

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403-1343
<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>

General Permit No. 201801536
Name of Permittee: General Public
Effective Date: March 22, 2019
Expiration Date: March 21, 2024

**DEPARTMENT OF THE ARMY
GENERAL (REGIONAL) PERMIT**

A general permit to perform work in or affecting navigable waters of the United States and waters of the United States, upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby issued by authority of the Secretary of the Army by the

District Engineer
U.S. Army Engineer District, Wilmington
Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403-1343

TO MAINTAIN, REPAIR AND CONSTRUCT MARSH SILLS FOR SHORELINE STABILIZATION ALONG ERODING SHORELINES IN NAVIGABLE WATERS AND WATERS OF THE UNITED STATES WITHIN THE 20 COASTAL COUNTIES IN THE STATE OF NORTH CAROLINA.

The following definitions should be used for purposes of this regional general permit (RGP):

a. Marsh Sill: Marsh sills are low-profile structures that are generally constructed parallel to shorelines with the objective of reducing wave action and providing protection for existing coastal marshes and shorelines. Marsh sills can maintain the natural continuity of the land-water interface and retain or enhance shoreline ecological processes.

b. Mean high water mark (MHWM): The line on the shore, in tidal water, reached by the plane of the mean (average) high water. The precise determination of the actual location of the line can be established by survey with the reference to the available tidal datum, preferably averaged over a period of 18.6 years. A less precise method, such as observation of the apparent shoreline, which is determined by reference to physical markings, lines of vegetation, may be used for the purpose of this general permit.

- c. Ordinary High Water Mark (OHWM): The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.
- d. Oyster reefs and shell banks: Intertidal and subtidal habitats composed of living shellfish or artifact shell material.

Special Conditions

- a. This general permit is not applicable to any work on Atlantic Ocean beaches.
- b. This general permit is not applicable to any work located within Atlantic sturgeon critical habitat and Loggerhead sea turtle critical habitat. Critical habitat areas can be viewed at <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>.
- c. Authorized structures located on 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 Wilmington District Corps of Engineers (Corps). The permittee must submit the information described in **Special Condition "t"**, on page 4, to the Corps and obtain approval from the Corps prior to the construction of any structures within the Federally Authorized Channel Setback.
- d. This general permit does not allow the placement of fill material landward of the marsh sill for the restoration, enhancement or creation of marsh or shoreline.
- e. Except as authorized by this general permit or any Corps approved modification to this general permit, all excavated material will be disposed of in approved upland disposal areas.
- f. The landward edge of the sill shall be positioned no greater than 30 feet waterward of the Mean High Water Mark or Ordinary High Water Mark or 5 feet waterward of existing wetlands, whichever distance is greater.
- g. For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one sixth (1/6) the width of the waterbody.

- h. The height of sills shall not exceed twelve inches above Mean High Water or Ordinary High Water level, or the height of the adjacent wetland substrate, whichever is higher.
- i. Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.
- j. The sills shall have at least one, five-foot opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot separation between sections is maintained. The five-foot openings shall be measured from the bottoms/toe of slopes of the sill structures. Overlapping sections shall not overlap more than 10 feet. Deviation from these opening requirements may be allowable following coordination with the N.C. Division of Coastal Management.
- k. The sill structure shall not exceed a slope of one and one-half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall not exceed 12 feet.
- l. Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.
- m. Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of April 1 thru September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation.
- n. Sills shall be marked at the ends of the structure(s) and at 50-foot intervals with yellow reflectors extending at least three feet above Mean High Water level or Ordinary High Water level and must be maintained for the life of the structure.
- o. If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the sill structure. Material used to construct the sill shall not be stockpiled directly on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.
- p. No excavation or filling, other than that necessary for the construction and proper bedding of the sill structure, is authorized by this general permit.
- q. Excavation and/or filling in wetlands is not authorized by this RGP.
- r. The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or clean broken concrete or other materials that are

approved by the N.C. Division of Coastal Management. Sill material shall be free of loose sediment or any pollutant, including exposed rebar. The sill material shall be of sufficient size and slope to prevent its movement from the approved alignment by wave or current action.

s. Sill construction activities shall not be conducted in such a manner as to impede water flow into or out of any natural channel or stream.

t. **For activities that require notification and approval from the Corps prior to construction**, the permittee must submit the following information to the appropriate Corps Regulatory Field Office:

1. Name, address and telephone number of the prospective permittee.
2. Location of the proposed project, including waterbody, nearest community and county.
3. A description of the proposed project and/or structure, including width of structure and fill, distance from shoreline, type of materials, the amount of proposed impacts to waters and a photograph of the area to be stabilized. The description shall be sufficiently detailed to allow the Wilmington District Engineer to determine that the adverse effect of the project will be minimal and to determine the need for compensatory mitigation. Project drawings shall be provided to show that the activity complies with the terms of the RGP. Drawings shall contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans.

u. Should all or part of a proposed development activity be located in an Area of Environmental Concern (AEC) as designated by the North Carolina Coastal Resources Commission, a Coastal Area Management Act (CAMA) permit is required from the North Carolina Division of Coastal Management prior to initiating the proposed activity. Should a Federal agency propose an activity within any of North Carolina's twenty coastal counties or which could affect a coastal use or resource in any one of North Carolina's twenty coastal counties, a consistency determination pursuant to Subpart "C" of 15 CFR 930 must be prepared and submitted by that Federal agency to the North Carolina Division of Coastal Management before the onset of the proposed activity.

General Conditions

a. Except as authorized by this general permit or any Corps approved modification to this general permit, no excavation, fill or mechanized land-clearing activities shall take place within waters or wetlands, at any time in the construction or maintenance of this project. This general permit does not authorize temporary placement or double handling of excavated or fill material

within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.

b. Authorization under this general permit does not obviate the need to obtain other federal, state, or local authorizations.

c. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

d. All work authorized by this general permit must comply with the terms and conditions of the applicable Clean Water Act Section 401 Water Quality Certification for this general permit issued by the North Carolina Division of Water Resources.

e. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

f. The activities authorized by this general permit must not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for a reason other than safety.

g. 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 Corps, 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.

h. The permittee, upon receipt of a notice of revocation of the general permit for the verified individual activity, may apply for an individual permit, or will, without expense to the United States and in such time and manner as the

Secretary of the Army or his/her authorized representative may direct, restore the affected water of the United States to its former conditions.

i. This General Permit does not authorize any activity that would conflict with a federal project's congressionally authorized purposes, established limitations or restrictions, or limit an agency's ability to conduct necessary operation and maintenance functions. Per Section 14 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 408), no project that has the potential to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, or obstruct a federally constructed work or project, including, but not limited to, levees, dams, jetties, navigation channels, borrow areas, dredged material disposal sites, flood control projects, etc., shall be permitted unless the project has been reviewed and approved by the appropriate Corps approval authority. The permittee must submit the information described in **Special Condition "t"**, on page 4, and obtain approval from the Wilmington District Engineer prior to the initiation of any activity that has the potential to modify or conflict with a federally authorized project.

j. 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.

k. The permittee will allow the Wilmington District Engineer or his/her representative to inspect the authorized activity at any time deemed necessary to ensure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this general permit.

l. This general permit does not grant any property rights or exclusive privileges.

m. This general permit does not authorize any injury to the property or rights of others.

n. This general permit does not authorize the interference with any existing or proposed federal project.

o. In issuing this general permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

(2) 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.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this general permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this general permit.

p. Authorization provided by this general permit may be modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting for the Secretary of the Army, determines that such action would be in the best public interest. The term of this general permit shall be five (5) years unless subject to modification, suspension or revocation. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the United States Government.

q. No activity may occur in a component of the National Wild and Scenic Rivers 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 designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or "study river" (e.g., National Park Service, U.S. Forest Service, etc.)

r. This general permit does not authorize any activity within, or directly affecting, a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, unless the permittee provides the Corps with a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act. Information on marine sanctuaries may be obtained at <http://sanctuaries.noaa.gov/#MN>. Permittees may not begin work until they provide the Corps with a written certification from the Department of Commerce.

s. In cases where the Wilmington District Engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act, the activity is not authorized, until the requirements of Section 106 of the National Historic

Preservation Act (NHPA) have been satisfied. Permittees must submit the information described in **Special Condition “t”**, on page 4, to the Corps if any properties subject to the above criteria may be affected by the proposed project. The permittee may not begin work until notified by the Corps that the requirements of the NHPA have been satisfied and that the activity is authorized.

t. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this general permit, you must immediately notify the Wilmington District Engineer of what you have 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 Wilmington District Engineer will initiate the 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 National Register of Historic Places.

u. No activity is authorized under this general permit which is likely to directly or indirectly 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 directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any general permit which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed*. Information on threatened and endangered species and their critical habitat can be obtained directly from the Corps field offices, the USFWS field offices or at the following web addresses: <http://www.fws.gov/> or <http://www.fws.gov/ipac/> or <http://www.noaa.gov/fisheries.html>. Permittees must submit the information described in **Special Condition “t”**, on page 4, to the Corps if any listed species or designated critical habitat may be affected by the proposed project. Permittees may not begin work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized.

*Note - Section 7 consultation has been completed for the West Indian manatee and if the activity might affect the manatee, the permittee does not have to submit the information in **Special Condition “t”**, on page 4, to the district engineer as long as the permittee complies with **General Condition “v”** below. Section 7 consultation has been completed for the Northern long-eared bat and the permittee must submit the information in **Special Condition “t”**, on page 4, to the district engineer if the project meets the criteria in **General Condition “w”** below.

v. In order to further protect the endangered West Indian Manatee (*Trichechus manatus*), the applicant must implement the USFWS’ Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at http://www.fws.gov/nc-es/mammal/manatee_guidelines.pdf.

w. The Wilmington District, U.S. Army Corps of Engineers (Corps) has consulted with the United States Fish and Wildlife Service (Service) 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 Service. This condition concerns effects to the NLEB only and does not address effects to other federally listed species and/or to federally-designated critical habitat.

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

The permittee must comply with (a) and (b) below when the project is a non-NCDOT project, which includes tree cutting or removal (any size tree) and/or percussive activities (e.g. blasting, pile driving)

*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 U.S. If the project is located on federal land, contact the Corps to determine the lead federal agency.

(a) A permittee using a Regional General Permit (RGP) is 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, check the project location against the electronic maps found at: https://www.fws.gov/raleigh/NLEB_RFO.html.

(b) A permittee must submit the information described in **Special Condition "t"**, on page 4, to the Corps, and receive written authorization from the Corps, prior to commencing the activity, if the activity will involve either of the following:

- Tree clearing/removal in a red HUC, AND/OR;
- Percussive activities in a red HUC, or within 0.25 mile of a red HUC.

2. Procedures when the Corps 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 Service (per the directions on the respective Service office's website), that project may proceed without notification to either the Corps or the Service, provided all General and Regional Permit Conditions (for NWPs), or RGP general and special conditions (for RGPs) are met.

The NLEB SLOPES can be viewed on the Corps 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 Corps at (910) 251- 4633.

x. If the permittee discovers or observes any live, injured or dead individual of an endangered or threatened species during construction, the permittee shall immediately notify the Wilmington District Engineer so that required coordination can be initiated with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

y. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program that prohibits any development, including fill, within a floodway that results in any increase in base flood elevations. This general permit does not authorize any activity prohibited by the National Flood Insurance Program.

z. The permittee must install and maintain, at his/her expense, any signal lights and signals 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.

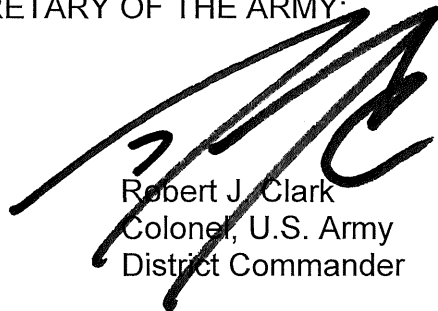
aa. The permittee must maintain any structure or work authorized by this general permit in good condition and in conformance with the terms and conditions of this general permit. The Permittee is not relieved of this requirement if the Permittee abandons the structure or work. Transfer in fee simple of the work authorized by this general permit will automatically transfer this general permit to the property's new owner, with all of the rights and responsibilities enumerated herein. The permittee must inform any subsequent owner of all activities undertaken under the authority of this general permit and provide the subsequent owner with a copy of the terms and conditions of this general permit.

bb. At his/her sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this general permit will not be

applicable to a specific proposal. In such case, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available.

cc. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this general permit will remain authorized provided the activity is completed within twelve months of the date of the general permit's expiration, modification, or revocation. Activities completed under the authorization of this general permit that were in effect at the time the activity was completed continue to be authorized by the general permit.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



Robert J. Clark
Colonel, U.S. Army
District Commander