

## **Regional Conditions 6-2007**

# **Final Regional Conditions for Nationwide Permits in the Wilmington District**

### **1.0 Excluded Waters**

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

#### **1.1 Anadromous Fish Spawning Areas**

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

#### **1.2 Trout Waters Moratorium**

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (see Section I. b. 7. for a list of the twenty-five trout counties).

#### **1.3 Sturgeon Spawning Areas**

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

### **2.0 Waters Requiring Additional Notification**

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

#### **2.1 Western NC Counties that Drain to Designated Critical Habitat**

Waters of the U.S. that requires a Pre-Construction Notification pursuant to General Condition 27 (PCN) and located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28805. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 17 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood,

Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provide guidelines on how to review linked websites and maps in order to fulfill NWP general condition 17 requirements.

<http://www.saw.usace.army.mil/wetlands/ESA>

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices or the US Army Corps of Engineers office listed below.

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

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service  
Raleigh Field Office  
Post Office Box 33726  
Raleigh, NC 27636-3726  
Telephone: (919) 856-4520

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

## **2.2 Special Designation Waters**

Prior to the use of any NWP in any of the following North Carolina identified waters and contiguous wetlands, applicants must comply with Nationwide Permit General Condition 27 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) and “High Quality Waters” (HQW) (as designated by the North Carolina Environmental Management Commission), or  
“Inland Primary Nursery Areas” (IPNA) (as designated by the North Carolina Wildlife Resources Commission), or “Contiguous Wetlands” (as defined by the North Carolina Environmental Management Commission), or “Primary Nursery Areas” (PNA) (as designated by the North Carolina Marine Fisheries Commission).

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

Non-Federal applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities for non-Federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889).

### **2.4 Barrier Islands**

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 27 (PCN).

### **2.5 Mountain or Piedmont Bogs**

Prior to the use of any NWP in a “Mountain or Piedmont Bog” of North Carolina, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

Note: The following wetland community types identified in the N.C. Natural Heritage Program document, “Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype)	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

### **2.6 Animal Waste Facilities**

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

### **2.7 Trout Waters**

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with

Nationwide Permit General Condition 27 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination of any potential impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

#### NCWRC and NC Trout Counties

Mr. Ron Linville			
Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
3855 Idlewild Road	Ashe	Mitchell	Wilkes
Kernersville, NC 27284-9180	Avery	Stokes	
Telephone: (336) 769-9453	Burke	Surry	

Mr. Dave McHenry			
Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

### 3.0 List of Corps Regional Conditions for All Nationwide Permits

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

#### 3.1. Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial streams. The NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of ephemeral and intermittent streams that exhibit important aquatic function(s)\* Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. The District Commander can waive the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis if he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing. This waiver only applies to the 300 linear feet threshold for NWPs. Mitigation may still be required for impacts to ephemeral and intermittent streams, on a case-by-case basis, depending on the impacts to the aquatic environment of the proposed project. [\*Note: The Corps uses the Stream Quality Assessment Worksheet, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of aquatic function within the intermittent stream channel.]

### **3.2 Mitigation for Loss of Stream Bed Exceeding 150 Feet.**

For any NWP that results in a loss of more than 150 linear feet of perennial and/or ephemeral/intermittent stream, the applicant shall provide a mitigation proposal to compensate for the loss of aquatic function associated with the proposed activity. For stream losses less than 150 linear feet, that require a PCN, the District Commander may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

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

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream or ephemeral/ intermittent stream, the applicant must comply with Nationwide Permit General Condition 27 (PCN). This applies to NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

### **3.4 Restriction on Use of Live Concrete**

For all NWPs which allow the use of concrete as a building material, measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the state until the concrete has hardened.

### **3.5 Requirements for Using Riprap for Bank Stabilization**

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

**3.5.1.** Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

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

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

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

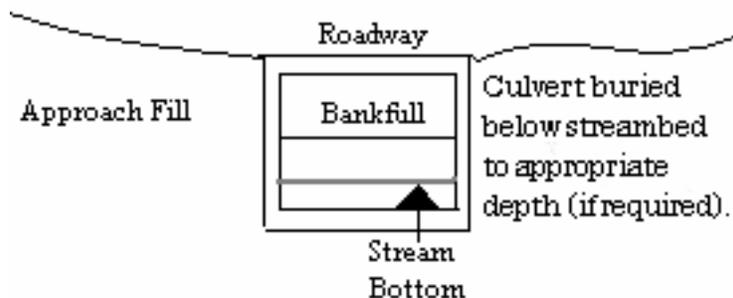
**3.5.5.** The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

**3.5.6.** A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional condition would result in greater adverse impacts to the aquatic environment.

### **3.6 Safe Passage Requirements for Culvert Placement**

For all NWP's that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed opening should be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow should be determined from gage data, if available. In the absence of such data, bankfull flow can be used as a comparable level.

In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipe and culvert bottoms shall be buried at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) quad sheets.



In all other counties: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert must be placed at a depth below the natural stream bottom to provide for passage during drought or low flow conditions.

Destabilizing the channel and head cutting upstream should be considered in the placement of the culvert.

A waiver from the depth specifications in this condition may be requested in writing. The waiver will be issued if it can be demonstrated that the proposal would result in the least impacts to the aquatic environment.

All counties: Culverts placed in wetlands do not have to be buried.

### **3.7 Notification to NCDENR Shellfish Sanitation Section**

Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps of Engineers Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued.

### **3.8 Preservation of Submerged Aquatic Vegetation**

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

### **4.0 Additional Regional Conditions for Specific Nationwide Permits**

#### **4.1 NWP #5 – Scientific Measurement Devices**

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

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

#### **4.2 NWP #7 - Outfall Structures and Maintenance**

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

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

#### **4.3 NWP #12 - Utility Line Activities**

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

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

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

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

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

**4.3.6.** The clearance for an aerial line is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line crossing navigable waters shall be governed by the system voltage, as indicated below:

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

**4.3.7.** A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required PCN. Cleared wetland areas shall be re-vegetated to the maximum

extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

**4.3.8.** For the purposes of this NWP, any permanently maintained corridor along the utility ROW shall be considered a permanent impact and a compensatory mitigation plan will be required for all such impacts associated with the requested activity.

**4.3.9.** Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

#### **4.4 NWP # 13 – Bank Stabilization**

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

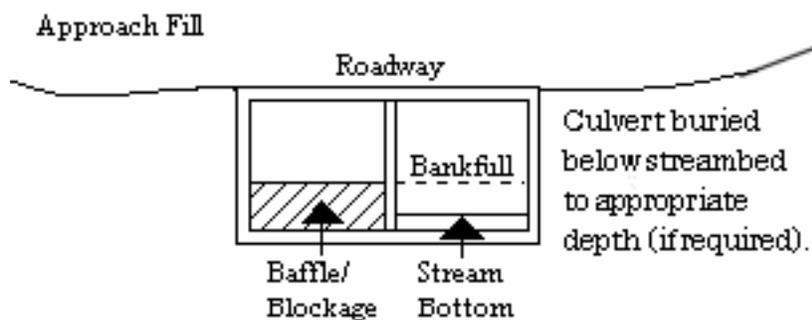
**4.4.2.** Properly anchored and cabled structural stabilization techniques, such as timber crib structures, revetments, and root wads, are acceptable materials to stabilize stream banks.

#### **4.5 NWP #14 - Linear Transportation Crossings**

**4.5.1.** Applicants shall employ natural channel design (see definition below) to the maximum extent practicable for stream relocations. In the event it is not practicable to employ natural channel design, any stream relocation shall be considered a permanent impact and the applicant shall provide a mitigation plan to compensate for the loss of aquatic function associated with the proposed activity.

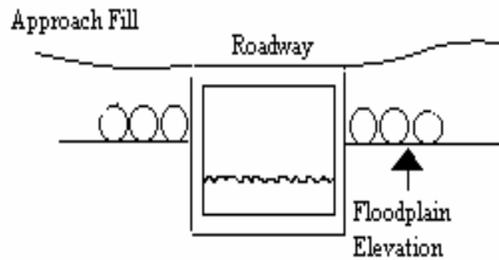
Natural Channel Design: A geomorphologic approach to stream restoration based on an understanding of valley type, general watershed conditions, dimension, pattern, profile, hydrology and sediment transport of natural, stable channels (reference condition) and applying this understanding to the reconstruction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

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



**4.5.3.** Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation.

**4.5.4.** This NWP authorizes only upland to upland crossings and cannot be used in combination



with Nationwide Permit 18 to create an upland within waters of the United States, including wetlands.

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

#### **4.6 NWP #18 – Minor Discharges**

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

#### **4.7 NWP #23 – Approved Categorical Exclusions**

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

#### **4.8 NWP #27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities.**

If you are under contract to the North Carolina Ecosystem Enhancement Program (NCEEP) and are supplying a Pre-construction Notification (PCN) for impacts associated with a mitigation project that will be used to supply mitigation credits to EEP, the PCN must include a cover letter from the NCEEP stating that they have reviewed and approved your restoration plan.

#### **4.9 NWP #29-Residential Developments.**

**4.9.1.** Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

**4.9.2.** Single-family recreational facilities are not authorized by this NWP. Recreational facilities that are incorporated into serving an entire residential development can be authorized by this NWP.

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

**4.9.4.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

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

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

#### **4.10 NWP #33 – Temporary Construction, Access and Dewatering**

The required restoration plan must include a timetable for restoration activities.

#### **4.11 NWP #35 – Maintenance Dredging of Existing Basins**

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

#### **4.12. NWP #36 – Boat Ramps**

**4.12.1.** Boat ramps will not extend farther than twenty (20) feet waterward from the mean high water (MHW) elevation contour in tidal areas or from the normal water level elevation contour in nontidal areas.

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

#### **4.13 NWP # 39 - Commercial, and Institutional Developments**

**4.13.1.** Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

**4.13.2.** Recreational facilities, if they are incorporated into and serving an entire commercial or institutional development can be authorized by this NWP.

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

**4.13.4.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five CFS) resulting in permanent above-grade fills are not authorized by this NWP.

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

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

#### **4.14 NWP # 40 - Agricultural Activities**

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

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

**4.14.3.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

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

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

#### **4.15 NWP # 41 - Reshaping Existing Drainage Ditches**

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

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

**4.15.3.** This NWP does not apply to channelized streams or natural streams.

#### **4.16 NWP # 42 – Recreational Facilities.**

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

**4.16.2.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

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

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

#### **4.17 NWP # 43 - Stormwater Management Facilities**

**4.17.1.** Discharges into wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

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

**4.17.3.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

#### **4.18 NWP # 44 - Mining Activities**

**4.18.1.** The pre-construction notification (PCN) must include a delineation of the affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes.

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

**4.18.3.** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e.  $\geq$  five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

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

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

#### **4.19 NWP # 46 - Discharges into Ditches and Canals**

**4.19.1.** The applicant must comply with NWP General Condition 27 (PCN) and receive authorization from the US Army Corps of Engineers before beginning work.

**4.19.2.** This NWP cannot be used to remove Section 404 of the Clean Water Act jurisdiction upstream of the project site by severing the hydrologic connection.

#### **4.20 NWP # 47 - Office of Pipeline Safety Designated Time Sensitive Repairs**

**4.20.1.** Pipeline/utility line repair, rehabilitation, or replacement through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.

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

**4.20.3.** The area of waters of the United States to be disturbed will be limited to the minimum necessary to repair, rehabilitate, or replace the utility line. The work area authorized by this permit, including permanent fills, will be minimized to the greatest extent practicable.

**4.20.4.** In areas where the repair, rehabilitation, or replacement involves a sub-aqueous utility line across a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the depth of the authorized channel. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

**4.20.5.** Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

**4.20.6.** Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

#### **4.21 NWP # 48 -Commercial Shellfish Aquaculture Activities**

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

**4.21.2.** Prior to the use of this NWP the applicant must comply with NWP General Condition 27 (PCN).

**4.21.3.** This NWP does not authorize any activity which impacts Submerged Aquatic Vegetation.

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

**4.21.5.** This NWP may not be used to authorize the discharges of dredged or fill material into wetlands, including Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.

### **NC DIVISION OF WATER QUALITY - GENERAL CERTIFICATION CONDITIONS**

For the most recent General Certification conditions, call the NC Division of Water Quality, Wetlands/401 Certification Unit at (919) 733-1786 or access the following website:

<http://h2o.enr.state.nc.us/ncwetlands/certs.html>

### **NC DIVISION OF COASTAL MANAGEMENT - STATE CONSISTENCY**

In a letter dated May 7, 2007, the North Carolina Division of Coastal Management found this NWP consistent with the North Carolina Coastal Zone Management Program. Updates on CAMA Consistency for NC can be found on the NC DCM web site at:

<http://dcm2.enr.state.nc.us/Permits/consist.htm>

### **EASTERN BAND OF THE CHEROKEE INDIANS TRIBAL WATER QUALITY CERTIFICATIONS**

In a letter dated May 8, 2007, US EPA, on behalf of the Eastern Band of Cherokee Indians, provided Tribal General Conditions for Nationwide Permits on Cherokee Indian Reservation. These Tribal General Conditions are located on the Corps website at:

<http://www.saw.usace.army.mil/WETLANDS/NWP2007/EBCI-certs.html>

#### **Citations:**

2007 Nationwide Permits Public Notice for Final Issue Date: March 15, 2007

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2007 SAW Regional Conditions – Authorized June 1, 2007

This and other information can be found on the Corps web site at:

<http://www.saw.usace.army.mil/WETLANDS/NWP2007/nationwide-permits.html>