

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. 198500194
Name of Permittee: General Public
Effective Date: January 1, 2017
Expiration Date: December 31, 2021

**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), Section 404 of the Clean Water Act (33 U.S.C. 1344), and Section 4(e) of the Outer Continental Shelf Lands Act of 1953 [43 U.S.C. 1333(e)] is hereby renewed and modified 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 AUTHORIZE THE CONSTRUCTION, MAINTENANCE AND REPAIR OF
ARTIFICIAL REEFS IN COASTAL AND OFFSHORE WATERS, AS PART OF WORK
CONDUCTED BY THE NORTH CAROLINA DIVISION OF MARINE FISHERIES
(NCDMF), WITHIN ALL WATERS SUBJECT TO THE REGULATORY
JURISDICTION OF THE WILMINGTON DISTRICT, CORPS OF ENGINEERS.**

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

- a. Artificial Reef: Structures that are constructed or placed in navigable waters of the United States or in waters overlying the outer continental shelf for the purpose of enhancing fish habitat, fishery resources and commercial and recreational fishing opportunities. Artificial reefs do not include pilings, bank and grade stabilization structures, wing deflectors, dolphins, jetties, breakwaters, groins or other structures that are not placed for the purpose of enhancing fishery resources and fishing opportunities.
- b. Fish Aggregating Device: Man-made objects used to attract ocean going pelagic fish. The devices usually consist of buoys or floats tethered to the ocean floor with concrete

blocks. Fish aggregating devices are primarily used to attract fish for commercial fishing and are not placed to enhance fish habitat.

For artificial reef projects sited in navigable waters and/or the outer continental shelf:

Information on new site development, including additions or boundary modifications to existing reef sites, will be provided to the following agencies for comments for a period of 30 days. The District will also provide a copy of the verified general permits to the following agencies:

National Geospatial-Intelligence Agency
Maritime Safety Information Division
7500 GEOINT Drive
Springfield, Virginia 22150

National Marine Fisheries Service
Office of Marine Recreational Fisheries
1315 East-West Highway
Silver Spring, Maryland 20910

Director
Southeast Region
National Marine Fisheries Service
263 13th Avenue South
St. Petersburg, Florida 33701

Assistant Secretary of the Army
Installation, Energy and Environment
ASA (IE&E)
110 Army Pentagon
Washington, D.C. 20310-50110

Department of Commerce, NOAA
Nautical Data Branch, N/CS26
1315 East-West Highway
Silver Spring, MD 20910
(e-mail: ocs.ndb@noaa.gov)

Commander (DPW)
Fifth Coast Guard District
431 Crawford Street
Portsmouth, Virginia 23704-5004

For artificial reef projects sited on the outer continental shelf:

Information on new site development, including additions or boundary modifications to existing reef sites, will be provided to the following agencies for comments for a period of 30 days. The District will also provide a copy of the verified general permits to the following agencies:

Department of the Navy
Office of Judge Advocate General (Code 11)
1322 Patterson Avenue SE
Suite 3000, Building 33
Washington, D.C. 20374-5066

Bureau of Oceans and International Environmental
and Scientific Affairs
U.S. Department of State (OES)
2201 C Street NW
Washington, D.C. 20520

Special Conditions

a. Prior to construction of any new artificial reef, including additions or boundary modifications to existing sites, the following information will be provided to the North Carolina Division of Marine Fisheries (NCDMF) and to the Wilmington District, Corps of Engineers, Regulatory Division (Corps):

i. The NCDMF reef number and the location of the structure and reef site expressed in both latitude/longitude, with a statement of horizontal datum (NAD83 or WGS84). Plans for circular shaped reef sites must show the coordinates of the center of the reef site and must describe the radius measurements of each circular reef site. Plans for reefs sites shaped as polygons must show the coordinates of all vertices.

ii. Plans of the proposed work (on 8-1/2-inch by 11-inch paper), showing all pertinent structures, elevations, clearances, dimensions, types and quantities of materials, the relative locations of all structures and boundaries of the reef site.

iii. Water depths and vertical clearances measured in feet from Mean Lower Low Water (MLLW) as used by the National Ocean Service (NOS) navigation charts.

iv. The site's proximity to shipping lanes and general navigation channels.

v. Approximate commencement and completion dates.

vi. Description of site conditions as evidenced by marine survey or inspection performed or approved by NCDMF.

vii. Anchoring methods to be used.

viii. Fishery management objectives, including the goals of the reef site and the types of fisheries the project will be enhancing.

ix. A general description of how the reef will be constructed, managed and monitored.

b. Construction may not proceed until the NCDMF has obtained concurrence from Commander (SPW), U.S. Coast Guard Sector North Carolina, 2301 East Fort Macon Road, Atlantic Beach, North Carolina 28512-5633 for the location and clearance depth. If required by the Coast Guard or deemed necessary by NCDMF, a private aid to navigation application (Form CG-2554) approved by Coast Guard Fifth District shall be furnished to the Wilmington District Engineer.

c. For new reef sites, including additions or boundary modifications to existing reef sites, no work will commence until the NCDMF has received written notice to proceed from the Wilmington District Engineer. This notice may include appropriate conditions or restrictions. Such conditions or restrictions will be enforceable in accordance with normal enforcement procedures and authorities.

d. All material placed to construct reefs (specifically designed reef modules) will be selected and placed so as to avoid the movement of reef materials due to sea conditions or currents. The permittee will be responsible for any materials which are moved by sea conditions or which break loose from reefs, and the permittee will be responsible for any damage caused by such materials.

e. All materials used for construction of reefs shall be consistent with the National Artificial Reef Plan and will be clean and free of petroleum and other hydrocarbons (oil, grease, asphalt and creosote), toxic residues (mercury, cadmium and lead) and loose, free floating material and other deleterious substances and/or in compliance with criteria established by the U.S. Environmental Protection Agency (EPA).

f. All material will be available for inspection by the EPA and/or the Corps or their designated representative prior to placement. Prior to the use of vessels subject to P.L. 92-402, the NCDMF must notify the EPA. Prior to the use of vessels not subject to P.L. 92-402 or any other proposed reef materials, the NCDMF must notify the Wilmington District Engineer. All reef material must be certified by the reviewing agency as acceptable before placement can be performed.

g. The use of tires, Fish Aggregating Devices (FADs), post use sanitary sewer materials, automobiles and other civilian vehicles, white goods (refrigerators, washers, etc.) boat molds, floatables, loose organic material and general demolition debris, other than clean concrete units to form reefs, are not authorized by this Regional General Permit (RGP).

h. The NCDMF will be responsible for maintaining any clearance above the reef or device required by the U.S. Coast Guard, the Corps and/or any other appropriate regulatory agency.

i. This RGP does not authorize the placement of material within any jurisdictional wetland, submerged aquatic vegetation bed, coral reefs, oyster reefs, mussel beds, scallop beds, clam beds or live bottoms (areas supporting the growth of sponges, sea fans, soft coral and other sessile macro invertebrates generally associated with rock outcrops).

j. The NCDMF will coordinate with the owner or operator of any utility line or other structure located within the immediate work area prior to the commencement of reef construction.

k. Artificial reefs shall not be located in shipping lanes, general navigation channels or established anchorage areas where such structures would be an impairment to navigation and/or anchorage.

l. This general permit does not authorize construction within danger zones or restricted areas identified in 33 CFR 334, within marine sanctuaries established pursuant to the Marine Protection, Research and Sanctuaries Act (16 U.S.C. 1432), or within material areas leased by the Bureau of Land Management.

m. The construction, maintenance and repair of reefs will be designed and accomplished in such a manner so as to avoid altering shoreline or near shore bottom profiles or cause shoreline or near shore erosion or accretion.

n. This general permit does not provide authorization for the construction of artificial reefs in designated shrimp, fish or shellfish trawling areas as established by the NCDMF, unless, in the opinion of the Wilmington District Engineer, such construction would not constitute a hazard to trawling activities.

o. 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 NCDCM before the onset of the proposed activity. Should a Federal activity within any one 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 be proposed by a Federal agency, 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.

p. The permittee must notify the National Ocean Service (NOS) in writing, upon first deployment of the reef material and upon completion of the activity authorized by this general permit. Your notification of completion must include a drawing which certifies the location and configuration of the completed activity (as built drawing). Notifications to NOS will be sent to ocs.ndb@noaa.gov or to the following address:

Department of Commerce, NOAA
Nautical Data Branch, N/CS26
1315 East-West Highway
Silver Spring, MD 20910

q. The permittee must notify and/or provide pertinent project information to Coast Guard Sector North Carolina at least three weeks prior to construction or placement of reef material. Notifications to Coast Guard Sector North Carolina can be sent to NCmarineevents@uscg.mil or to the following address:

USCG Sector NC Waterways Division
721 Medical Center Drive
Wilmington, North Carolina 28401

General Conditions

a. Authorized structures located on or adjacent to Federally authorized waterways will be constructed in accordance with the latest setback criteria established by the District Engineer, Wilmington District. 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.

b. 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.

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

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, jettys, 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.

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 assure 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.) Information on these rivers is also available at: <http://www.rivers.gov/>.

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 applicant 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 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 NWP 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 may not begin work until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

*Note - Section 7 consultation has been completed for the West Indian manatee and the permittee must comply with General Condition “v” in order to satisfy the requirements of the ESA for this species.

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. If the permittee discovers or observes any live, damaged, 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.

x. 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.

y. 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.

z. 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.

aa. 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.

bb. Except as authorized by this general permit or any Corps approved modification to this general permit, all fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities.

cc. 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.

dd. 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:

FOR THE COMMANDER:


Scott McLendon
Chief, Regulatory Division
Wilmington District