

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>

RGP No. 199200297

Name of Permittee: United States Forest Service and the North Carolina Forest Service

Effective Date: January 1, 2022

Expiration Date: December 31, 2027

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

A RGP to perform work in or affecting navigable waters of the US and waters of the US, 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 THE DISCHARGE OF DREDGED OR FILL MATERIAL WITHIN NON-TIDAL WATERS OF THE US IN THE STATE OF NORTH CAROLINA ASSOCIATED WITH FOREST MANAGEMENT AND WILDFIRE CONTROL AND SUPPRESSION AS FOLLOWS:

WHEN PERFORMED BY THE U.S. FOREST SERVICE OR THE NORTH CAROLINA FOREST SERVICE, OR WHEN CONDUCTED ON FEDERAL OR STATEOWNED PROPERTY, AUTHORIZED ACTIVITIES INCLUDE:

1. The discharge of dredged or fill materials associated with the discing, plowing or blading of soils for maintaining currently serviceable firebreaks and for creating new firebreaks, not exempted by 33 CFR 323.4, when the new firebreak is required as a result of the recommended use of prescribed fire by the North Carolina Forest Service or the U.S. Forest Service.
2. The discharge of dredged or fill material associated with activities conducted for the purpose of training forest fire equipment operators.

3. The discharge of dredged or fill materials associated with the installation and maintenance of firebreaks for the purpose of wild-fire control during emergency wild-firefighting situations.

OTHER AUTHORIZED ACTIVITIES INCLUDE:

4. The discharge of dredged or fill material associated with ongoing, site-specific, wildlife management activities, not exempted by 33 CFR 323.4, where discing and/or other discharges within existing cleared areas are used to manipulate habitat and feeding areas for native species of fauna and flora.

Special Conditions

a. Activities conducted under the authorization of this RGP shall in no way promote or facilitate drainage of any area of waters of the US.

b. The responsible agency* must receive written concurrence from the Wilmington District Corps of Engineers (Corps) prior to conducting training activities on privately owned properties. This concurrence may be obtained by submitting the following information to the appropriate Corps Regulatory Field Office. You may apply online at https://edocs.deq.nc.gov/Forms/Pre-Construction_Notification_Form.

1. Name, address, email and/or telephone number.
2. Location of proposed work, including waterbody, nearest community and county.
3. An explanation for why the training is necessary and why the training cannot be performed on Federal or State-owned property.
4. Characteristics of work including maps showing proposed training area, training schedule, description of work to be performed and information supporting the need for conducting the activity at the proposed location.

* The responsible agency may request a single concurrence for multiple training activities and/or events on a particular tract.

b-c. All Permittees conducting emergency wild-fire fighting activities under the authority of this RGP shall, within 30 days of completion of the activity, notify the Corps and undertake any restoration of preconstruction contours determined by the District Engineer to be necessary and feasible.

e-d. 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 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.

~~d.~~e. Permittees must, for all work not associated with emergency wild-fire fighting, maintain a minimum 100-foot wide vegetated buffer on all streams classified by the North Carolina Wildlife Resources Commission as *Designated Public Mountain Trout Waters* and a 50-foot wide vegetated buffer on all other open water bodies including tributaries ~~streams~~. These buffers do not apply to temporary fire breaks or to firebreaks that will be planted or allowed to naturally revegetate.

General Conditions

a. Except as authorized by this RGP or any Corps approved modification to this RGP, 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 RGP 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 RGP does not obviate the need to obtain other federal, state, or local authorizations.

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

d. The Permittee shall employ sedimentation and erosion control measures necessary and appropriate 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 installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the stabilization of disturbed areas at the earliest practicable date.

e. The activities authorized by this RGP must not interfere with the public's right to free navigation on all navigable waters of the US. 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.

f. 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.

g. The Permittee, upon receipt of a notice of revocation of the RGP for the verified individual activity, may apply for an individual permit, or will, without expense to the US 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 US to its former conditions.

h. This RGP 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 "b" 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.

i. 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.

j. 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 RGP.

k. This RGP does not grant any property rights or exclusive privileges.

l. This RGP does not authorize any injury to the property or rights of others.

m. This RGP does not authorize the interference with any existing or proposed federal project.

n. In issuing this RGP, 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 RGP.
4. Design or construction deficiencies associated with the permitted work.
5. Damage claims associated with any future modification, suspension, or revocation of this RGP.

o. Authorization provided by this RGP 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 RGP 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 US Government.

p. 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.)

q. In cases where the 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 “b” 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.

r. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this RGP, you must immediately notify the 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 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.

~~s. No activity is authorized under this general permit RGP 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 must submit the information described in Special Condition “b” 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.~~

~~t. *Note— Section 7 consultation has been completed for the Northern long-eared bat and the permittee. Permittee must submit the information in Special Condition “b” to the district engineer if the project meets the criteria in General Condition “u”.~~

st. -Endangered Species.

(1) No activity is authorized under this RGP 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 this RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(2) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal prospective permittees (and when FHWA is the lead federal agency) must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP activity, or whether additional ESA consultation is necessary.

(3) Non-federal prospective permittees - for activities that might affect federally-listed endangered or threatened species or designated critical habitat, the PCN must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The District Engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat. In cases where the

non-federal prospective permittee has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the prospective permittee shall not begin work until the Corps has provided notification that the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(4) As a result of formal or informal consultation with the U.S. Fish and Wildlife Service (USFWS) or NMFS, the District Engineer may add species-specific endangered species conditions to the RGP verification letter for a project.

(5) Authorization of an activity by a RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the USFWS or the NMFS, the ESA prohibits any person subject to the jurisdiction of the U.S. to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(6) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS in Raleigh, North Carolina at the address provided below, or from the USFWS and NMFS via their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

The Raleigh USFWS Office covers all NC counties east of, and including, Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.
US Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

(7) The Wilmington District, USFWS, NCDOT, and the FHWA have conducted programmatic Section 7(a)(2) consultation for a number of federally listed species and habitat, and programmatic consultation concerning other federally listed species and/or habitat may occur in the future. The result of completed programmatic consultation is a Programmatic Biological Opinion (PBO) issued by the USFWS. These PBOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” of whichever species or critical habitat is covered by a specific PBO. Authorization under RGP 2878 is conditional upon the permittee’s compliance with all the mandatory terms and conditions associated with incidental take of the applicable PBO (or PBOs), which are incorporated by reference in RGP 2878. Failure to comply with the terms and conditions associated with incidental take of an

applicable PBO, where a take of the federally listed species occurs, would constitute an unauthorized take by the permittee, and would also constitute permittee non-compliance with the authorization under RGP 2878. If the terms and conditions of a specific PBO (or PBOs) apply to a project, the Corps will include this/these requirements in any RGP 2878 verification that may be issued for a project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its PBO, and with the ESA.

(8) Northern long-eared bat (NLEB) (*Myotis septentrionalis*). Standard Local Operating Procedures for Endangered Species (SLOPES) for the NLEB have been approved by the Corps and the U.S. Fish and Wildlife Service. See <http://www.saw.usace.army.mil/Missions/Regulatory-Permit-Program/Agency-Coordination/ESA/>. This SLOPES details how the Corps will make determinations of effect to the NLEB when the Corps is the lead federal agency for an NCDOT project that is located in the western 41 counties of North Carolina. This SLOPES does not address NCDOT projects (either federal or state funded) in the eastern 59 counties in North Carolina. Note that if another federal agency is the lead federal agency for a project in the western 41 counties, procedures for satisfying the requirements of Section 7(a)(2) of the ESA will be dictated by that agency and will not be applicable for consideration under the SLOPES; however, information that demonstrates the lead federal agency's (if other than the Corps) compliance with Section 7(a)(2) / 4(d) Rule for the NLEB, will be required in the PCN. Note that at the time of issuance of RGP 2878, the federal listing status of the NLEB as "Threatened" is being litigated at the National level. If, as a result of litigation, the NLEB is federally listed as "Endangered", this general condition ("s") will no longer be applicable because the 4(d) Rule, and this NLEB SLOPES, will no longer apply/be valid.

(9) 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.

~~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. 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 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 terms and general and regional conditions, or all applicable RGP terms and general and special conditions, and 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 NWP), 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/](http://www.saw.usace.army.mil/Missions/Regulatory%20Permit%20Program/Agency%20Coordination/ESA/). Permittees who do not have internet access may contact the Corps at (910) 251-4633.~~

~~contact the Corps at (910) 251- 4633.~~

~~u. If the permitteePermittee discovers or observes any live, damaged, injured or dead individual of an endangered or threatened species during construction, the permitteePermittee 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.~~

t 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 RGP does not authorize any activity prohibited by the National Flood Insurance Program.

u. No work in waters of the US identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission

(NCWRC) as anadromous fish spawning areas shall occur between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

v. The Permittee must maintain any structure or work authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. 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 RGP will automatically transfer this RGP 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 RGP and provide the subsequent owner with a copy of the terms and conditions of this RGP.

w. At his/her sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this RGP 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.

x. Except as authorized by this RGP or any Corps approved modification to this RGP, 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.

y. Except as authorized by this RGP or any Corps approved modification to this RGP, all excavated material will be disposed of in approved upland disposal areas.

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

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Benjamin A. Bennett
Colonel, U.S. Army
District Commander