



**US Army Corps
of Engineers®**
Wilmington District

PUBLIC NOTICE

Issue Date: March 17, 2017

PUBLIC NOTICE FINAL REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

Purpose: This Notice announces the Final Regional Conditions for Nationwide Permits in the Wilmington District. The proposed Regional Conditions for Nationwide Permits in the Wilmington District are Final, as per approval by and signature of the South Atlantic Division Engineer, 14 March 2017.

Background: The Corps of Engineers reissued all the existing Nationwide Permits (NWP), General Conditions (GCs), and definitions, with some modifications. The Corps of Engineers issued two new NWPs, issued one new general condition and added 5 new definitions.

In addition to the NWP general conditions, Corps Districts are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. The Final NWPs, GCs, and associated definitions become effective on March 19, 2017. The Final Regional Conditions for the Wilmington District also become effective on March 19, 2017.

The Wilmington District issued an initial public notice on June 7, 2016, soliciting comments on draft proposed Regional Conditions to accompany the original June 1, 2016 proposed Nationwide Permits, General Conditions and definitions. The Wilmington District prepared Environmental Analyses for each of the Nationwide Permits with Regional Conditions for consideration by the South Atlantic Division Engineer.

In the analyses, the South Atlantic Division Engineer considered the public comments, the potential cumulative adverse effects on the aquatic environment that could result from the use of each NWP and the regional conditions, the exclusion of the NWPs from certain geographic areas or specific water bodies, and other required conditions to further ensure that each and all NWPs in the District shall not authorize activities that may exceed the minimal adverse effects threshold.

Concurrences and Certifications: The North Carolina Division of Water Resources (DWR) provided their general certifications for the NWPs on March 3, 2017 and March 6, 2017. Current 401 certifications are maintained on the North Carolina DWR website (<https://deq.nc.gov/about/divisions/water-resources/water-resources-permits/wastewater-branch/401-wetlands-buffer-permits/401-general-certifications>). The District's website will

provide this link to ensure that the public has access to the most current certifications. The new 401 certifications and the website link should be available on March 20, 2017.

The Eastern Band of Cherokee Indians (EBCI) provided their water quality certifications for all NWP's on March 2, 2017. A copy of the water quality certification can be viewed on the District's website at the following web address:

<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits>.

The Coastal Zone Management Act consistency determination for the NWP's was issued on February 23, 2017. A copy of this consistency determination can be viewed on the District's website at the following web address: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits>.

All final regional conditions for the 2017 nationwide permits are attached. All of the nationwide permits, the final regional conditions and supporting documentation are posted on the District web site at the following web address:

<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Permits/2017-Nationwide-Permits>.

FINAL 2017 REGIONAL CONDITIONS

NOTICE ABOUT WEB LINKS IN THIS DOCUMENT:

The web links (both internal to our Wilmington District and any external links to collaborating agencies) in this document are valid at the time of publication. However, the Wilmington District Regulatory Program web page addresses, as with other agency web sites, may change over the timeframe of the five-year Nationwide Permit renewal cycle, in response to policy mandates or technology advances. While we will make every effort to check on the integrity of our web links and provide re-direct pages whenever possible, we ask that you report any broken links to us so we can keep the page information current and usable. We apologize in advanced for any broken links that you may encounter, and we ask that you navigate from the Regulatory home page (Regulatory Permit Program Wetlands and Streams) of the Wilmington District Corps of Engineers, to the “Permits” section of our web site to find links for pages that cannot be found by clicking directly on the listed web link in this document.

Final 2017 Regional Conditions for Nationwide Permits (NWP) in the Wilmington District

1.0 Excluded Waters

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1.1 Anadromous Fish Spawning Areas

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from the Corps and either NCDMF or NCWRC.

1.2 Trout Waters Moratorium

Waters of the United States in the designated trout watersheds of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC, or from the Eastern Band of Cherokee Indians (EBCI) Fisheries and Wildlife Management (FWM) office if the project is located on EBCI trust land. (See Section 2.7 for information on the designated trout watersheds).

1.3 Sturgeon Spawning Areas as Designated by the National Marine Fisheries Service (NMFS)

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the NMFS.

2.0 Waters Requiring Additional Notification

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWPs. These waters are:

2.1 Western NC Counties that Drain to Designated Critical Habitat

For proposed activities within waters of the United States that require a Pre-Construction Notification (PCN) and are located in the sixteen counties listed below, permittees must provide a copy of the PCN to the U.S. Fish and Wildlife Service (USFWS), 160 Zillicoa Street, Asheville, North Carolina 28801. This PCN must be sent concurrently to the U.S. Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific notification requirements related to the Endangered Species Act and the below website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville U.S. Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood, Henderson, Jackson, Macon, Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for permittees which provides guidelines on how to review linked websites and maps in order to fulfill NWP General Condition 18 requirements:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/AgencyCoordination/ESA.asp>

Permittees who do not have internet access may contact the appropriate U.S. Fish and Wildlife Service offices listed below or Corps at (910) 251-4633:

Asheville U.S. Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsythe and Stokes Counties.

U.S. Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Raleigh U.S. Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

U.S. Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726

Raleigh, NC 27636-3726
Telephone: (919) 856-4520

2.2 Special Designation Waters

Prior to the use of any NWP, except NWP 3, that involves a discharge of dredged or fill material in any of the following identified waters and/or adjacent wetlands in North Carolina, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The North Carolina waters and wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) or “High Quality Waters” (HQW) as designated by the North Carolina Environmental Management Commission; “Primary Nursery Areas” (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and the NCWRC; or wetlands adjacent to these waters. Definitions of ORW, HQW and PNA waters can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page:

<http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following World Wide Web Page:

<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>

Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

2.3 Coastal Area Management Act (CAMA) Areas of Environmental Concern

Non-federal permittees for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA) must also obtain the required CAMA permit. Development activities for non-federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – 69 Darlington Avenue, Wilmington, NC 28403, (910) 251-4802 or Washington Field Office – 2407 West 5th Street, Washington, NC 27889, (910) 251-4610).

2.4 Barrier Islands

Prior to the use of any NWP on a barrier island of North Carolina, permittees must submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32).

2.5 Mountain or Piedmont Bogs

Prior to the use of any NWP in a Bog, as classified by the North Carolina Wetland Assessment Methodology (NCWAM), permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The latest version of NCWAM can be

viewed on the Corps RIBITS (Regulatory In-lieu Fee and Bank Information Tracking System) website or at the following World Wide Web Page:

https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::

2.6 Animal Waste Facilities

Prior to use of any NWP for construction of animal waste facilities in waters of the United States, including wetlands, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32).

2.7 Trout Waters

Prior to any discharge of dredge or fill material into streams, waterbodies or wetlands within the 294 designated trout watersheds of North Carolina, the permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity, unless other thresholds are established in the Regional Conditions in Section 4 (Additional Regional Conditions for Specific Nationwide Permits). The permittee shall also provide a copy of the notification to the appropriate NCWRC office, or to the EBCI FWM Office (if the project is located on EBCI trust land), to facilitate the determination of any potential impacts to designated Trout Waters.

Notification to the Corps will include a statement with the name of the NCWRC or EBCI FWM biologist contacted, the date of the notification, the location of work, a delineation of wetlands and waters, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and, if applicable, a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

NCWRC and NC Trout Watersheds:

NCWRC Contact**	Counties that are entirely within Trout Watersheds*	Counties that are partially within Trout Watersheds*
Mountain Coordinator Balsam Depot 20830 Great Smoky Mountain Expressway Waynesville, NC 28786 Telephone: (828) 558-6011 For NCDOT Projects: NCDOT Coordinator 206 Charter. Street Albemarle, NC 28001 Telephone: (704) 982-9181	Alleghany Jackson Ashe Macon Avery Swain Graham Transylvania Haywood Watauga	Burke McDowell Buncombe Mitchell Caldwell Polk Cherokee Rutherford Clay Surry Henderson Wilkes Madison Yancey

*NOTE: To determine notification requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for each County at the following World Wide Web page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Trout/>.

**If a project is located on EBCI trust land, submit the PCN in accordance with Section 3.14. Contact the Corps Asheville Regulatory Field Office at (828) 271-7980 with questions.

2.8 Western NC Waters and Corridors

The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity in waters of the United States if the activity will occur within any of the following identified waters in western North Carolina, within 0.5 mile on either side of these waters, or within 0.75 mile of the Little Tennessee River, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

Brasstown Creek
Burningtown Creek
Cane River
Caney Fork
Cartoogechaye Creek
Chattooga River
Cheoah River
Cowee Creek
Cullasaja River
Deep Creek
Ellijay Creek
French Broad River
Garden Creek
Hiwassee River
Hominy Creek
Iotla Creek
Little Tennessee River (within the river or within 0.75 mile on either side of this river)
Nantahala River
Nolichucky River
North Fork French Broad River
North Toe River
Nottley River
Oconaluftee River (portion not located on trust/EBCI land)
Peachtree Creek
Shooting Creek
Snowbird Creek
South Toe River
Stecoah Creek
Swannanoa River
Sweetwater Creek

Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)
Valley River
Watauga Creek
Watauga River
Wayah Creek
West Fork French Broad River

To determine notification requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for all corridors at the following World Wide Web page:
<http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/Designated-Special-Waters.aspx>

3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

3.1 Limitation of Loss of Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of more than 300 total linear feet of stream bed, unless the District Engineer has waived the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis and has determined that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing and documented by appropriate/accepted stream quality assessments*. This waiver only applies to the 300 linear feet threshold for NWPs.

This Regional Condition does not apply to NWP 23 (Approved Categorical Exclusions).

*NOTE: Permittees should utilize the most current methodology prescribed by Wilmington District to assess stream function and quality. Information can be found at:
https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::

3.2 Mitigation for Loss of Stream Bed

For any NWP that results in a loss of more than 150 linear feet of stream, the permittee shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment. For stream losses of 150 linear feet or less that require a PCN, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

3.3 Pre-construction Notification for Loss of Streambed Exceeding 150 Feet

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream, intermittent or ephemeral stream, the permittee shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). This applies to

NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

3.4 Restriction on Use of Live Concrete

For all NWPs which allow the use of concrete as a building material, live or fresh concrete, including bags of uncured concrete, may not come into contact with the water in or entering into waters of the United States. Water inside coffer dams or casings that has been in contact with wet concrete shall only be returned to waters of the United States after the concrete is set and cured and when it no longer poses a threat to aquatic organisms.

3.5 Requirements for Using Riprap for Bank Stabilization

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

3.5.1. Where bank stabilization is conducted as part of an activity, natural design, bioengineering and/or geoen지니어ing methods that incorporate natural durable materials, native seed mixes, and native plants and shrubs are to be utilized to the maximum extent practicable.

3.5.2. Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters. The placement of filter fabric is not required if the riprap will be pushed or “keyed” into the bank of the waterbody. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional Condition would result in greater adverse impacts to the aquatic environment.

3.5.3. The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

3.5.4. The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

3.5.5. It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

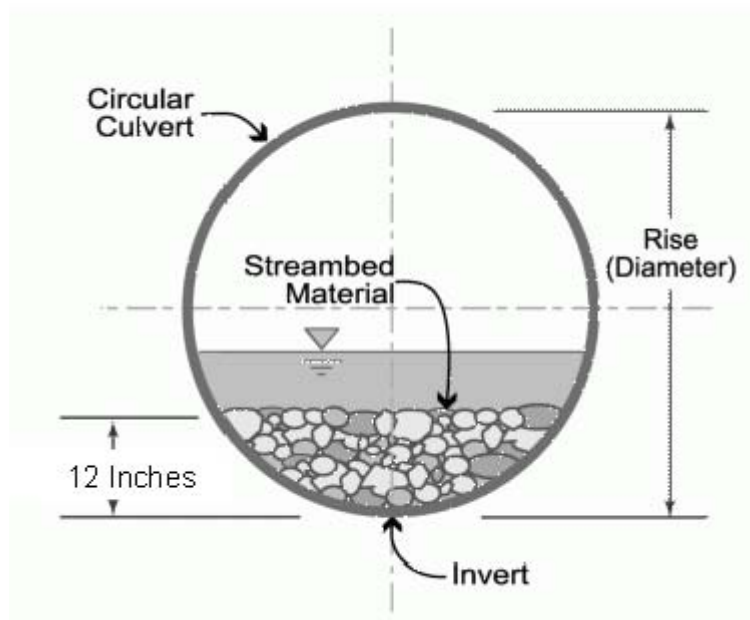
3.5.6. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

3.6 Requirements for Culvert Placement

3.6.1 For all NWPs that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by altering the width or depth of the stream profile in connection with the construction activity. The width, height, and gradient of a proposed culvert should be

sufficient to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow is the seasonal sustained high flow that typically occurs in the spring. Spring flows should be determined from gage data, if available. In the absence of such data, bank-full flow can be used as a comparable indicator.

In Public Trust Areas of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the culvert at least one foot below normal bed elevation.



In all other areas: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried to maintain aquatic passage and to maintain passage during drought or low flow conditions, and every effort shall be made to maintain the existing channel slope.

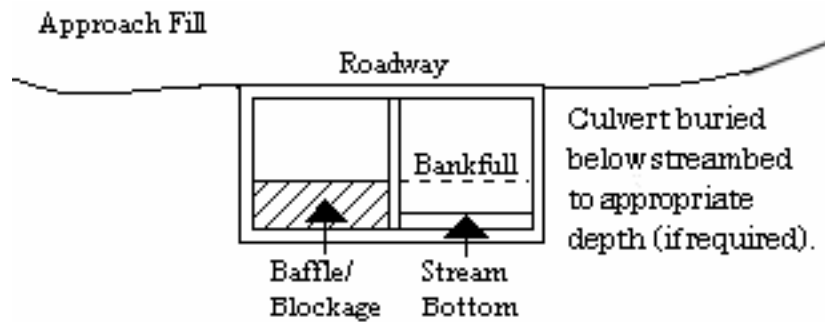
Culverts must be designed and constructed in a manner that minimizes destabilization and head cutting. Destabilizing the channel and head cutting upstream should be considered and appropriate actions incorporated in the design and placement of the culvert.

A waiver from the depth specifications in this condition may be requested, in writing, by the permittee and issued by the Corp; this request must be specific as to the reason(s) for the request. The waiver will be issued if it can be demonstrated that the proposed design would result in less impacts to the aquatic environment.

All counties: Culverts placed within riparian and/or riverine wetlands must be installed in a manner that does not restrict the flow and circulation patterns of waters of the United States.

Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried, but the culverts must be of adequate size and/or number to ensure unrestricted transmission of water.

3.6.2 Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts or culvert barrels at such crossings shall be allowed only to receive bank-full flows.



3.6.3 Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation. Additional culverts or culvert barrels at such crossings should not be buried, or if buried, must have sills at the inlets to ensure that they only receive flows exceeding bank-full.

3.6.4 Excavation of existing stream channels shall be limited to the minimum necessary to construct or install the proposed culvert. The final width of the impacted stream at the culvert inlet and outlet should be no greater than the original stream width. A waiver from this condition may be requested in writing; this request must be specific as to the reason(s) for the request. The waiver will be issued if the proposed design would result in less impacts to the aquatic environment and/or if it can be demonstrated that it is not practicable to restore the final width of the impacted stream at the culvert inlet and outlet to the width of the original stream channel.

3.6.5 The width of the culvert shall be comparable to the width of the stream channel. If the width of the culvert is wider than the stream channel, the culvert shall include baffles, benches and/or sills to maintain the width of the stream channel. A waiver from this condition may be requested in writing; this request must be specific as to the reason(s) for the request. The waiver will be issued if it can be demonstrated that it is not practicable or necessary to include baffles, benches or sills and the design would result in less impacts to the aquatic environment.

3.7 Notification to NCDEQ Shellfish Sanitation Section

Permittees shall notify the NCDEQ Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand

should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued by the permittee.

3.8 Submerged Aquatic Vegetation

Impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP, except NWP 48, unless EFH Consultation has been completed pursuant to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Permittees shall submit a PCN (See NWP General Condition 32) to the District Engineer prior to commencing the activity if the project would affect SAV. The permittee may not begin work until notified by the Corps that the requirements of the Magnuson-Stevens Act have been satisfied and that the activity is authorized.

3.9 Sedimentation and Erosion Control Structures and Measures

All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the United States. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

3.10 Restoration of Temporary Impacts to Stream Beds

Upon completion of work that involves temporary stream impacts, streambeds are to be restored to pre-project elevations and widths using natural streambed material such that the impacted stream reach mimics the adjacent upstream and downstream reach. The impacted area shall be backfilled with natural streambed material to a depth of at least 12 inches or to the bottom depth of the impacted area if shallower than 12 inches. An engineered in-stream structure or material can be used to provide protection of a buried structure if it provides benefits to the aquatic environment and can be accomplished by a natural streambed design. A permittee may request a waiver of this condition if it is determined a buried structure needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

3.11 Restoration of Temporary Impacts to Stream Banks

Upon completion of work involving temporary stream bank impacts, stream banks are to be restored to pre-project grade and contours or beneficial grade and contours if the original bank slope is steep and unstable. Natural durable materials, native seed mixes, and native plants and shrubs are to be utilized in the restoration. Natural designs which use bioengineered and/or geo-engineered methods are to be applied. An engineered structure or material can be used to provide protection of a buried structure if it provides benefits to the stream bank environment, provided it is not in excess of the minimum amount needed for protection and does not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark. A permittee may request a waiver of this condition if it is determined a buried structure

needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities.

3.12 Federal Navigation Channel Setbacks and Corps Easements

3.12.1 Authorized structures and fills located in or adjacent to Federally authorized waterways will be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at <http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx>. This general permit does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to the construction of any structures or fills within the Federally Authorized Channel Setback.

3.12.2 The permittee shall obtain a Consent to Cross Government Easement from the Wilmington District’s Land Use Coordinator prior to any crossing of the Corps easement and/or prior to commencing construction of any structures, authorized dredging or other work within the right-of-way of, or in proximity to, a federally designated disposal area. The Land Use Coordinator may be contacted at: CESAW-OP-N, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343, email: SAWWeb-NAV@usace.army.mil

3.13 Northern Long-eared Bat – Endangered Species Act Compliance

The Wilmington District, U.S. Army Corps of Engineers has consulted with the United States Fish and Wildlife Service (USFWS) in regards to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and Standard Local Operating Procedures for Endangered Species (SLOPES) have been approved by the Corps and the USFWS. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or federally designated critical habitat.

A. Procedures when the Corps is the lead federal* agency for a project:

The permittee must comply with (1) and (2) below when:

- the project is located in the western 41 counties of North Carolina, to include non-federal aid North Carolina Department of Transportation (NCDOT) projects, OR;
- the project is located in the 59 eastern counties of North Carolina, and is a non-NCDOT project.

*Generally, if a project is located on private property or on non-federal land, and the project is not being funded by a federal entity, the Corps will be the lead federal agency due to the requirement to obtain Department of the Army authorization to impact waters of the United States. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(1) A permittee using a NWP must check to see if their project is located in the range of the NLEB by using the following website: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>. If the project is within the range of the NLEB, or if the project includes percussive activities (e.g., blasting, pile driving, etc.), the permittee is then required to check the appropriate website in the paragraph below to discover if their project:

- is located in a 12-digit Hydrologic Unit Code area (“red HUC” - shown as red areas on the map), AND/OR;
- involves percussive activities within 0.25 mile of a red HUC.

Red HUC maps - for the western 41 counties in NC (covered by the Asheville Ecological Services Field Office), check the project location against the electronic maps found at: http://www.fws.gov/asheville/htmls/project_review/NLEB_in_WNC.html. For the eastern 59 counties in NC (covered by the Raleigh Ecological Services Field Office), check the project location against the electronic maps found at: https://www.fws.gov/raleigh/NLEB_RFO.html.

(2) A permittee must submit a PCN to the District Engineer, and receive written authorization from the District Engineer, prior to commencing the activity, if the activity will involve any of the following:

- tree clearing/removal, construction/installation of wind turbines in a red HUC, AND/OR;
- bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, (applies anywhere in the range of the NLEB), AND/OR;
- percussive activities in a red HUC, or within 0.25 mile of a red HUC.

The permittee may proceed with the activity without submitting a PCN to either the Corps or the USFWS, provided the activity complies with all applicable NWP terms and general and regional conditions, if the permittee’s review under A.(1) and A.(2) above shows that the project is:

- located outside of a red HUC (and there are no percussive activities), and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;
- located outside of a red HUC and there are percussive activities, but the percussive activities will not occur within 0.25-mile of a red HUC boundary, and the activity will NOT include bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, OR;

- located in a red HUC, but the activity will NOT include: tree clearing/removal; construction/installation of wind turbines; bridge removal or maintenance, unless the bridge has been inspected and there is no evidence of bat use, and/or; any percussive activities.

B. Procedures when the USACE is not the lead federal agency:

For projects where another federal agency is the lead federal agency - if that other federal agency has completed project-specific ESA Section 7(a)(2) consultation for the NLEB, and has (1) determined that the project would not cause prohibited incidental take of the NLEB, and (2) completed coordination/consultation that is required by the USFWS (per the directions on the respective USFWS office's website), that project may proceed without notification to either the USACE or the USFWS, provided all General and Regional Permit Conditions are met.

The NLEB SLOPES can be viewed on the USACE website at the following World Wide Web Page: <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>. Permittees who do not have internet access may contact the USACE at (910) 251- 4633.

3.14 Work on Eastern Band of Cherokee Indians Land

All PCNs submitted for activities in waters of the United States on Eastern Band of Cherokee Indians (EBCI) trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land), must comply with the requirements of the latest MOU between the Wilmington District and the Eastern Band of Cherokee Indians.

4.0 Additional Regional Conditions for Specific Nationwide Permits

4.1 NWP #1 – Aids to Navigation

This NWP does not authorize the construction of utility lines, including electrical service cables.

4.2 NWP #3 – Maintenance

4.2.1 (150 linear feet for temporary dewatering) of streams and waterbodies when conducting maintenance activities. Minor deviations in an existing structure's configuration, temporary structures and temporary fills are authorized as part of the maintenance activity. In designated trout watersheds, the permittee shall submit a PCN (see Regional Condition 2.7 and General Condition 32) to the District Engineer prior to commencing the activity if; 1) impacts (other than temporary dewatering to work in dry conditions) to streams or waterbodies exceed 75 linear feet; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceeds 150 linear feet; 3) the project will involve impacts to wetlands; 4) the project involves the replacement of a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States; or 5) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

4.2.2 The permittee shall submit a PCN (see NWP General Condition 32) to the District Engineer prior to commencing the activity if the activity involves repair, rehabilitation or replacement of impounding structures or parts of impounding structures or fills.

4.2.3 The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 1/10-acre of wetlands or 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, how pre-project conditions will be restored, and include a timetable for all restoration activities.

4.3 NWP #5 – Scientific Measurement Devices

4.3.1 All weirs and flumes authorized by this NWP must be removed immediately upon completion of their intended use.

4.3.2 Weirs and flumes are not authorized by this NWP in areas identified by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas, designated “Inland Primary Nursery Areas” or Trout Waters.

4.3.3 In designated trout watersheds (see Regional Condition 2.7 and General Condition 32), PCN is not required if; 1) the quantity of discharged material will be less than or equal to 25 cubic yards below the plane of the ordinary high water mark; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry condition are 150 linear feet or less; and 3) the activity will be constructed outside of the trout waters moratorium (October 15 through April 15).

4.3.4 Activities authorized by this NWP cannot be constructed on Eastern Band of Cherokee Indians (EBCI) Tribal trust lands without approval of a 401 Water Quality Certification from the EBCI.

4.4 NWP #6 – Survey Activities

Activities authorized by this NWP that involve geological exploratory devices, exploratory activities, ground penetrating radar and/or isotope technology cannot be constructed on Eastern Band of Cherokee Indians (EBCI) Tribal trust lands without approval of a 401 Water Quality Certification from the EBCI.

4.5 NWP #7 - Outfall Structures and Maintenance

4.5.1 The permittee must employ the best available means when using any associated intake structure, including determining its site, design, and technology (e.g., screening), in order to minimize entrainment or impingement of fish and other aquatic life.

4.5.2 This NWP cannot be used to authorize any ocean outfall structures unless the Corps receives written verification that the proposed project is consistent with the North Carolina Coastal Management Program or has received a CAMA permit.

4.6 NWP #12 - Utility Line Activities

4.6.1 Pipeline/utility line construction through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.

4.6.2 Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control or containment methods or otherwise such fills will consist of non-erodible materials.

4.6.3 The work area authorized by this permit, including temporary and/or permanent fills, will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The permittee is required to provide this information to the Corps with the initial notification package.

4.6.4 Excavated materials shall be returned to the excavated areas and any remaining materials shall be disposed of in uplands, unless the Corps authorizes disposal in waters of the United States.

4.6.5 In areas where a sub-aqueous utility line is to cross a federally-maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the allowable overdepth of the authorized channel, including all side slopes. For areas outside federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

4.6.6 The minimum clearance*(see NOTE in 4.6.7) for aerial communication lines, or any lines not transmitting electrical power, will be ten (10) feet above the clearance required for nearby stationary bridges as established by the U.S. Coast Guard. In the event the U.S. Coast Guard has not established a bridge clearance, minimum vertical clearances for power and aerial lines will not be less than required by Section 23, Rule 232, of the latest revision of the National Electrical Safety Code (ANSI C2). Clearances will not be less than shown in Table 232-1, Item 7, ANSI C2.

4.6.7 The minimum clearance* for an aerial line, transmitting electrical power, is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line crossing navigable waters of the United States, where there is an established bridge clearance established by the U.S. Coast Guard, shall be governed by the system voltage, as indicated below:

Nominal System	Minimum Clearance
Voltage, kilovolt	Above Bridge Clearance (As Established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the United States beneath the bridge.

4.6.8 On navigable waters of the United States, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the Corps in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

4.6.9 A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required PCN. Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

4.6.10 Any permanently maintained corridor along the utility right of way within forested wetlands shall be considered a permanent impact. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires PCN and the cumulative total of permanent forested wetland impacts exceeds 1/10-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal.

For permanent forested wetland impacts of 1/10-acre or less, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

4.6.11 Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent practicable. If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

4.6.12 When directional boring or horizontal directional drilling (HDD) under waters of the United States, including wetlands, permittees shall closely monitor the project for hydraulic fracturing or “fracking.” Any discharge from hydraulic fracturing or “fracking” into waters of

the United States, including wetlands, shall be reported to the appropriate Corps Regulatory Field Office within 48 hours. Restoration and/or compensatory mitigation may be required as a result of any unintended discharges.

4.6.13 For purposes of this NWP, the term utility line does not include pipes or culverts associated with driveways, roadways, lots, etc.

4.6.14 The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 1/10-acre of wetlands or 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, describes how pre-project conditions will be restored, and includes a timetable for all restoration activities.

4.7 NWP #13 – Bank Stabilization

4.7.1 Unanchored trees, treetops, or debris may not be used as stream bank stabilization material.

4.7.2 Properly anchored and cabled structural stabilization techniques, such as timber crib structures, revetments, and root wads, are acceptable materials to stabilize stream banks.

4.7.3 If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

4.7.4 In designated trout watersheds, PCN is not required for impacts to a maximum of 100 linear feet (150 linear feet for temporary dewatering) of streams or waterbodies for bank stabilization activities not adjoining, adjacent to, or in the relative vicinity of existing stabilization structures. Materials for the stabilization structure(s) and design of the project must be constructed to withstand normal and expected high stream flows. In designated trout waters, the permittee shall submit a PCN (see Regional Condition 2.7 and General Condition 32) to the District Engineer prior to commencing the activity if 1) impacts (other than temporary dewatering to work in dry conditions) to streams and waterbodies exceed 100 linear feet; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceed 150 linear feet; or 3) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

4.7.5 The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, describes how pre-project conditions will be restored, and includes a timetable for all restoration activities.

4.8 NWP #14 - Linear Transportation Projects

4.8.1 If appropriate, permittees shall employ natural channel design (see definition below and NOTE below) to the maximum extent practicable for stream relocations. All stream relocation proposals shall include a Relocation and Monitoring Plan and a functional assessment of baseline conditions (e.g., use of the North Carolina Stream Assessment Methodology). Compensatory mitigation may be required for stream relocations.

Natural Channel Design means a geomorphologic approach to stream restoration based on an understanding of valley type, general watershed conditions, dimension, pattern, profile, hydrology and sediment transport of natural, stable channels (reference condition) and applying this understanding to the reconstruction of a stable channel.

NOTE: For more information on Natural Channel Design, permittees should reference North Carolina Stream Mitigation Guidance on the Corps RIBITS (Regulatory In-lieu Fee and Bank Information Tracking System) website or at the following World Wide Web Page:

https://ribits.usace.army.mil/ribits_apex/f?p=107:27:16705499703550::NO:RP:P27_BUTTON_KEY:0

4.8.2 This NWP authorizes only upland to upland crossings and cannot be used in combination with Nationwide Permit 18 to create an upland within waters of the United States, including wetlands.

4.8.3 This NWP cannot be used for private projects located in tidal waters or tidal wetlands.

4.8.4 In designated trout watersheds, a PCN is not required for impacts to a maximum of 60 linear feet (150 linear feet for temporary dewatering) or 1/10-acre of jurisdictional aquatic resources for proposed structures not adjoining, adjacent to, or connected to existing structures. In designated trout waters, the permittee shall submit a PCN (see Regional Conditions 2.7 and General Condition 32) to the District Engineer prior to commencing the activity if 1) impacts (other than temporary dewatering to work in dry conditions) to jurisdictional aquatic resources exceed 60 linear feet or 1/10-acre; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceed 150 linear feet; 3) the project will involve impacts to wetlands; 4) the primary purpose of the project is for commercial development; 5) the project involves the replacement of a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States; or 6) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

4.8.5 The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings. The PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, describes how pre-project conditions will be restored, and includes a timetable for all restoration activities.

4.9 NWP #18 – Minor Discharges

4.9.1 This NWP may not be used in conjunction with NWP #14 to create upland.

4.9.2 In designated trout waters (see Regional Condition 2.7), a PCN is not required if 1) the quantity of discharged material is less than or equal to 10 cubic yards below the plane of the ordinary high water mark; 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions are 150 linear feet or less; and 3) the activity will be constructed outside of the trout waters moratorium (October 15 through April 15).

4.10 NWP #23 - Approved Categorical Exclusions

4.10.1 The discharge of dredged or fill material associated with this NWP must not cause the loss of greater than 1 acre of waters of the United States or 500 linear feet of stream bed for each single and complete project.

4.10.2 No development activities authorized by this NWP may begin until the permittee obtains a consistency concurrence or a CAMA permit from the North Carolina Division of Coastal Management, if either is required.

4.11 NWP #29 - Residential Developments.

4.11.1 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.11.2 Single-family recreational facilities are not authorized by this NWP. Recreational facilities that are incorporated into the residential development plan and will serve the residents of the entire development can be authorized by this NWP.

4.11.3 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.11.4 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.11.5 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to SA, PNA, WS-1 and/or WS-II waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>.

Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.11.6 If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

4.11.7 Utility lines authorized by this NWP shall comply with the terms and conditions, including regional conditions, of NWP 12.

4.12 NWP #33 – Temporary Construction, Access, and Dewatering

4.12.1 The permittee shall submit a PCN to the District Engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 1/10-acre of wetlands or 150 linear feet of stream channel for the construction of temporary access fills and/or temporary road crossings.

4.12.2 For activities that require a PCN, the PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, describes how pre-project conditions will be restored, and includes a timetable for all restoration activities.

4.13 NWP #35 – Maintenance Dredging of Existing Basins

4.13.1 No excavation of special aquatic sites, such as submerged aquatic vegetation (SAV) areas and wetlands, is permitted.

4.14 NWP #36 – Boat Ramps

4.14.1 Boat ramps will not extend farther than twenty (20) feet waterward from the mean high water (MHW) elevation contour in tidal areas or from the ordinary high water mark elevation contour in non-tidal areas. A waiver from this condition may be requested in writing. The District Engineer may issue a waiver if the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment.

4.14.2 Boat ramps will not be sited over areas of submerged aquatic vegetation, or sited in areas where boating activities may result in either direct or indirect disturbance or loss of SAV. Permittees are encouraged to contact the NCDCM, NCDMF or the NMFS for assistance in determining the presence of SAV.

4.15 NWP #39 - Commercial and Institutional Developments

4.15.1 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.15.2 Recreational facilities that are incorporated into the commercial or institutional development can be authorized by this NWP.

4.15.3 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.15.4 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.15.5 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.15.6 If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

4.15.7 Utility lines authorized by this NWP shall comply with the terms and conditions, including regional conditions, of NWP 12.

4.16 NWP #40 - Agricultural Activities

4.16.1 This NWP may not be used in channelized or natural streams.

4.16.2 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.16.3 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.16.4 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookupError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.17 NWP #41 - Reshaping Existing Drainage Ditches

4.17.1 This NWP applies only to activities ordered by the State of North Carolina or a local government in response to noncompliance with the State's erosion and sedimentation control requirements, or as ordered by the Corps or the United States Environmental Protection Agency in response to noncompliance with any provision of the Clean Water Act.

4.17.2 Proponents must take all appropriate measures to avoid modifying the reach and circulation of waters within wetlands adjacent to the reshaped ditch.

4.17.3 This NWP does not apply to channelized streams or natural streams.

4.18 NWP # 42 – Recreational Facilities.

4.18.1 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.18.2 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.18.3 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain, resulting in permanent above-grade fills are not authorized by this NWP.

4.18.4 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.19 NWP #43 - Stormwater Management Facilities

4.19.1 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.19.2 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water

surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.19.3 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain, resulting in permanent above-grade fills are not authorized by this NWP.

4.20 NWP #44 - Mining Activities

4.20.1 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.20.2 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.20.3 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page:
<http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookupError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.21 NWP #48 - Commercial Shellfish Aquaculture Activities

4.21.1 No development activities authorized by this NWP may begin until the permittee obtains a consistency concurrence, CAMA permit, or an exemption determination from the North Carolina Division of Coastal Management, if required: and/or a lease, permit, deed or other easement which establishes an enforceable property interest for the operator in coordination with the North Carolina Division of Marine Fisheries.

4.21.2 The permittee shall notify the District Engineer by an approved notification procedure prior to commencing the activity if the activity will require a CAMA permit.

4.21.3 The permittee shall notify the District Engineer by an approved notification procedure prior to commencing the activity if lease areas will be sited within areas that contain SAV that exceed and/or do not meet the criteria established in the latest NCDMF protocol for evaluating shellfish lease areas in SAV.

4.21.4 This NWP may not be used to authorize the discharges of dredged or fill material into wetlands, including Coastal Wetlands as defined by North Carolina's Coastal Area Management Act. No lease site shall be sited within 20 feet of a wetland area, unless approved by the Corps and the NMFS - Habitat Conservation Division.

4.21.5 This NWP does not authorize the discharge of any earthen fill material into any waters of the United States.

4.21.6 Lease areas cannot be sited or located farther than one-third the width of a waterbody, unless approved by the District Engineer. This condition does not apply to aquaculture methods that use only cultch-on-bottom or clam-on-bottom methods.

4.21.7 Lease sites shall not be located within marked or unmarked established navigation channels.

4.21.8 The permittee must install and maintain, at his/her expense, any signal lights, signals and aids to navigation prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities. For further information, the permittee should contact Coast Guard Sector North Carolina at (910) 772-2191 or email Coast Guard Fifth District at cgd5waterways@uscg.mil.

4.22 NWP #51 - Land-Based Renewable Energy Generation Facilities.

4.22.1 The applicant must comply with NWP General Condition 32 (Pre-Construction Notification) and receive authorization from the Corps before beginning work.

4.22.2 The PCN must indicate the project life span and include a detailed maintenance, decommissioning and demolition plan for the life of the project.

4.22.3 The PCN must include a detailed remediation plan in the event that the activities authorized by this NWP are damaged by any natural or human-induced event.

4.22.4 Any permanently maintained corridor along the utility ROW within forested wetlands shall be considered a permanent impact. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires PCN and the cumulative total of permanent forested wetland impacts exceeds 1/10-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal.

For permanent forested wetland impacts of 1/10-acre or less, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

4.22.5 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.22.6 The minimum clearance* for an aerial electrical power transmission line crossing navigable waters of the United States shall be governed by the system voltage, as indicated below:

Nominal System	Minimum Clearance
Voltage, kilovolt	Above Bridge Clearance (As Established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the United States beneath the bridge.

4.22.7 On navigable waters of the United States, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the Corps in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

4.22.8 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway means the area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.22.9 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.22.10 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.23 NWP #52 - Water-Based Renewable Energy Generation Pilot Projects.

4.23.1 It is possible that the authorized structure may be damaged by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the permitted structure and the safety of moored boats and barges. The permittee will not hold the United States liable for any such damage.

4.23.2 The PCN must indicate the project life span and include a detailed maintenance, decommissioning and demolition plan for the life of the project.

4.23.3 The PCN must include a detailed remediation plan in the event that the activities authorized by this NWP are damaged by any natural or human-induced event.

4.23.4 Any permanently maintained corridor along the utility ROW within forested wetlands shall be considered a permanent impact. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires PCN and the cumulative total of permanent forested wetland impacts exceeds 1/10-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal.

For permanent forested wetland impacts of 1/10-acre or less, the District Engineer may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

4.23.5 Discharges in perennial streams, intermittent streams and wetlands for stormwater management facilities are prohibited under this NWP.

4.23.6 In areas where a sub-aqueous utility line is to cross a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below

the allowable overdepth of the authorized channel, including all side slopes. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

4.23.7 The minimum clearance* for an aerial electrical power transmission line crossing navigable waters of the United States shall be governed by the system voltage, as indicated below:

Nominal System	Minimum Clearance
Voltage, kilovolt	Above Bridge Clearance (As Established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including *any* infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the United States beneath the bridge.

4.23.8 On navigable waters of the United States, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the Corps in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

4.23.9 Discharges of dredged or fill material into waters of the United States, including wetlands, within the floodway* resulting in permanent above-grade fills are not authorized by this NWP.

*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.23.10 Discharges of dredged or fill material into waters of the United States, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.23.11 This NWP may not be used to authorize discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.
Wetlands adjacent to these HQW waters.

*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapters 2B and 10C (15A NCAC 02B, 15A NCAC 10C) and at the following World Wide Web page: <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2015A%20-%20Environmental%20Quality&lookUpError=15A%20NCAC%20000%20>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/classifications>. Permittees who do not have internet access may contact the Corps at (910) 251- 4633.

4.23.12 Transmission lines necessary to transmit electricity from an offshore energy-producing facility will be designed, constructed and placed in a manner so as not to endanger the public or the public's use of the beach.

4.24 NWP 53 - Low-Head Dam Removal

4.24.1 The PCN shall include an estimate of the amount of sediment stored behind the dam and a description of the methodology used to make that estimation.

4.24.2 The PCN shall include a sediment removal plan. This plan shall describe the methods of sediment removal, dewatering and the location of the disposal area(s). This requirement will be waived if the permittee demonstrates that 1) the release of sediment from behind the dam will not result in a discharge of dredged or fill material; 2) that the removal of sediment is not practicable; and/or 3) sediment removal and/or disposal would be more damaging to the aquatic environment than the release of sediments from behind the dam.