB sampling by those intending to use this RP.

7. If the work involves hydraulic dredging of old shellfish reefs an automatic time of year restriction will apply for between February 15 and June 15 of any year unless consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries confirms there will be no impact for protection of anadromous fish migration and spawning.

8. The Corps will coordinate all activities with NOAA Fisheries Service, Protected Species Division and Habitat Conservation Division (HCD); and/or the U.S. Fish and Wildlife, Virginia Field Office for the purpose of Endangered Species consultation and Essential Fish Habitat (EFH) assessment.

9. A proponent (permittee or applicant) of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Division to cross government property before any construction can take place:

- a. James River
- b. Lynnhaven Inlet and Connecting Waters
- c. All Local Cooperation Agreement areas
- d. Dismal Swamp Canal

e. Albemarle and Chesapeake Canal

f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Office at the address on the first page of this RP or by telephone at (757) 201-7733.

10. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party. See general condition number 39.

11. The Secretary of the Army or his/her authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his/her representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

12. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters or causes more than a minimal adverse effect on navigation, both commercially and recreationally. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal, or administrative penalties (33 U.S.C. 406).

13. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under RPs.

1. **Geographic jurisdiction.** This RP 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.

7. **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.

8. **Multiple general permit authorizations.** This RP may be combined with any Corps general permits (including Nationwide (NWP) or RPs 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.

9. **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:

10. 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 (NRHP), 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 NHPA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed or determined to be eligible for listing on the NRHP, 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 at:

<http://www.dhr.virginia.gov/>

or Tribal Historic Preservation Officer (THPO), as appropriate, and the NRHP. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties.

11. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid

construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the NRHP.

12. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

13. **Federal 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 U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.

14. **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 Engineer with the appropriate documentation to demonstrate compliance with those requirements.

c. Non-federal permittees shall notify the District Engineer if any proposed or listed species or proposed or designated critical habitat may 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 Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the USFWS online project review process at:

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

and from the NMFS at: <http://www.nmfs.noaa.gov/pr/species/>.

The District Engineer will determine whether the proposed activity "may affect" or will have "no effect" to proposed or listed species or proposed or designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified proposed or listed species or proposed or designated critical habitat that might

be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on proposed or listed species or proposed or designated critical habitat, or until Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the USFWS or NOAA PRD the District Engineer may add species-specific regional endangered species conditions to the RP.

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

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

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

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

17. 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, USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

18. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.

19. **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.

20. **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 designated 100-year floodplain.

21. **Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7733 or at the address listed on the front page of this permit.

22. **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”; E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities”; E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”; and E.O. 14008, “Tackling the Climate Crisis at Home and Abroad”; E.O. 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All”.

23. **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:

24. Avoidance and minimization. Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR Part 230.10(a) Section 404 (b)(1) Guidelines).

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

26. Heavy equipment in wetlands. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

27. 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.

28. 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.

29. 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.

30. 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.

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

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

33. **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 Department of Game and Inland Fisheries (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.

34. **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:

35. **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.

36. **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.

37. **Property rights.** This RP 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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **Abandonment.** If the permittee decides to abandon the activity authorized under this RP, 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.

43. **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.

44. **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:

45. **Duration of Activity's Authorization.** Activities authorized under 23-RP-20 must be completed by May 12, 2028. 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 RPs 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. May 12, 2028), 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 May 12, 2029, you must reapply for separate permit authorization in order to meet current permit criteria.

46. Expiration of 23-RP-20. Unless further modified, suspended, or revoked, this RP will be in effect until May 12, 2028. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.

12 May 2023

Date

Brian P. Hallberg, PMP
Colonel, U.S. Army
Commanding



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
FORT NORFOLK
803 FRONT STREET
NORFOLK VA 23510-1011

July 24, 2024

Southern Virginia Regulatory Section
NAO-2024-00803 / VMRC #24-V0605 (Elizabeth River)

Virginia Marine Resource Commission
Fisheries Management Division
Mr. Andrew Button
380 Fenwick Road, Bldg. 96
Fort Monroe, Virginia 23651

Dear Mr. Button:

This is in reference to the Department of the Army application submitted by VMRC to mine up to 240,000 cubic yards of fossil oyster shell from a 97.37-acre area (i.e., Site #5) in the Elizabeth River. The proposed project as described in JPA 24-V0605 and depicted on the attached exhibits stamped received by our office on March 13, 2024 and March 29, 2024 and created by our office on July 22, 2024 satisfies the terms and conditions of Norfolk District's Regional Permit 20 (23-RP-20). Provided that VMRC follows the general and special terms and conditions of the 23-RP-20, as well as all other special conditions included below, no further authorization will be required from the Corps.

To clarify the extent of authorized work, VMRC will be authorized to hydraulically dredge less than 15 acres and a maximum of 60,000 cubic yards of fossil shell from Site #5, (36.906188°N; -76.346309°W), on the east side of Craney Island Dredge Material Management Site. Following the dredge process, fossil shell will be transported via barge to either an upland storage area or planted on existing oyster reefs throughout the Commonwealth provided receipt of Department of Army Permit authorization prior to.

Special Conditions:

1. Attached is your 408-permission letter (33 USC 408) dated July 23, 2024. Any conditions of the 408-permission letter are also special conditions of this permit.
2. VMRC must adhere to a Time or Year Restriction (TOYR) prohibiting all in-water activities between February 15th and June 1st of any given year to protect anadromous fish and EFH.
3. As stipulated by VMRC, the dredge barge shall have 4 elephant trunk discharge pipes -- 2 forward and 2 aft on the barge. The trunks shall extend under the barge, and return the sediments and fine bits of shell back into the excavated

trench. The pipes feeding the trunks shall have doors over them that open and close, to allow regulation of the flow through each pipe. At the beginning of the shell dredging process, the operator shall normally discharge the majority of return sediments through the bow pipes, allowing the material to be evenly discharged back into the excavated area. The return sediments shall not be discharged over the stern in a manner that causes a "wind row" of return sediments at a depth less than adjacent undisturbed river bottom. After the dredge has advanced in the cut and has excavated to the permitted depth, the stern pipes shall be opened somewhat to create a less uniform profile to the excavated bottom, and the opening of four discharge pipes will reduce the velocity of the discharge and lessen turbidity. The use of the stern discharge should create a more natural and functional bottom in the final dredge cut.

Enclosed is a "compliance certification" form, which must be signed and returned within 30 days of completion of the project. Your signature on this form certifies that you have completed the work in accordance with the regional permit terms and conditions.

Activities authorized under this RP must be completed by May 12, 2028. 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 Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. May 12, 2028), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR Part 325.7(a-e). If work cannot be completed by May 12, 2028, you must reapply for separate permit authorization in order to meet current permit criteria.

The State Water Control Board provided unconditional §401 Water Quality Certification for this RP. 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 this RP. You will not be required to obtain a separate 401 Water Quality Certification from DEQ. Please note that you should obtain all required State and local authorizations before you proceed with the project. This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of Environmental Quality Virginia Coastal

Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP on December 2, 2022 and provided concurrence that this RP is consistent with the VCP. Therefore, no further coordination with the VCP is required. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to any State or local laws or regulations.

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 authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, 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.

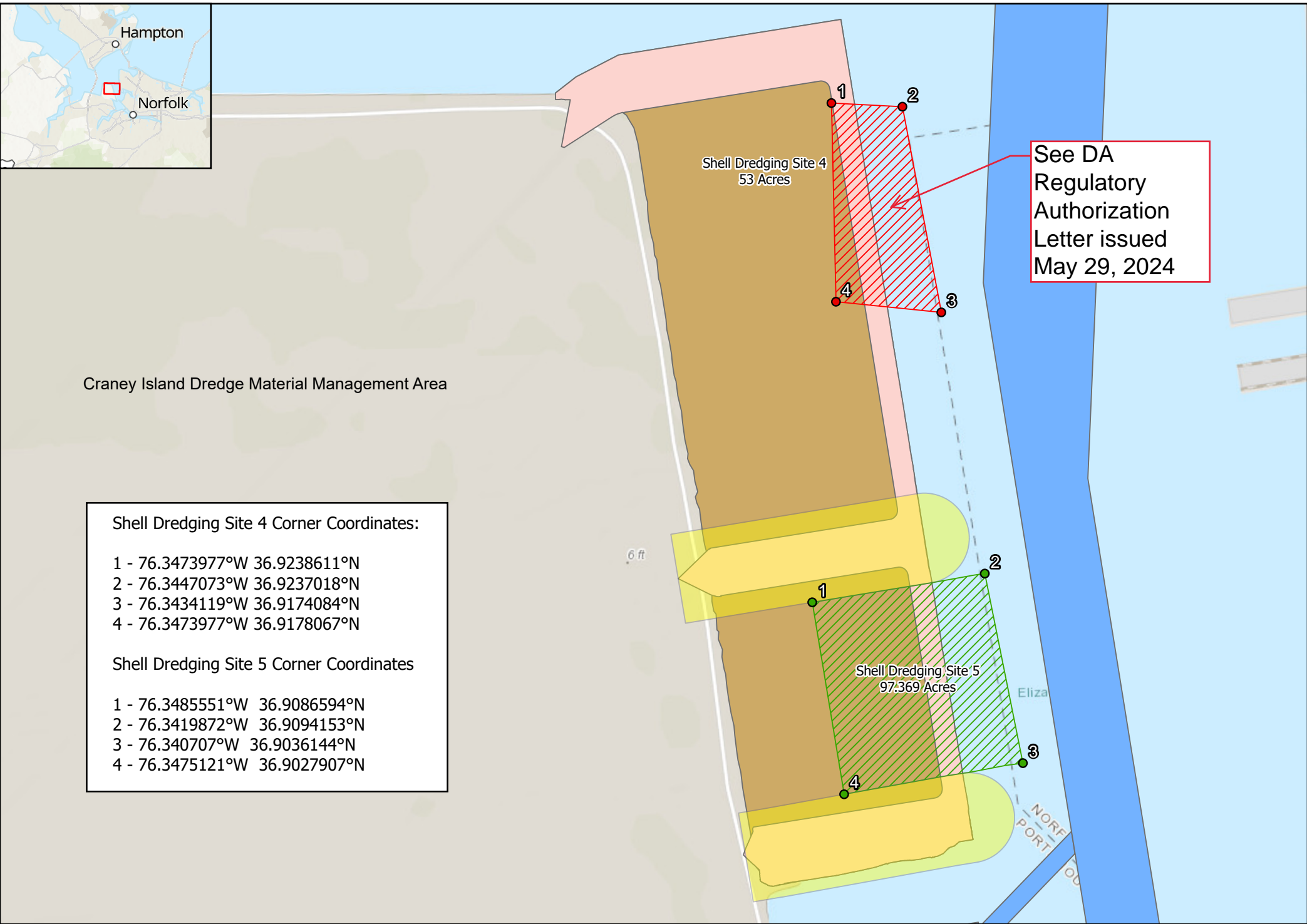
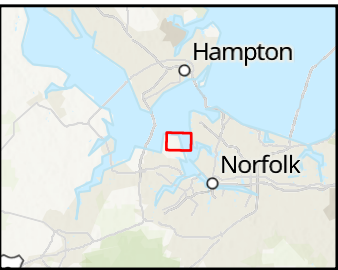
In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.

If you have any questions and/or concerns about this permit authorization, please contact me at (757) 201-7579 or via email at randy.l.steffey@usace.army.mil.

Sincerely,

Randy L. Steffey
Project Manager, Southern Virginia
Regulatory Section

Attachments: Project Drawings
Certificate of Compliance
23-RP-20



Shell Dredging Site 4 Corner Coordinates:

1 - 76.3473977°W 36.9238611°N
2 - 76.3447073°W 36.9237018°N
3 - 76.3434119°W 36.9174084°N
4 - 76.3473977°W 36.9178067°N

Shell Dredging Site 5 Corner Coordinates:

1 - 76.3485551°W 36.9086594°N
2 - 76.3419872°W 36.9094153°N
3 - 76.340707°W 36.9036144°N
4 - 76.3475121°W 36.9027907°N



US Army Corps
of Engineers
Norfolk District

Craney Island Eastward Expansion Shell Dredging Site

- Shell Dredging Site 4
- Shell Dredging Site 5 (97.369 Acres)
- Dike Offset Area

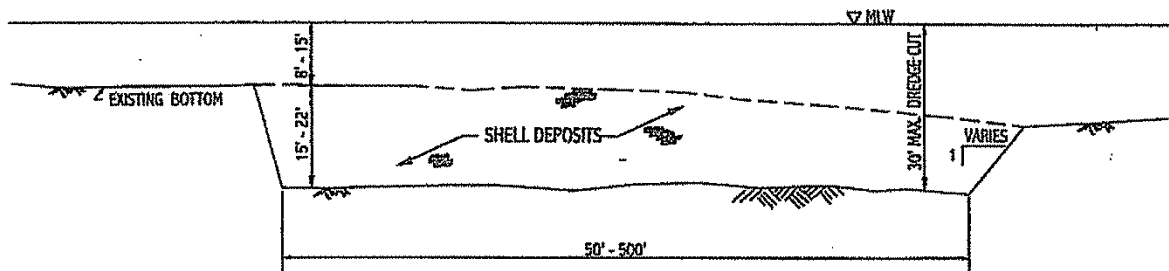
- Craney Island Eastward Expansion Dike Area
- Craney Island Eastward Expansion Fill Area
- Federal Navigation Channel

0 500 1,000 2,000
Feet

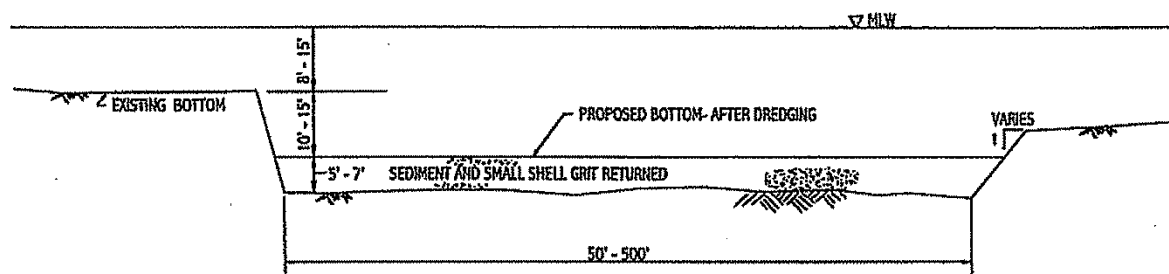


Map: CIEE NEPA.aprx
Developed By: Jared Swallow
Date of Map: 7/22/2024





TYPICAL CUT SECTION NOT TO SCALE



TYPICAL SECTION - AFTER DREDGING NOT TO SCALE

FOSSIL SHELL DREDGING
DREDGING DETAILS

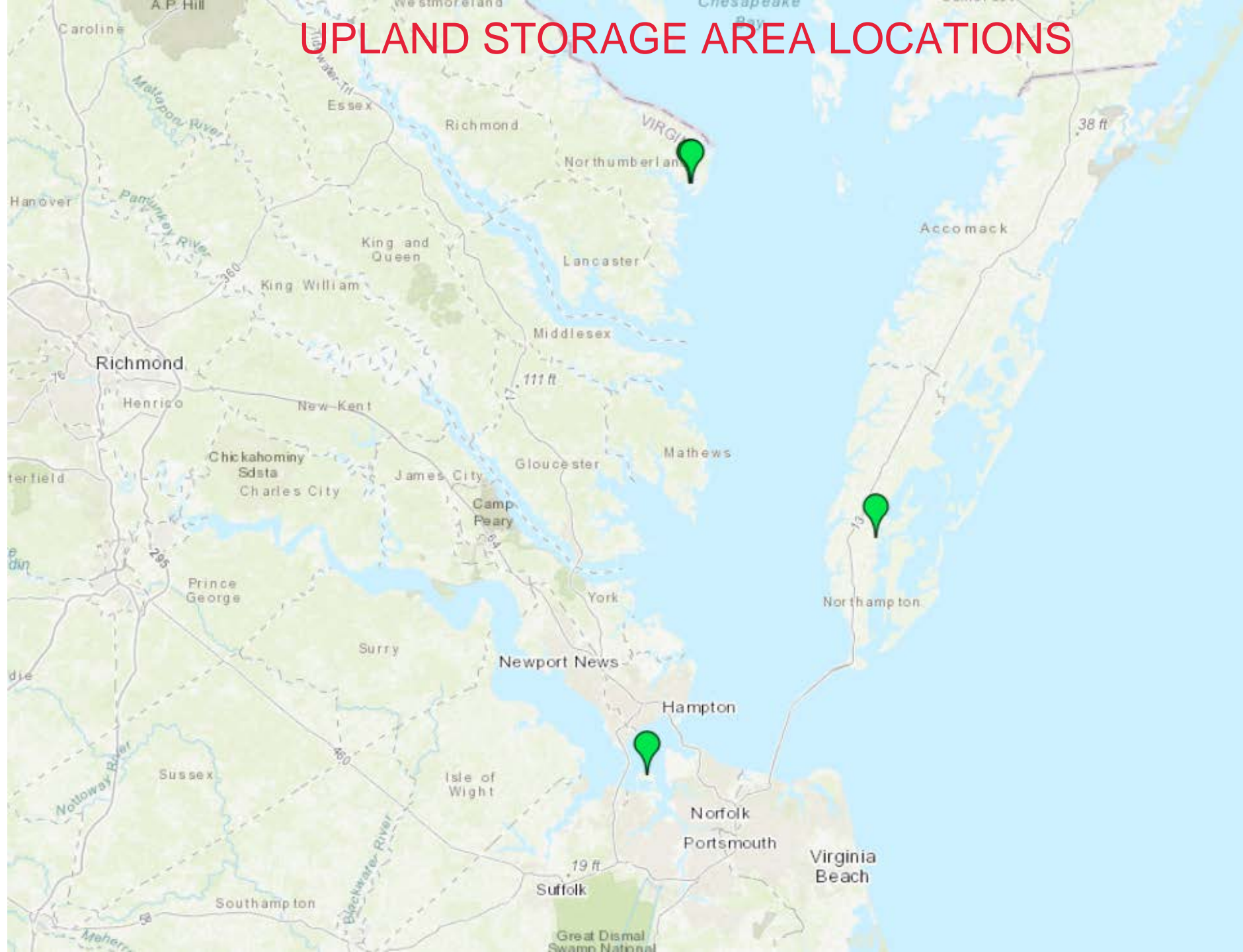
VMRC - CONSERVATION & REPLENISHMENT DEPARTMENT

SHEET 1 of 1

DATE: NOVEMBER, 2000

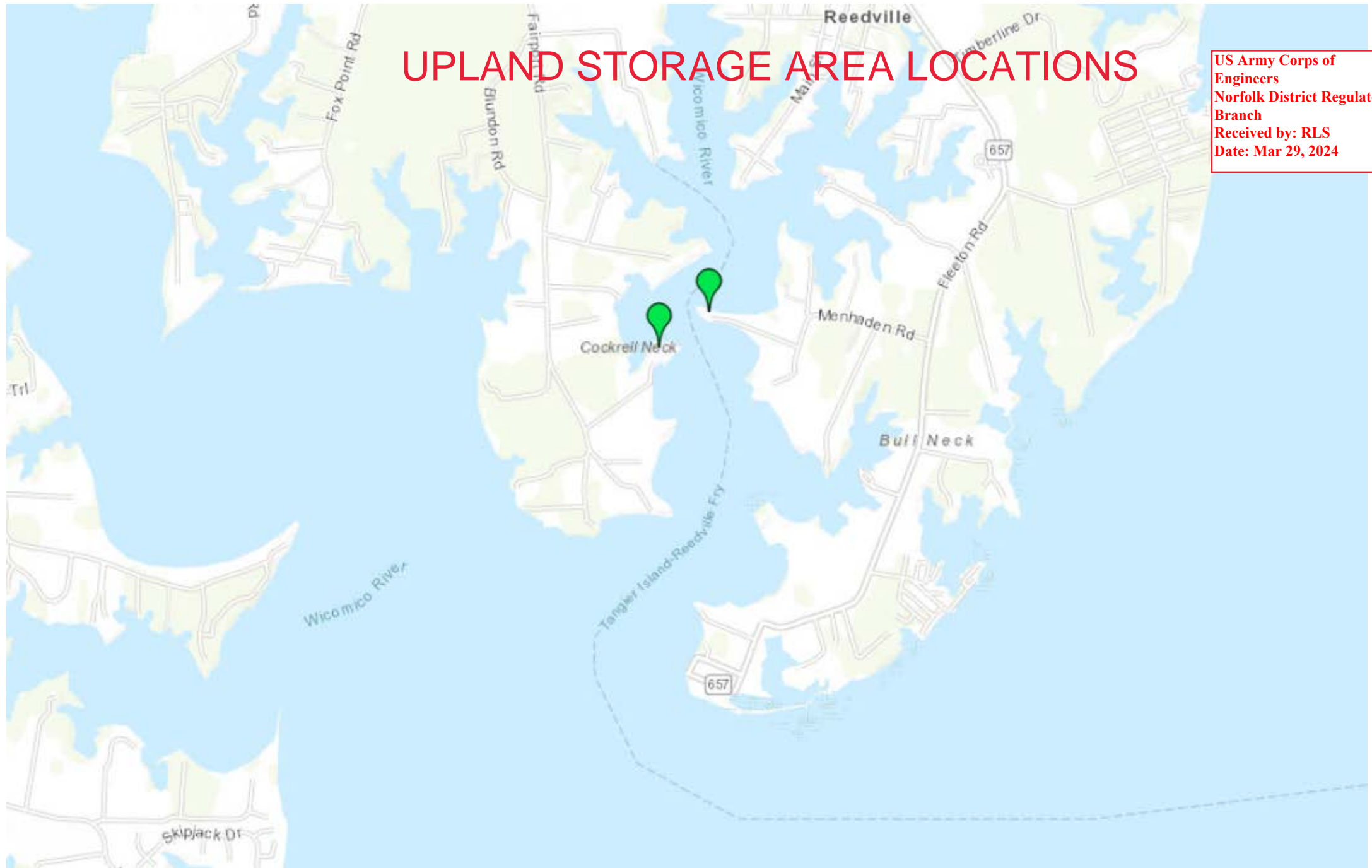
UPLAND STORAGE AREA LOCATIONS

US Army Corps of
Engineers
Norfolk District
Regulatory Branch
Received by: RLS
Date: Mar 29, 2024



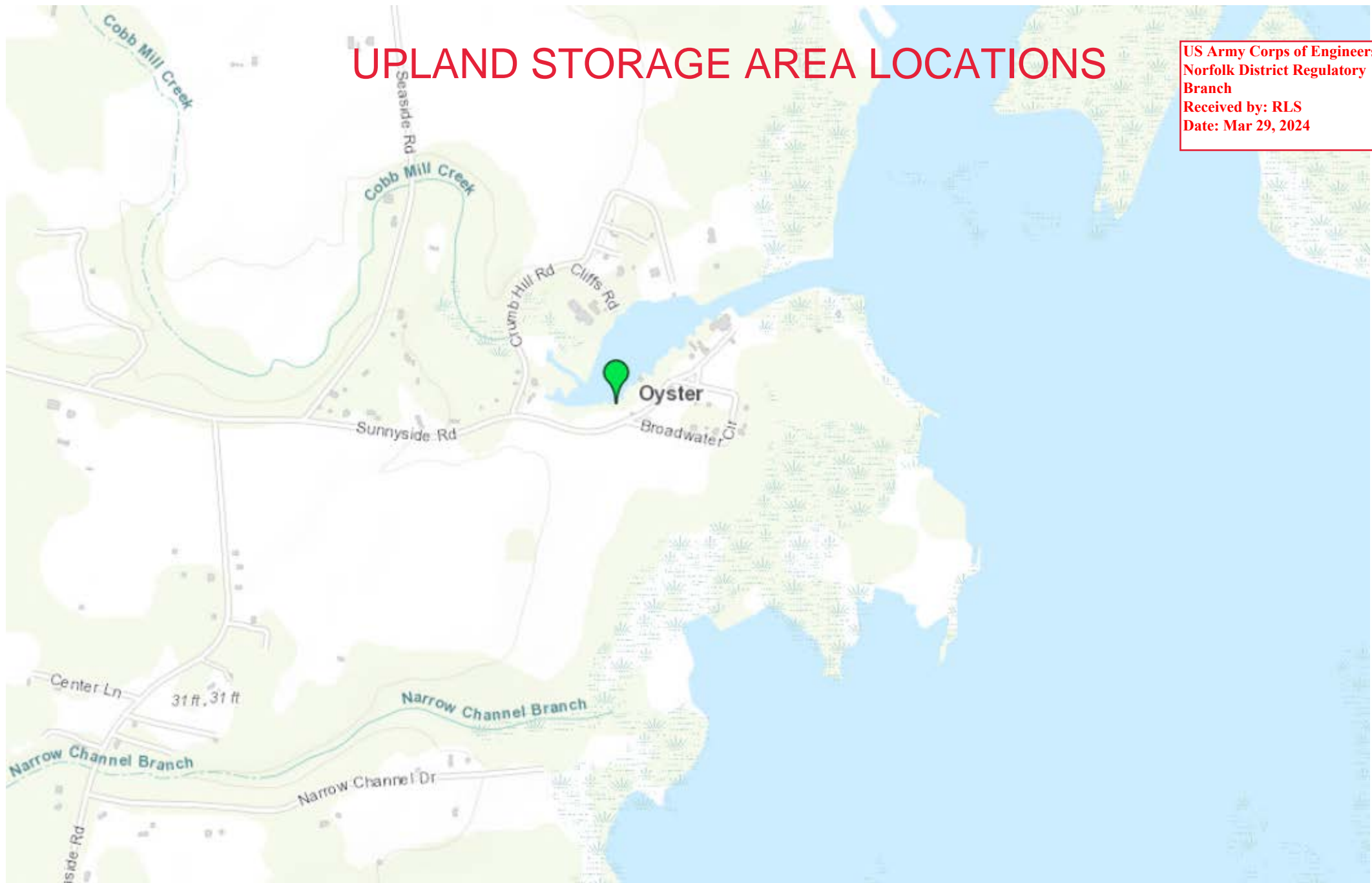
UPLAND STORAGE AREA LOCATIONS

US Army Corps of
Engineers
Norfolk District Regulatory
Branch
Received by: RLS
Date: Mar 29, 2024



UPLAND STORAGE AREA LOCATIONS

US Army Corps of Engineers
Norfolk District Regulatory
Branch
Received by: RLS
Date: Mar 29, 2024





U.S. Army Corps
Of Engineers
Norfolk District

**CERTIFICATE OF COMPLIANCE
WITH
ARMY CORPS OF ENGINEERS PERMIT**

Permit Numbers: NAO-2024-00803
VMRC Number: 24-V0605 --- (Craney Island Fossil Shell Dredge Site #5)

Corps Contact: Randy L. Steffey

Name of Permittee: VMRC Fisheries Management Division; Mr. Andrew Button

Date of Issuance: July 24, 2024

Permit Type: 23-RP-20

Within 30 days of completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US Army Corps of Engineers - Norfolk District
CENAO-WR-RS
Attn: Randy L. Steffey
803 Front Street
Norfolk, VA 23510-1096

Or scan and send via email to randy.l.steffey@usace.army.mil

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation has been completed in accordance with the permit conditions.

Signature of Permittee

Date



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

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

**CENAO-WRR
23-RP-20**

REGIONAL PERMIT

Effective Date: May 12, 2023

Expiration Date: May 12, 2028

I. AUTHORITIES:

23-RP-20, Regional Permit 20 (RP), authorizes the creation of artificial reefs (oyster and fish haven) and dredging of old shellfish reefs, when the material, dredge shell or structural, will be used to create new or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia.

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

This permit is authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to create artificial reefs or enhance existing natural or artificial reefs owned, operated, or managed by the Commonwealth of Virginia; and to dredge historical shellfish reefs (including the in-situ discharge of washed sediments) and as directed by the Virginia Marine Resources Commission to plant, use, or sell such shells or other materials in whatever manner the Commission deems to be in the best interest of the Commonwealth, provided the project complies with the provisions and conditions set forth below.

The placement of this structure material within designated offshore fish havens is excluded from regulation by Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401) at 40 CFR 220.1 (c)(2), within the definition of dumping at 40 CFR 220.2(e) where the material is deposited for developing, maintaining, or harvesting fisheries resources.

NOT AUTHORIZED: This permit does not authorize the construction of reefs that will be used for the introduction of non-native species (shell or finfish).

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

for a particular project that might generally qualify for this RP. This RP covers only those activities that strictly comply with all descriptions, general and special conditions set out below. Any work that does not comply with the following terms, conditions, standards, and limitations does not qualify for this RP and will require separate Department of the Army authorization.

II. PROCEDURES:

Prospective permittees (permittees or applicants) must notify the Corps' District Engineer, via the submission of a Joint Permit Application (JPA) and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP (the permit verification). No work is authorized unless and until the Corps issues a permit verification. A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by downloading a copy at the following link:

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

III. STATE AND LOCAL APPROVALS:

1. The State Water Control Board provided §401 Water Quality Certification for the 17-RP-20. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit (VWPP) Regulation, provided that the permittee abides by the conditions of 23-RP-20.

2. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia DEQ Virginia Coastal Zone Management Program (VCP) completed its review of the Federal Consistency Determination (FCD) for this RP and provided concurrence that this RP is consistent with the VCP.

3. Permittees should ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation 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.).

4. Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act or to any State or local law or regulation.

IV. SPECIAL CONDITIONS:

1. No portion of the reef will be constructed in areas of known submerged aquatic vegetation (SAV) beds.

2. Any proposed new artificial reef (oyster or fish haven) shall be coordinated with and have no objection from U.S. Coast Guard (USCG) Sector Virginia, Waterways Management Chief, and USCG District Five Waterways Management Branch.
3. Vessels or mechanized vehicles shall be inspected by the USCG to ensure hazardous material will not enter the watershed.
4. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the USCG shall be installed and maintained at the expense of the permittee. 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 23704-5004, telephone number (757) 398-6230.
5. If the 23-RP-20 activity also requires permission from the Corps pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408) because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project ("USACE project"), the activity that requires Section 408 permission is not authorized until the Norfolk District Corps grants the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer issues a written 23-RP-20 verification. Contact a Norfolk District Regulatory Project Manager to assist in determining if your proposed activity might alter or temporarily or permanently occupy or use a Corps of Engineers Civil Works project.

Locations of the Norfolk District Civil Works projects can be found at:
<https://www.nao.usace.army.mil/408Review/> .

For projects located within the Civil Works boundary of the Baltimore, Huntington, Nashville, or Wilmington District, please contact a Norfolk District Project Manager for assistance.

6. Prior to authorization of artificial reefing for fish havens (*i.e.*, ocean sinking) of any ships, vessels, or mechanized vehicles and to ensure the project is conducted in an environmentally sound manner, such ships, vessels, and mechanized vehicles shall be prepared for reefing consistent with Environmental Protection Agency (EPA) guidance entitled *Best Management Practice for Preparing Vessels Intended to Create Artificial Reefs*, EPA842-B-06-002 (May 2006). The permittee must notify the United States EPA Region III Coastal Science Team Leader, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, PA 19103-2029, 215-814-2137 at least 60 days prior to the proposed reefing activity and allow EPA reasonable opportunity upon request to inspect the ship, vessel, or mechanized vessel prior to reefing. This provision does not supersede any of EPA's existing statutory authorities to inspect the ship, vessel, or mechanized vessel.

a. Failure to comply with the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq. (TSCA) is a violation of this permit.

b. All material used in the construction of the reefs shall be of clean suitable material and free of petroleum and other hydrocarbons (oil, grease, asphalt, and creosote), toxic residues (including but not limited to mercury, cadmium, and lead), and loose, free-floating material and other deleterious substances. Reefing preparations for all vessels and mechanized vehicles shall include the removal of: all liquid fuels, oils and greases; all asbestos that is loose or may become loose during vessel sinking; all manufactured products containing greater than or equal to (\geq) 50 parts per million (ppm) of solid PCBs, all liquid PCBs regardless of concentration and all materials contaminated by PCB spills where the concentration of the original PCB source is \geq 50ppm; all harmful exterior hull anti-fouling systems that are determined to be active; all exfoliating (peeling) and exfoliated paint; all loose debris, including materials or equipment that are not permanently attached to the vessel that could be transported into the water column during a sinking event; and all other materials that may negatively impact the biological, physical, or chemical characteristics of the marine environment. Such preparation also shall include the removal, or sealing, of all accessible friable asbestos. Vessel owners must also document that no PCBs at concentrations greater than 50ppm remain on board the vessel. This may require representative PCB sampling by those intending to use this RP.

7. If the work involves hydraulic dredging of old shellfish reefs an automatic time of year restriction will apply for between February 15 and June 15 of any year unless consultation with the National Oceanic and Atmospheric Administration (NOAA) Fisheries confirms there will be no impact for protection of anadromous fish migration and spawning.

8. The Corps will coordinate all activities with NOAA Fisheries Service, Protected Species Division and Habitat Conservation Division (HCD); and/or the U.S. Fish and Wildlife, Virginia Field Office for the purpose of Endangered Species consultation and Essential Fish Habitat (EFH) assessment.

9. A proponent (permittee or applicant) of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Division to cross government property before any construction can take place:

- a. James River
- b. Lynnhaven Inlet and Connecting Waters
- c. All Local Cooperation Agreement areas
- d. Dismal Swamp Canal

e. Albemarle and Chesapeake Canal

f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Office at the address on the first page of this RP or by telephone at (757) 201-7733.

10. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Engineer unless the permittee is transferring his or her interest to a third party. See general condition number 39.

11. The Secretary of the Army or his/her authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his/her representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

12. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters or causes more than a minimal adverse effect on navigation, both commercially and recreationally. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal, or administrative penalties (33 U.S.C. 406).

13. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under RPs.

1. **Geographic jurisdiction.** This RP 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.

7. **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.

8. **Multiple general permit authorizations.** This RP may be combined with any Corps general permits (including Nationwide (NWP) or RPs 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.

9. **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:

10. 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 (NRHP), 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 NHPA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed or determined to be eligible for listing on the NRHP, 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 at:

<http://www.dhr.virginia.gov/>

or Tribal Historic Preservation Officer (THPO), as appropriate, and the NRHP. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties.

11. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid

construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the NRHP.

12. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

13. **Federal 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 U.S. Fish and Wildlife Service (USFWS), U.S. Forest Service, or National Park Service unless approval from the applicable land management agency is provided with the permit application.

14. **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 Engineer with the appropriate documentation to demonstrate compliance with those requirements.

c. Non-federal permittees shall notify the District Engineer if any proposed or listed species or proposed or designated critical habitat may 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 Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the USFWS online project review process at:

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

and from the NMFS at: <http://www.nmfs.noaa.gov/pr/species/>.

The District Engineer will determine whether the proposed activity "may affect" or will have "no effect" to proposed or listed species or proposed or designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified proposed or listed species or proposed or designated critical habitat that might

be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on proposed or listed species or proposed or designated critical habitat, or until Section 7 consultation has been completed.

d. As a result of formal or informal consultation with the USFWS or NOAA PRD the District Engineer may add species-specific regional endangered species conditions to the RP.

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

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

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

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

17. 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, USFWS). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

18. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.

19. **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.

20. **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 designated 100-year floodplain.

21. **Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7733 or at the address listed on the front page of this permit.

22. **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”; E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities”; E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis”; and E.O. 14008, “Tackling the Climate Crisis at Home and Abroad”; E.O. 14096, “Revitalizing Our Nation’s Commitment to Environmental Justice for All”.

23. **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:

24. **Avoidance and minimization.** Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences. (40 CFR Part 230.10(a) Section 404 (b)(1) Guidelines).

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

26. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

27. **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.

28. **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.

29. **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.

30. **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.

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

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

33. **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 Department of Game and Inland Fisheries (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.

34. **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:

35. **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.

36. **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.

37. **Property rights.** This RP 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.

38. **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.

39. **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.

40. **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.

41. **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.

42. **Abandonment.** If the permittee decides to abandon the activity authorized under this RP, 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.

43. **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.

44. **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:

45. **Duration of Activity's Authorization.** Activities authorized under 23-RP-20 must be completed by May 12, 2028. 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 RPs 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. May 12, 2028), 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 May 12, 2029, you must reapply for separate permit authorization in order to meet current permit criteria.

46. Expiration of 23-RP-20. Unless further modified, suspended, or revoked, this RP will be in effect until May 12, 2028. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.

12 May 2023

Date

Brian P. Hallberg, PMP
Colonel, U.S. Army
Commanding



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
FORT NORFOLK
803 FRONT STREET
NORFOLK VA 23510-1011

July 23, 2024

SUBJECT: Final Section 408 Permission for Section 408 Request ID No. 408-NAO-2024-0032 and DA Application No. NAO-2024-00803, VMRC Shell Management Division 2024 Oyster Restoration and Replenishment Plan, Craney Island Shell Dredge Areas Site #4 and Site #5

Mr. Andrew Button
Deputy Chief, Shellfish Management Division
Head, Conservation and Replenishment
Virginia Marine Resources Commission
380 Fenwick Road, Bldg. 96
Fort Monroe, Virginia 23651

Dear Mr. Button:

The U.S. Army Corps of Engineers, Norfolk District (USACE) has completed the review of your request to dredge oyster shell from two designated shell dredging locations including Site #4 (53-acres) and a portion of Site #5 (97.37-acres) located between Craney Island Dredged Material Management Area (CIDMMA) and a portion of the federal navigation channel in the Elizabeth River (as depicted in the enclosed project plans). The oyster shell will be used to plant previously authorized sites throughout the Commonwealth of Virginia. The proposed dredging activities may alter the Lamberts Bend to Sewells Point Segment of Norfolk Harbor and Channels Federal Navigation Project and Craney Island Eastern Expansion (CIEE) federal projects operated and maintained by USACE. Pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408), you must obtain approval to alter a USACE Civil Works project (USACE project). This evaluation was performed consistent with Engineer Circular (EC) 1165-2-220, dated 10 September 2018.

The Norfolk District Regulatory Branch is concurrently processing a Department of the Army (DA) permit application (DA Application No. NAO-2024-00803) for authorization pursuant to Section 10 of the Rivers and Harbors Act (RHA) (33 U.S.C. § 403) and/or Section 404 of the Clean Water Act (33 U.S.C. § 1344) via the Regional General Permit 20 (23-RP-20).

Based on this Section 408 evaluation and subject to the final DA permit authorization, the Norfolk District grants permission to alter the USACE project, as specified in your request and subject to compliance with the project specific special terms and conditions below and standard terms and conditions, as specified in EC Appendix K, enclosed. These conditions ensure the alteration is not injurious to the public interest; does not impair the usefulness of the USACE project; and/or are included for environmental compliance purposes.

Section 408 Permission Project Specific Special Conditions:

a. You or your prime contractor must coordinate with Mr. Carlos Quinones at the Craney Island Facility Management Office, via email Carlos.M.Quinones@usace.army.mil or telephone at (757) 484-1021, a minimum of 30 days prior to the commencement of work to ensure the proposed dredging activities will not conflict with ongoing operations in and around the Craney Island Dredge Material Management Area (CIDMMA). You may be required to further coordinate directly with current federal dredging contractors conducting dredged material placement at the CIDMMA.

b. You or your prime contractor must ensure that all work is performed in such a manner that the dredge plant and all associated equipment encroaches or obstructs the federal navigation channel to the minimum extent practicable. If the dredge plant or any associated equipment obstructs the channel and makes it difficult for or endangers the safe passage of any vessels, it must be promptly moved on the approach of any vessels to such an extent as may be necessary to afford a safe passage.

c. This activity may interfere with marine traffic in the USACE project channel, therefore, you shall coordinate with the U.S. Coast Guard (USCG), Fifth Coast Guard District via email at CGD5Waterways@uscg.mil or via telephone at (757) 398-6220 and copy the USCG Sector Virginia via email at VirginiaWaterways@uscg.mil or via telephone at (757) 668-5580 a minimum of 45 days prior to commencement of work, so that any activity that may impact navigation can be included in the Local Notice to Mariners (LNM) publications. In addition to the LNM, if you encounter any hazards to navigation, please notify the USCG immediately as to the location of such hazards.

d. Upon notification by the Norfolk District of any upcoming surveying and/or maintenance dredging activities, you or your prime contractor must remove any vessels, equipment, and other items or obstructions, located within 100 feet of the federal navigation channel, within five (5) calendar days of notification, and must keep the area clear until notified that the survey and/or maintenance dredging activities have been completed.

For any questions regarding this Section 408 permission decision, please contact the Section 408 Team Lead, Katy Damico, via email at Katy.R.Damico@usace.army.mil or via telephone at (757) 201-7670.

Sincerely,

Keith B. Lockwood

Keith B. Lockwood
Chief, Water Resources Division

Enclosures

ENCLOSURE

Section 408 Permission Standard Terms and Conditions

Pursuant to Engineer Circular 1165-2-220 (10 September 2018), Appendix K, the following standard conditions must be included in all Section 408 approval notifications (i.e., permissions). The Requester is responsible for compliance with these standard terms and conditions in addition to any project specific special conditions specified in the Section 408 permission letter, above, or be subject to potential enforcement action.

LIMITS OF THE AUTHORIZATION

1. This permission only authorizes you, the requester, to undertake the activity described herein under the authority provided in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 USC 408). This permission does not obviate the need to obtain other federal, state, or local authorizations required by law. This permission does not grant any property rights or exclusive privileges, and you must have appropriate real estate instruments in place prior to construction and/or installation.
2. The time limit for completing the work authorized ends on the expiration date of the associated Department of the Army permit verification (23-RP-20) (DA Application No. NAO-2024-00803). If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
3. Without prior written approval of the USACE, you must neither transfer nor assign this permission nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this permission. Failure to comply with this condition will constitute noncompliance for which the permission may be revoked immediately by USACE.
4. The requester understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said work will cause unreasonable conditions and/or obstruction of USACE project authorized design, the requester will be required upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim can be made against the United States on account of any such removal or alteration.

INDEMNIFICATION AND HOLD HARMLESS

1. The United States will in no case be liable for:
 - a. any damage or injury to the structures or work authorized by this permission that may be caused or result from future operations undertaken by the United States, and no claim or right to compensation will accrue from any damage; or
 - b. damage claims associated with any future modification, suspension, or revocation of this permission.
2. The United States will not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of the project requested by you, nor for damages to the property or injuries to your officers, agents, servants, or employees, or others who may be on your premises or project work areas or the federal project(s) rights-of-way. By accepting this permission, you hereby agree to fully defend, indemnify, and hold harmless the United States and USACE from any and all such claims, subject to any limitations in law.

3. Any damage to the water resources development project or other portions of any federal project(s) resulting from your activities must be repaired at your expense.

REEVALUATION OF PERMISSION

1. The determination that the activity authorized by this permission would not impair the usefulness of the federal project and would not be injurious to the public interest was made in reliance on the information you provided.
2. This office, at its sole discretion, may reevaluate its decision to issue this permission at any time circumstances warrant, which may result in a determination that it is appropriate or necessary to modify or revoke this permission. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. you fail to comply with the terms and conditions of this permission;
 - b. The information provided in support of your application for permission proves to have been inaccurate or incomplete; or
 - c. significant new information surfaces which this office did not consider in reaching the original decision that the activity would not impair the usefulness of the water resources development project and would not be injurious to the public interest.

CONDUCT OF WORK UNDER THIS PERMISSION

1. You are responsible for implementing any requirements for mitigation, reasonable and prudent alternatives, or other conditions or requirements imposed as a result of environmental compliance.
2. Work/usage allowed under this permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the federal project.
3. In the event of any deficiency in the design or construction of the requested activity, you are solely responsible for taking remedial action to correct the deficiency.
4. The right is reserved to the USACE to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to operate and/or to make any other use of the lands as may be necessary in connection with government purposes, and you will have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.
5. You must provide copies of pertinent design, construction, and/or usage submittals/documents. USACE may request that survey and photographic documentation of the alteration work and the impacted project area be provided before, during, and after construction and/or installation.
6. You may be required to perform an inspection of the federal project with the USACE, prior to your use of the structure, to document existing conditions.
7. USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.