

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. 198000048  
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), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby modified and renewed by authority of the Secretary of the Army by

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

TO AUTHORIZE EMERGENCY CONSTRUCTION OF PRIMARY DUNES AND ANY ASSOCIATED EXCAVATION WATERWARD OF THE MEAN HIGH WATER (MHW) ELEVATION CONTOUR ON ATLANTIC OCEAN SHORELINES WITHIN NORTH CAROLINA, AND TO AUTHORIZE THE EMERGENCY PLACEMENT OF SANDBAGS AND ANY ASSOCIATED EXCAVATION NECESSARY TO FILL SANDBAGS WATERWARD OF THE MEAN HIGH WATER (MHW) ELEVATION CONTOUR ON ATLANTIC OCEAN SHORELINES WITHIN NORTH CAROLINA.

**Special Conditions**

a. Before initiating work under the authority of this general permit, the permittee must obtain written approval from the North Carolina Division of Coastal Management (NCDCM) and forward this approval to the Corps of Engineers, Wilmington District, Regulatory Division (Corps).

b. This general permit does not authorize the placement of sandbags for the protection of vacant lots.

c. Work authorized by this general permit is limited to the reconstruction of primary dunes and the placement of sandbags determined to be absolutely necessary to rectify an emergency situation as defined by North Carolina Coastal Resources Commission Regulations. The NCDRCM in coordination with the Corps, will make the decision whether an emergency exists. All work must comply with the North Carolina Guidelines for Areas of Environmental Concern in Ocean Hazard Areas.

d. This general permit does not necessarily authorize restoration of the property to its condition prior to the emergency. The Corps or the NCDRCM may limit the scope of work to that necessary to stabilize the beach to prevent property damage, injury or loss of life. Neither the U.S. Government nor the State of North Carolina will be held liable should the authorized work not fulfill its intended purpose.

e. All activities authorized by this general permit must be performed in strict accordance with the Special and General Conditions of this general permit, any specific instructions from the State or the Corps and any other state or federal requirements including North Carolina General Statutes 113-229, 143-215.3(a)(1), 143-215.3(c) and 113A-118.

f. This general permit does not authorize the excavation or filling of wetlands subject to Clean Water Act regulation.

g. Primary dunes will be reconstructed at or landward of existing or recently eroded primary dunes and/or adjacent primary dunes.

h. Between April 1 and November 15 of any year, no work will be authorized by this general permit until the permittee notifies the Corps and the Corps, after appropriate coordination with USFWS, NMFS and/or NCWRC, makes a case specific determination that the requirements of the Endangered Species Act and the Magnuson Stevens Fishery Conservation and Management Act. The Corps may require a permittee to comply with specific conditions if the activity would adversely impact Essential Fish Habitat or if the activity may affect threatened or endangered species or their critical habitat. The permittee must submit the information described in General Condition "y" to the Corps and obtain approval from the Corps prior to any work between April 1 and November 15.

i. Return water from upland, contained disposal areas must comply with Water Quality Certification No. 3888, issued by the North Carolina Division of Water Resources (NCDWR) on March 19, 2012 or the current Water Quality Certification applicable to return water from upland disposal facilities.

## **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 Wilmington District Engineer. You may review the setback policy at <http://www.saw.usace.army.mil/Missions/Navigation/Setbacks.aspx>. The permittee must obtain approval from the Corps prior to the construction of any structures within the Federally Authorized Channel Setback. The permittee must submit the information described in General Condition “y” to the Corps and obtain approval from the Corps prior to the construction of any structures within the Federally Authorized Channel Setback.

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 of Engineers, to remove, relocate, or

alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

h. The permittee, upon receipt of a notice of revocation of the 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. The permittee must submit the information described in General Condition "y" to the Corps and obtain approval from the Corps 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: CESA-W-OP-N, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343, email: [SAWWeb-NAV@usace.army.mil](mailto: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 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 General Condition “y” 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 General Condition “y” 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 project might affect the manatee, the permittee does not have to submit the information in General Condition “y” to the district engineer as long as the permittee complies with General Condition “v”. Section 7 consultation has been completed for the Northern long-eared bat and the permittee must submit the information in General Condition “y” to the district engineer if the project meets the criteria in General Condition “w”.

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](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.

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

(1) A permittee using a Nationwide Permit (NWP) or a Regional General Permit (RGP) 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](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](https://www.fws.gov/raleigh/NLEB_RFO.html).

(2) A permittee must submit a pre-construction notification (PCN) to the district engineer, and receive written authorization from the district engineer, prior to commencing the activity, if the activity will involve either 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 or RGP 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 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, 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.

y. For activities that require approval from the Corps prior to initiating work, 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 detailed description of the proposed project, including applicable project details such as width, height, length of structures or fills, distance from the shoreline, type of materials, location of structure(s), and the amount of proposed impact to waters and/or wetlands. The description should 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 should be provided when necessary to show that the activity complies with the terms of the RGP. (Drawings usually clarify the project and when provided results in a quicker decision. Drawings should 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).

z. 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.

aa. 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](mailto:cgd5waterways@uscg.mil).

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. 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. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

dd. 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.

ee. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon an RGP will remain authorized provided the activity is completed

within twelve months of the date of an RGP's expiration, modification, or revocation. Activities completed under the authorization of an RGP that was in effect at the time the activity was completed continue to be authorized by that RGP.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

FOR THE COMMANDER:

  
Scott McLendon  
Chief, Regulatory Division  
Wilmington District