

## **Public Notice**

### **Final Regional Conditions for Nationwide Permits**

**Purpose:** The proposed Regional Conditions for Nationwide Permits in the Wilmington District are Final, as per approval by and signature of the South Atlantic Division Engineer, dated 17 May 2002. This Notice contains the Final Regional Conditions for Nationwide Permits in the Wilmington District (see Attachment 1).

**Background:** The Corps of Engineers reissued all the existing Nationwide Permits (NWP), General Conditions (GCs), and definitions, with some modifications, and added one new General Condition. In addition to the NWP general conditions, Corps Districts are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. The Final NWPs, GCs, and associated definitions became effective on March 18, 2002. The Final Regional Conditions for the Wilmington District became effective on May 17, 2002.

The Wilmington District issued an initial public notice on August 24, 2001, soliciting comments on draft proposed Regional Conditions to accompany the original August 9, 2001 proposed Nationwide Permits, definitions and General Conditions. The Wilmington District also issued a public notice on February 14, 2002 for revised Regional Conditions, reflecting the comments received from the proposed conditions and incorporating changes needed due to the revisions made for the Final Nationwide Permits and General Conditions. The Wilmington District prepared Environmental Analyses for each of the Nationwide Permits with Regional Conditions for consideration by the South Atlantic Division Engineer.

In the analyses, the South Atlantic Division Engineer considered the public comments, the potential cumulative adverse effects on the aquatic environment that could result from the use of each NWP and the regional conditions, the exclusion of the NWPs from certain geographic areas or specific water bodies, and other required conditions to further ensure that each and all NWPs in the District shall not authorize activities that may exceed the minimal adverse effects threshold.

**Concurrences and Certifications:** The State of North Carolina Division of Water Quality (DWQ) issued the Section 401 Water Quality Certification for the Nationwide Permits on March 18, 2002. The DWQ 401 Certification Documents are online via the Internet. The link is as follows: <http://h2o.enr.state.nc.us/newetlands/certs.html> (As noted in these documents, DWQ has added General Conditions to the Corps NWPs and the District Regional Conditions.) The US EPA approved Section 401 Water Quality Certification conditions for Nationwide Permits for waters within the tribal jurisdiction of the Eastern Band of the Cherokee Indians on March 18, 2002 (see Attachment 2). The Coastal Zone Management Act consistency determination for this NWP was issued on April 26, 2002 (see Attachment 3).

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

### **I. Waters Excluded from NWP or Subject to Additional Notification Requirements:**

#### **(a) The Corps identified waters that will be excluded from use of this NWP. These waters are:**

- 1) Discharges into Waters of the United States designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning area are prohibited during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.
- 2) Discharges into Waters of the United States designated as sturgeon spawning areas are prohibited during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).

#### **(b) The Corps identified waters that will be subject to additional notification requirements for activities authorized by this NWP. These waters are:**

- 1) Prior to the use of any NWP in any of the following North Carolina *designated waters*, applicants must comply with Nationwide Permit General Condition 13. In addition, the applicant must furnish a written statement of compliance with all of the conditions of the applicable Nationwide Permit. The North Carolina *designated waters* that require additional notification requirements are “Outstanding Resource Waters” (ORW) and “High Quality Waters” (HQW) (as defined by the North Carolina Division of Water Quality), or “Inland Primary Nursery Areas” (IPNA) (as defined by the North Carolina Wildlife Resources Commission), or contiguous wetlands (as defined by the North Carolina Division of Water Quality), or “Primary Nursery Areas” (PNA) (as defined by the North Carolina Division of Marine Fisheries).
- 2) Applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) coastal counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities 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) for authorization to begin work.
- 3) Prior to the use of any NWP on a Barrier Island of North Carolina, applicants must comply with Nationwide Permit General Condition 13. In addition, the applicant

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shall furnish a written statement of compliance with all of the conditions listed of the applicable Nationwide Permit.

4) Prior to the use of any NWP in a “Mountain or Piedmont Bog” of North Carolina, applicants shall comply with Nationwide Permit General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP.

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

Swamp Forest-Bog Complex  
Forest

Swamp Forest-Bog Complex (Spruce Subtype)  
Southern Appalachian Bog (Northern Subtype)  
Southern Appalachian Bog (Southern Subtype)  
Southern Appalachian Fen

Piedmont Bogs

Upland Depression Swamp

5) Prior to the use of any NWP in Mountain Trout Waters within twenty-five (25) designated counties of North Carolina, applicants shall comply with Nationwide General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP. Notification will include a letter of comments and recommendations from the North Carolina Wildlife Resources Commission (NCWRC), the location of work, a delineation of wetlands, a discussion of alternatives to working in the Mountain Trout Waters, why other alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the Mountain Trout Waters. To facilitate coordination with the NCWRC, the proponent may provide a copy of the notification to the NCWRC concurrent with the notification to the District Engineer. The NCWRC will respond both to the proponent and directly to the Corps of Engineers.

The twenty-five (25) designated counties are:

Alleghany	Ashe	Avery	Yancey
Buncombe	Burke	Caldwell	Wilkes
Cherokee	Clay	Graham	Swain
Haywood	Henderson	Jackson	Surry
Macon	Madison	McDowell	Stokes
Mitchell	Polk	Rutherford	
Transylvania	Watauga		

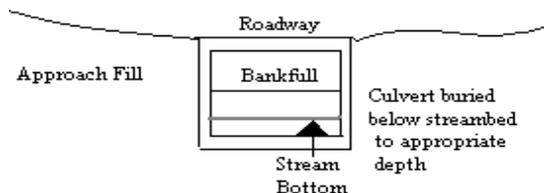
6) Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination of the disposal area and allow a temporary shellfish closure to be made.

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Any disposal of sand to the 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. If beach disposal was to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swim advisory shall be posted and a press release shall be made. NCDENR Shellfish Sanitation Section must be notified before commencing this activity.

## II. List of Final Corps Regional Modifications and Conditions for All Nationwide Permits

- 1) Individual or multiple NWPs may not be used for activities that result in the cumulative loss or degradation of greater than 300 total linear feet of perennial streambed or intermittent streambed that exhibits important aquatic function(s).
- 2) Prior to the use of any NWP (except 13, 27, and 39) for any activity that has more than a total of 150 total linear feet of perennial streambed impacts or intermittent streambed impacts (if the intermittent stream has important aquatic function), the applicant must comply with Nationwide Permit General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP. Compensatory mitigation is typically required for any impact that requires such notification. [Note: The Corps uses the Intermittent Channel Evaluation Form, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of the intermittent channel stream status. Also, NWPs 13, 27 and 39 have specific reporting requirements.]
- 3) For all Nationwide Permits 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.
- 4) For all Nationwide Permits that allow for the use of riprap material for bank stabilization, filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.
- 5) For all NWPs that involve the construction of culverts, measures will be included in the construction that will promote the safe passage of fish and other aquatic organisms. All culverts in the 20 CAMA coastal counties must be buried to a depth of one foot



below the bed of the stream or wetland. For all culvert construction activities, the

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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. Culvert inverts will be buried at least one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or smaller, culverts must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter of the culvert. Bottomless arch culverts will satisfy this condition. A waiver from the depth 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 more adverse impacts to the aquatic environment.

### III. Additional Regional Conditions Applicable to Specific Nationwide Permits

#### **A. NWP #5 – Scientific Measurement Devices**

- 1) All weirs and flumes authorized by this NWP must be removed immediately upon completion of their intended use.
- 2) Weirs and flumes are not authorized by this NWP in areas designated by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas or designated as “Inland Primary Nursery Areas” by the NC Wildlife Resources Commission.

#### **B. NWP # 7 - Outfall Structures and Maintenance**

- 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.

#### **C. NWP #12 - Utility Line Activities**

- 1) Pipeline/utility line construction through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.
- 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.
- 3) The areas of waters of the United States to be disturbed will be limited to the minimum necessary to install the utility line. The work area authorized by this permit, including temporary access roadways and permanent fills, will be minimized to the

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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) Temporary access roadways will not span more than one-half the distance across any waters of the United States including wetlands at any one time.

5) 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.

6) 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.

7) 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 shall be governed by the system voltage, as indicated below:

<u>Nominal System Voltage, kilovolt</u>	<u>Minimum Clearance Above Bridge Clearance</u>	(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	

8) A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required pre-construction notification (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.



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- 4) NWP 14 cannot be used for private projects located in tidal waters or tidal wetlands.
- 5) The activities associated with NWP 14 require a pre-construction notification if they will result in the loss of greater than 150 total linear feet of perennial streambed or intermittent stream that exhibits important aquatic function(s).

### **F. NWP #18 – Minor Discharges**

- 1) This NWP may not be used in conjunction with NWP #14 to create high ground for road access using NWP #14.

### **G. NWP #33 – Temporary Construction, Access and Dewatering**

- 1) The required restoration plan must include a timetable for restoration activities.

### **H. NWP #35 – Maintenance Dredging of Existing Basins**

- 1) No excavation of special aquatic sites, such as submerged aquatic vegetation (SAV) areas and wetlands, is permitted.
- 2) Applicants are advised to notify the NCDENR Shellfish Sanitation Section prior to dredging in an area closed to shellfishing, where the effluent may be released to an area open for shellfishing or swimming, to avoid contamination of the disposal area and so that a temporary shellfish closure can be made. Disposal of sand to the beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and not dredged sand from closed shellfishing areas. If beach disposal was to occur at times other than stated above or if sand from a closed shellfishing area is to be used, a swim advisory shall be posted and a press release shall be made. NCDENR Shellfish Sanitation Section must be notified.

### **I. NWP #36 – Boat Ramps**

- 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.
- 2) Placement of boat ramps in waters that support submerged aquatic vegetation (SAV) may result in propeller damage and re-suspension of sediments that can reduce light penetration and photosynthesis. Therefore boat ramps will not be sited over areas of

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submerged aquatic vegetation, or sited in areas where boating activities may result in either direct or indirect disturbance or loss of SAV beds. Contact the NCDCCM, NCDMF or the NMFS for assistance in determination regarding the presence of SAV.

### **J. NWP # 39 - Residential, Commercial, and Institutional Developments**

- 1) Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.
- 2) Single-family recreational facilities are not authorized under NWP 39. Recreational facilities, if they are incorporated into and serving an entire residential, commercial, or institutional development, can be authorized by this NWP.

### **K. NWP # 40 - Agricultural Activities**

- 1) This nationwide permit does not apply to channelized streams.

### **L. NWP # 41 - Reshaping Existing Drainage Ditches.**

- 1) 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.
- 2) Proponents must take all appropriate measures to avoid modifying the reach and circulation of waters within wetlands adjacent to the reshaped ditch.
- 3) This nationwide permit does not apply to channelized streams.

### **M. NWP # 43 - Stormwater Management Facilities**

- 1) Discharges into wetlands and in perennial streams are prohibited under this NWP.

### **N. NWP # 44 - Mining Activities**

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