

## Enclosure A

### Draft Regional Conditions 201~~27~~

#### NOTICE ABOUT WEB LINKS IN THIS DOCUMENT:

The web links (both internal to our District and any external links to collaborating agencies) in this document are valid at the time of publication. However, the Wilmington District Regulatory Program web page addresses, as with other agency web sites, may change over the timeframe of the five-year Nationwide Permit renewal cycle, in response to policy mandates or technology advances. While we will make every effort to check on the integrity of our web links and provide re-direct pages whenever possible, we ask that you report any broken links to us so we can keep the page information current and usable. We apologize in advanced for any broken links that you may encounter, and we ask that you navigate from the regulatory home page ([Regulatory Permit Program Wetlands and Streams](#))~~wetlands and stream permits~~ of the Wilmington District Corps of Engineers, to the “Permits” section of our web site to find links for pages that cannot be found by clicking directly on the listed web link in this document.

### Final 201~~27~~ Regional Conditions for Nationwide Permits (NWP) 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-watersheds~~ of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (See Section 2.7 for [information a list of on](#) the ~~twenty-five~~ ~~designated~~ trout ~~counties-watersheds~~).

##### 1.3 Sturgeon Spawning Areas as Designated by the National Marine Fisheries Service (NMFS)

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 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

For proposed activities within Waters of the U.S. that require a Pre-Construction Notification (PCN) pursuant to General Condition 31 (PCN) and are located in the sixteen counties listed below, ~~applicants-permittees~~ must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 18 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-permittees~~ which provides guidelines on how to review linked websites and maps in order to fulfill NWP ~~G~~ General ~~C~~ eondition 18 requirements:

<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/AgencyCoordination/ESA.aspx>

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

~~Applicants-Permittees~~ who do not have internet access may contact the appropriate US Fish and Wildlife Service offices listed below or the US Army Corps of Engineers at (910) 251-4633:

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, Forsythe 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, ~~except NWP 3,~~ that involves a discharge of dredged or fill material in any of the following identified waters and ~~contiguous or adjacent~~ wetlands in North Carolina, ~~applicants must~~ permittees shall submit a PCN to the district engineer prior to commencing the activity (comply with Nationwide Permit General Condition 3+2) (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

**Commented [RDS1]:** Excluded NWP 3 from this condition based on the minor impacts usually associated with maintenance activities. In many cases, maintenance activities will improve current situations and can result in benefits to the aquatic environment.

“Outstanding Resource Waters” (ORW) or “High Quality Waters” (HQW) as designated by the North Carolina Environmental Management Commission; ~~“Inland Primary Nursery Areas” (IPNA) as designated by the NCWRC;~~ “Primary Nursery Areas” (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and the NCWRC; or wetlands adjacent to these waters. ~~“Contiguous Wetlands” as defined by the North Carolina Environmental Management Commission.~~ Definitions of ORW, HQW and PNA waters can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

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

Non-federal ~~applicants~~ permittees 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. Development 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 – 69 Darlington Avenue, Wilmington, NC 28403, (910) 251-4802 or Washington Field Office – 2407 West 5th Street, Washington, NC 27889, (910) 251-4610).

## 2.4 Barrier Islands

Prior to the use of any NWP on a barrier island of North Carolina, ~~applicants~~ permittees must submit a PCN to the district engineer prior to commencing the activity (comply with (see Nationwide Permit General Condition 3+2) (PCN).

## 2.5 Mountain or Piedmont Bogs

Prior to the use of any NWP in a Bog classified by the North Carolina Wetland Assessment Methodology (NCWAM), ~~applicants-permittees shall submit a PCN to the district engineer prior to commencing the activity (see General Condition 32), shall comply with Nationwide Permit General Condition 31 (PCN).~~ The latest version of NCWAM can be viewed ~~is on the Corps RIBITS (Regulatory In-lieu Fee and Bank Information Tracking System) website or at the following World Wide Web Page: located on the NC DWQ web site at:~~ [https://ribits.usace.army.mil/ribits\\_apex/f?p=107:27:0::NO::](https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::) ~~http://portal.ncdenr.org/web/wq/swp/ws/pdu/newam.~~

## 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-permittees shall submit a PCN to the district engineer prior to commencing the activity (see General Condition 32), shall comply with Nationwide Permit General Condition 31 (PCN).~~

## 2.7 Trout Waters

Prior to any discharge of dredge or fill material into streams, waterbodies or wetlands within the 294 designated trout watersheds of North Carolina, the permittee shall submit a PCN (see General Condition 32) to the district engineer prior to commencing the activity, unless other thresholds are established in the Regional Conditions in Section 4 (Additional Regional Conditions for Specific Nationwide Permits). The permittee 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 and waters, 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 Watersheds:

<u>NCWRC Contact</u>	<u>Counties that are entirely within Trout Watersheds</u>	<u>Counties that are partially within Trout Watersheds*</u>
<u>Mountain Coordinator</u>	<u>Alleghany Jackson</u>	<u>Burke McDowell</u>
<u>Balsam Depot</u>	<u>Ashe Macon</u>	<u>Buncombe Mitchell</u>
<u>20830 Great Smoky</u>	<u>Avery Swain</u>	<u>Caldwell Polk</u>
<u>Mountain Expressway</u>	<u>Graham Transylvania</u>	<u>Cherokee Rutherford</u>
<u>Waynesville, NC 28786</u>	<u>Haywood Watauga</u>	<u>Clay Surry</u>
<u>Telephone: (828) 400-4223</u>		<u>Henderson Wilkes</u>
		<u>Madison Yancey</u>

\*NOTE: To determine notification requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for each County at the following World Wide Web page: (<http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>.....)

Commented [A2]: We will create a web page to host the 14 county-specific pdfs.

Commented [RDS3]: The last page of this document is an example of a county map that will be available on our website.

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 31 (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**

Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
20830 Great Smoky Mtn. Expressway	Ashe	Mitchell	Wilkes
Waynesville, NC 28786	Avery	Stokes	
Telephone: (828) 452-2546	Burke	Surry	

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

**2.8 Western NC Waters and Corridors**

The permittee shall submit a PCN (see General Condition 32) to the district engineer prior to commencing the activity if the activity will occur within any of the following identified waters in western North Carolina, or within 0.5 mile on either side of these waters, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

- Caney Fork Creek
- Cartoogechaye Creek
- Chattooga River
- Cheoah River
- Cullasaja River
- Ellijay Creek
- Hiwassee River
- Little Tennessee River

Nantahala River  
North Fork French Broad River  
Nottley River  
Oconaluftee River  
Snowbird Creek  
Stecoah Creek  
Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)  
Valley River  
West Fork French Broad River

### 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, intermittent or ephemeral stream, unless the ~~D~~istrict ~~Commander-engineer~~ has waived the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis and he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. Waivers for the loss of ephemeral and intermittent streams must be in writing and documented by appropriate/accepted stream quality assessments\*. This waiver only applies to the 300 linear feet threshold for NWPs.

This Regional Condition does not apply to NWP 23 (Approved Categorical Exclusions).

\*NOTE: ~~Applicants Permittees~~ should utilize the most current methodology prescribed by Wilmington District to assess stream function and quality. Information can be found at: [https://ribits.usace.army.mil/ribits\\_apex/f?p=107:27:0::NO::](https://ribits.usace.army.mil/ribits_apex/f?p=107:27:0::NO::)  
<http://www.saw.usace.army.mil/wetlands/permits/nwp/nwp2012> (see "Quick Links")

#### 3.2 Mitigation for Loss of Stream Bed

For any NWP that results in a loss of more than 150 linear feet of ~~perennial and/or ephemeral/intermittent~~ stream, the ~~applicant-permittee~~ shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment. For stream losses ~~of 150 linear feet or less less than 150 linear feet~~, that require a PCN, the ~~District-district~~ ~~Commander-engineer~~ 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, intermittent or ephemeral stream, the ~~permittee/applicant shall submit a PCN to the district engineer prior to commencing the activity (see General Condition 32), must comply with Nationwide Permit General Condition 31 (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, live or fresh concrete, including bags of uncured concrete, may not come into contact with the water in or entering into waters of the US. Water inside coffer dams or casings that has been in contact with wet concrete shall only be returned to waters of the US after the concrete is set and cured and when it ~~is~~ no longer poses a threat to aquatic organisms.

### 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. The placement of filter fabric is not required if the riprap will be set or "keyed" into the bank of the waterbody.

**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 ~~C~~eondition would result in greater adverse impacts to the aquatic environment.

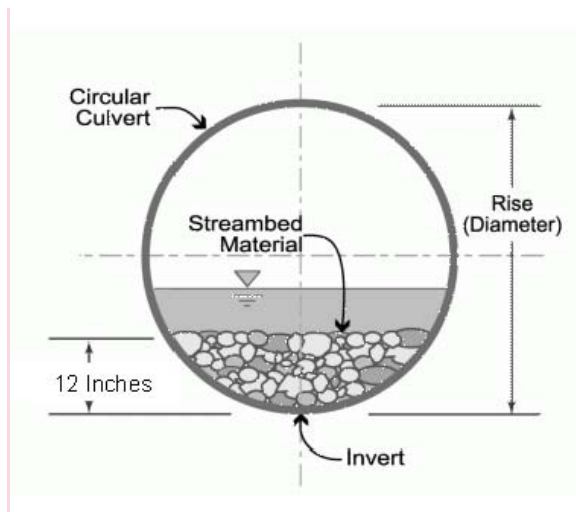
### 3.6 Safe Passage Requirements for Culvert Placement

For all NWPs 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

**Commented [RDS4]:** The placement of filter fabric behind riprap restricts the ability to key/push the rip rap into the bank. As a result, the placement of filter fabric in these cases can allow for an increase in erosion along the bank behind the rip-rap. This condition is regularly waived when the applicant proposes to key the rip-rap into stream banks.

organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by ~~altering the width or depth of the stream profile 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 culvert should be ~~such sufficient 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, bank-full flow can be used as a comparable indicator.

In Public Trust Areas of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the culvert at least one foot below normal bed elevation. ~~In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipes/culverts must be sufficiently sized to allow for the burial of the bottom of the pipe/culvert 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) 7.5-minute quadrangle maps.~~



In all other ~~counties~~ areas: 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.

**Commented [RDS5]:** We removed blue line streams from the coastal counties portion of the original Regional Condition. We feel that these streams are far more similar to non-coastal county streams than they are to streams located in AECs. A waiver of the depth specification is regularly waived for the blue line streams located in these areas. This change is consistent with NCDWR (401) and NDCM (CAMA GP) rules/conditions.



Culverts ~~are to be~~must be designed and constructed in a manner that minimizes destabilization and head cutting. Destabilizing the channel and head cutting upstream should be considered and appropriate actions incorporated in the design and 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 within riparian and/or riverine wetlands must be installed in a manner that does not restrict the flow and circulation patterns of waters of the United States. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried.

### 3.7 Notification to NCDENR Shellfish Sanitation Section

~~Applicants~~Permittees 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 by the permittee.

### 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), unless EFH Consultation has been completed pursuant to the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). Permittees shall submit a PCN (See NWP General Condition 32) to the district engineer prior to commencing the activity if the project would affect SAV. The permittee may not begin work until notified by the Corps that the requirements of the Magnuson-Stevens Act have been satisfied and that the activity is authorized.~~

Commented [RDS6]: Revised to allow for EFH consultation.

### 3.9 Sedimentation and Erosion Control Structures and Measures

~~3.9.1.~~ All PCNs will identify and describe sedimentation and erosion control structures and measures proposed for placement in waters of the US. The structures and measures should be depicted on maps, surveys or drawings showing location and impacts to jurisdictional wetlands and streams.

### **3.10 Restoration of Temporary Impacts to Streambeds**

Upon completion of work that involves temporary stream impacts, streambeds are to be restored to pre-project elevations and widths using natural streambed material such that the geomorphology of the impacted stream reach mimics the adjacent upstream and downstream reach. The impacted area shall be backfilled with natural streambed material to a depth of at least 12 inches or to the bottom depth of the impacted area if shallower than 12 inches. An engineered in-stream structure or material can be used to provide protection of a buried structure if it provides benefits to the aquatic environment and can be accomplished by a natural streambed design. A permittee may request a waiver of this condition if it is determined a buried structure needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

### **3.11 Restoration of Temporary Impacts to Stream Banks**

Upon completion of work involving temporary stream bank impacts, stream banks are to be restored to pre-project grade and contours or beneficial grade and contours if the original bank slope is steep and unstable. Natural durable materials, native seed mixes, and native plants and shrubs are to be utilized in the restoration. Natural designs which use bioengineered and/or geoengineered methods are to be applied. An engineered structure or material can be used to provide protection of a buried structure if it provides benefits to the stream bank environment, provided it is not in excess of the minimum amount needed for protection and does not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark. A permittee may request a waiver of this condition if it is determined a buried structure needs significant physical protection beyond those provided in this condition. This condition does not apply to NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

**Commented [RDS7]:** Added these conditions to ensure that minimal impacts to the aquatic environment.

### **3.12 Federal Navigation Channel Setbacks and Corps Easements**

**3.12.1** Authorized structures and fills 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>. This general permit does not authorize the construction of hardened or permanently fixed structures within the Federally Authorized Channel Setback, unless the activity is approved by the Corps. The permittee shall submit a PCN (see General Condition 32) to the district engineer prior to the construction of any structures or fills within the Federally Authorized Channel Setback.

**3.12.2** The permittee shall obtain a Consent to Cross Government Easement from the Wilmington District's Land Use Coordinator prior to any crossing of the Corps easement and/or prior to commencing construction of any structures, authorized dredging or other work within the right-of-way of, or in proximity to, a federally designated disposal area. The Land Use Coordinator may be contacted at: CESAW-OP-N, 69 Darlington Avenue, Wilmington, North Carolina 28403-1343, email: SAWWeb-NAV@usace.army.mil

**Commented [RDS8]:** These conditions were added to ensure minimal impacts to navigation, federal projects and property ownership.

### **3.13 Northern Long-eared Bat – Endangered Species Act Compliance**

The Wilmington District Corps of Engineers has consulted with the United States Fish and Wildlife Service (USFWS) in regards to the threatened Northern long-eared bat (NLEB) (*Myotis septentrionalis*) and a Standard Local Operating Procedure for Endangered Species (SLOPES) has been approved by the Corps and the USFWS. The SLOPES applies to all projects, including non-federal aid North Carolina Department of Transportation (NCDOT) projects, located in the western 41 counties of North Carolina, and to all non-NCDOT projects in the 59 eastern counties of North Carolina.

The SLOPES can be viewed on the Corps website at the following World Wide Web Page: [XX](http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf). The range map for the NLEB can be viewed on the USFWS website at the following World Wide Web Page: <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>

Commented [RDS9]: A link will be added once the SLOPES are posted to the website.

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

**3.13.1** All permittees using a NWP for a project that is located in the range of the NLEB, or that will involve percussive activities (e.g., blasting, pile driving, etc.), are required to check the following websites to discover if their project (1) is located in a 12-digit Hydrologic Unit Code area (“red HUC” - shown as red areas on the map), AND/OR, (2) 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: <http://www.fws.gov/raleigh/index.html>.

A permittee must submit a 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, and/or bridge removal or repair (when the bridge has not been inspected for bat usage or the bridge has been inspected and there is evidence of bat use) in a red HUC, AND/OR:
- Percussive activities in a red HUC, or within 0.25 mile of a red HUC.

Note - 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.

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

### **4.1 NWP #1 – Aids to Navigation**

This NWP does not authorize the construction of utility lines, including electrical service cables.

Commented [RDS10]: Consistent with regulations at 33 CFR 322

#### **4.1 NWP #3 – Maintenance**

**4.1.1** In designated trout watersheds, a PCN is not required for impacts less than or equal to 75 linear feet of streams and waterbodies when conducting maintenance activities. Minor deviations in an existing structure's configuration, temporary structures and temporary fills are authorized as part of the maintenance activity. In designated trout watersheds, the permittee shall submit a PCN (see Regional Condition 2.7 and General Condition 32) to the district engineer prior to commencing the activity if; 1) impacts to stream or waterbodies exceed 75 linear feet; 2) the project will involve impacts to wetlands; or 3) the project involves the replacement of a bridge or spanning structure and alters the supporting structure(s) within water of the United States.

**4.1.2** The permittee shall submit a PCN (see NWP General Condition 32) to the district engineer prior to commencing the activity if the activity involves repair, rehabilitation or replacement of impounding structures or parts of impounding structures or fills.

**4.1.3** Where bank stabilization is conducted as part of the maintenance activities, natural durable materials, native seed mixes, and native plants and shrubs are to be utilized. The stabilization activities are to incorporate natural designs, bioengineering and/or geoengineering methods. Pre-engineered structures or materials can be used in the bank stabilization activities if the primary purpose is protection of a crucial structure (house, commercial building, transportation structure, utility structures, etc.) and it is determined natural designs, bioengineering and/or geoengineering methods cannot meet this purpose.

#### **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 Trout Watersheds.

**4.1.3** In designated trout watersheds (see Regional Condition 2.7 and General Condition 32), PCN is not required if the quantity of discharged material will be less than or equal to 25 cubic yards below the plane of the ordinary high water mark.

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

**4.1.1** The applicant-permittee 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.

**4.1.2** 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.

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

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

**4.1.2** 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.

**4.1.3** 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~~ permittee is required to provide this information to the Corps with the initial notification package.

**4.1.4** 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 allowable overdepth of the authorized channel, including all side slopes. 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.

**4.1.5** The minimum clearance\*(see NOTE in 4.3.6.) 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.

**4.1.6** The minimum clearance\* for an aerial line, transmitting electrical power, 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 of the US shall be governed by the system voltage, as indicated below:

Nominal System	Minimum Clearance
Voltage, kilovolt	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

\*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the US beneath the bridge.

**4.1.7** On navigable waters of the US, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the US Army Corps of Engineers in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

**4.1.8** 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.

**4.1.9** For the purposes of this NWP, any permanently maintained corridor along the utility ROW within forested wetlands shall be considered a permanent impact and a compensatory mitigation plan will be required for all such impacts associated with the requested activity if the cumulative total of permanent forested wetland impacts exceeds 1/10-acre.

For permanent forested wetland impacts of 1/10-acre or less, the district engineer may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

**4.1.10** Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent practicable. If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

**4.1.11** When directional boring or horizontal directional drilling (HDD) under waters of the U.S., including wetlands, permittees shall closely monitor the project for hydraulic fracturing or “fracking.” Any discharge from hydraulic fracturing or “fracking” into waters of the U.S., including wetlands, shall be reported to the appropriate Corps Regulatory Field Office within 48 hours. Restoration and/or compensatory mitigation may be required as a result from any unintended discharges.

4.1.12 For purposes of this NWP, the term utility line does not include pipes or culverts associated primarily with driveways, roadways, lots, etc.

#### 4.1 NWP #13 – Bank Stabilization

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

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

4.1.3 If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

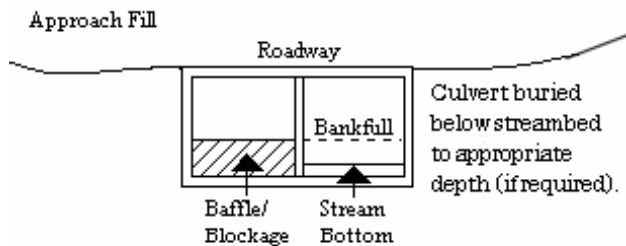
#### 4.1 NWP #14 - Linear Transportation Crossings

4.1.1 If appropriate, ~~applicants-permittees~~ shall employ natural channel design (see definition below and NOTE below) to the maximum extent practicable for stream relocations. All stream relocation proposals shall include a Relocation and Monitoring Plan and a functional assessment of baseline conditions (ex. use of the North Carolina Stream Assessment Methodology). Compensatory mitigation may be required for stream relocations. In the event it is not appropriate 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.

NOTE: For more information on Natural Channel Design, permittees should reference North Carolina Stream Mitigation Guidance on the Corps RIBITS (Regulatory In-lieu Fee and Bank Information Tracking System) website or at the following World Wide Web Page: [https://ribits.usace.army.mil/ribits\\_apex/f?p=107:27:16705499703550::NO:RP:P27\\_BUTTON\\_KEY:0](https://ribits.usace.army.mil/ribits_apex/f?p=107:27:16705499703550::NO:RP:P27_BUTTON_KEY:0) Applicants should reference the “Mitigation” section of the Wilmington District web site for more information regarding appropriate stream design. For projects located within the Coastal Plain ecoregion of North Carolina and within headwater areas across the state, use the specific guidance on coastal plain stream restoration.

4.1.2 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.



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

**4.1.4** 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.

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

**4.1.6** Excavation of existing stream channels shall be limited to the minimum necessary to construct or install the proposed culvert. The final width of the impacted streams at the culvert inlet and outlet should be no greater than the original stream width. A waiver from this condition may be requested in writing. The waiver will be issued if it can be demonstrated that it is not practicable to limit the final width of the culvert to that of the impacted stream at the culvert inlet and outlet and the proposed design would result in less impacts to the aquatic environment.

**4.1.7** In designated trout watersheds, a PCN is not required for impacts less than or equal to 60 linear feet or 1/10-acre of jurisdictional aquatic resources for proposed structures not adjoining, adjacent, or connected to existing structures. In designated trout watersheds, the permittee shall submit a PCN (see Regional Conditions 2.7 and General Condition 32) to the district engineer prior to commencing the activity if: 1) impacts to jurisdictional aquatic resources exceed 60 linear feet or 1/10-acre; 2) the project will involve impacts to wetlands; 3) the primary purpose of the project is for commercial development; or 4) the project involves the replacement of a bridge or spanning structure and alters the supporting structure(s) within waters of the United States.

**4.1 NWP #18 – Minor Discharges**

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

**4.1.2** In designated trout watersheds (see Regional Condition 2.7), a PCN is not required if the quantity of discharged material is less than or equal to 10 cubic yards below the plane of the ordinary high water mark.

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



4.1.1 The discharge of dredged or fill material associated with this NWP must not cause the loss of greater than 1-acre of waters of the United States or 500 linear feet of stream bed for each single and complete project.

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

**4.1 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 PCN for impacts associated with a mitigation project that will be used to supply mitigation credits to NCEEP, the PCN must include a cover letter from the NCEEP stating that they have reviewed and approved your restoration plan.

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

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

4.1.2 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.

4.1.3 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.1.4 Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.1.5 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 (HQW), including only SA, PNA, WS-I and WS-II waters,  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act,  
Wetlands adjacent to SA, PNA, WS-I and/or WS-II waters ~~these waters~~

\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A

**Commented [RDS11]:** Notification is required for impacts to ORWs. This condition was inconsistent with Regional Condition 2.7, which allows work in trout water HQWs after submittal of PCN. This condition was revised to clarify the types of HQW waters that are prohibited. This condition was revised to prohibit activities only in SA, PNA, WS-I and WS-II waters.

02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>.

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

4.1.6 If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

4.1.7 Utility lines authorized by this NWP shall comply with the terms and Regional Conditions of NWP 12.

#### 4.1 NWP #33 – Temporary Construction, Access and Dewatering

4.1.1 The permittee shall submit a PCN to the district engineer prior to commencing the activity if the activity will involve the discharge of dredged or fill material into more than 1/10-acre of wetlands or 150 linear feet of waters for the construction of temporary access fills and road crossings.

4.1.2 For activities that require a PCN, the PCN must include a restoration plan that thoroughly describes how all temporary fills will be removed, how pre-project conditions will be restored, and include a timetable for all restoration activities.

#### 4.1 NWP #35 – Maintenance Dredging of Existing Basins

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

#### 4.1 NWP #36 – Boat Ramps

4.1.1 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~~ ordinary high water mark elevation contour in non-tidal areas. A waiver from this condition may be requested in writing. The waiver will be issued if the permittee can demonstrate that it is not practicable to construct the boat ramp within 20 feet from the mean high water mark or ordinary high water mark.

4.1.2 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/Permittees are encouraged to contact the NCDWM, NCDMF or the NMFS for assistance in determining the presence of SAV.

**Commented [RDS12]:** NWP 33 will no longer require a PCN, unless the activity is in navigable waters of the United States. We will be requiring notification for NWP 33 if it exceeds these thresholds to make sure that temporary impacts will be temporary and to ensure minimal impacts to the aquatic environment.

#### 4.1 NWP #39 - Commercial, and Institutional Developments

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

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

4.1.3 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.1.4 Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.1.5 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:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters,  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act,  
Wetlands adjacent to these HQW waters.

\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link:

<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. 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

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

**4.1.6** If riprap stabilization is needed, it should be placed only on the stream banks, or, if it is necessary to be placed in the stream bed, the finished top elevation of the riprap should not exceed that of the original stream bed.

**4.1.7** Utility lines authorized by this NWP shall comply with the terms and Regional Conditions of NWP 12.

#### **4.1 NWP #40 - Agricultural Activities**

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

**4.1.2** 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

**4.1.3** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

**4.1.4** 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:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters,  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act,  
Wetlands adjacent to these HQW waters.

\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. ~~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~~

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

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

**4.1.1** 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.

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

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

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

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

**4.2.2** 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

**4.1.3** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, ~~resulting, resulting~~ in permanent above-grade fills are not authorized by this NWP.

**4.1.4** 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:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters,  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act,  
Wetlands adjacent to these HQW waters.

\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link:

<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. 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~~  
Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

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

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

**4.1.2** 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

**4.1.3** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, resulting in permanent above-grade fills are not authorized by this NWP.

#### **4.1 NWP #44 - Mining Activities**

~~**4.1.1** The 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.~~

**Commented [RDS13]:** Redundant. General Condition 32 requires delineation of special aquatic sites.

**4.1.1** 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

**4.1.2** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

~~4.1.3 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:~~

~~High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters.  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.  
Wetlands adjacent to these HQW waters.~~

~~\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link:~~

~~<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. 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~~

~~Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.~~

#### ~~4.1 NWP # 46 – Discharges into Ditches and Canals~~

~~4.1.1. The applicant must comply with NWP General Condition 31 (PCN) and receive authorization from the US Army Corps of Engineers before beginning work.~~

**Commented [RDS14]:** Redundant. NWP 46 always requires PCN.

~~4.1.2. This NWP cannot be used to remove jurisdiction pursuant to Section 404 of the Clean Water Act upstream of the project site by severing the hydrologic connection.~~

**Commented [RDS15]:** These determinations are made on a case by case basis. This condition is unnecessary.

#### ~~4.1 NWP #48 -Commercial Shellfish Aquaculture Activities~~

~~4.1.1. No development activities authorized by this NWP may begin until the permittee obtains a consistency concurrence or a CAMA permit from the North Carolina Division of Coastal Management, if either required.~~

~~4.1.2 Prior to the use of this NWP (The permittee applicant must shall comply with NWP General Condition 31 (PCN) submit a PCN to the district engineer prior to commencing the activity (see General Condition 32).~~

~~4.1.3 This NWP does not authorize any activity which impacts Submerged Aquatic Vegetation.~~

~~4.1.3 This NWP does not authorize the discharge of any earthen fill material into any waters of the United States.~~

4.1.4 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.

**4.1 NWP #51 - Land-Based Renewable Energy Generation Facilities.**

~~4.1.1 The applicant must comply with NWP General Condition 31 (Pre Construction Notification) and receive authorization from the U.S. Army Corps of Engineers before beginning work.~~

Commented [RDS16]: Redundant. NWP 51 requires PCN.

4.1.1 The PCN must indicate the project life span and include a detailed maintenance, decommissioning and demolition plan for the life of the project.

4.1.2 The PCN must include a detailed remediation plan in the event that the activities authorized by this NWP are damaged by any natural or human-induced event.

4.1.3 For the purposes of this NWP, any permanently maintained corridor in forested wetlands along a 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- if the cumulative total of permanent forested wetland impacts exceeds 1/10-acre.

For permanent forested wetland impacts of 1/10-acre or less, the district engineer may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

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

4.1.5 The minimum clearance\* for an aerial electrical power transmission line crossing navigable waters of the US 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



\*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the US beneath the bridge.

~~4.1. The 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.~~

Commented [RDS17]: Redundant. General Condition 32 requires delineation of special aquatic sites.

4.1.6 On navigable waters of the US, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the US Army Corps of Engineers in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

4.1.7 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

4.1.8 Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

4.1.9 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:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters, Coastal Wetlands as defined by North Carolina's Coastal Area Management Act, Wetlands adjacent to these HQW waters.

~~\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the World Wide Web Page: <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. 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~~

Permittees who do not have internet access may contact the US Army Corps of Engineers at (910) 251- 4633.

#### **4.1 NWP #52 - Water-Based Renewable Energy Generation Pilot Projects.**

~~4.1.1 This permit does not authorize the interference with any existing or proposed Federal project, and the Permittee will not be entitled to compensation for damage or injury to the authorized structure or work which may be caused from existing or future operations undertaken by the United States in the public interest. This includes offshore borrow areas, navigation channels, disposal areas, easements, and rights of way.~~

**Commented [RDS18]:** Redundant. The new NWP's will include a condition similar to this one.

~~4.1.2 No attempt will be made by the Permittee to prevent the full and free use by the public of all navigable waters of the US at or adjacent to the authorized work. The permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.~~

~~4.1.3 The Permittee must install and maintain, at its expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on all authorized facilities constructed within navigable waters of the United States.~~

**Commented [RDS19]:** Redundant. This condition is the same as General Condition 1 of the NWP's.

4.1.1 It is possible that the authorized structure may be damaged by wave wash from passing vessels. The issuance of this permit does not relieve the Permittee from taking all proper steps to ensure the integrity of the permitted structure and the safety of moored boats and barges. The Permittee will not hold the United States liable for any such damage.

~~4.1.5 The applicant must comply with NWP General Condition 31 and receive authorization from the US Army Corps of Engineers before beginning work.~~

**Commented [RDS20]:** Redundant. The terms of NWP 52 require notification.

4.1.2 The PCN must indicate the project life span and include a detailed maintenance, decommissioning and demolition plan for the life of the project.

4.1.3 The PCN must include a detailed remediation plan in the event that the activities authorized by this NWP are damaged by any natural or human-induced event.

~~4.1.8 Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by this NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).~~

**Commented [RDS21]:** Redundant. This is addressed in Regional Condition 3.8

4.1.4 For the purposes of this NWP, any permanently maintained corridor in forested wetlands 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 if the cumulative total of permanent forested wetland impacts exceeds 1/10-acre.

For permanent forested wetland impacts of 1/10-acre or less the district engineer may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

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

**4.1.6** 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 allowable overdepth of the authorized channel, including all side slopes. 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.

**4.1.7** The minimum clearance\* for an aerial electrical power transmission line crossing navigable waters of the US 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

\*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the Mean High Water (MHW) of the navigable waters of the US beneath the bridge.

**4.1.8** On navigable waters of the US, including all federal navigation projects, where there is no bridge for reference for minimum clearance, the proposed project will need to be reviewed by the US Army Corps of Engineers in order to determine the minimum clearance between the line and MHW necessary to protect navigational interests.

~~**4.1.14** The (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.~~

**Commented [RDS22]:** Redundant. General Condition 32 requires delineation of special aquatic sites.

**4.1.9** 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.

\*NOTE: Floodway-The area designated and/or regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface

elevation is no more than a designated height identified by the regulating entity within the 100-year floodplain.

**4.1.10** Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

**4.1.11** 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:

High Quality Waters (HQW), including only SA, PNA, WS-I and WS-II waters,  
Coastal Wetlands as defined by North Carolina's Coastal Area Management Act,  
Wetlands adjacent to these HQW waters.

\*NOTE: Definitions of HQW, SA, PNA, WS-I, WS-II waters and Coastal Wetlands can be found in the North Carolina State Administrative Code, Title 15A, Subchapter 2B (NCAC 15A 02B) and at the following World Wide Web page: <http://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/rules>. Surface water classifications for waters in North Carolina can be viewed at the North Carolina Division of Water Resources website or at the following link:

<https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards>. 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

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**4.1.12** Transmission lines necessary to transmit electricity from an offshore energy-producing facility will be designed, constructed and placed in a manner so as not to endanger the public or the public's use of the beach.

#### **NWP B - Living Shorelines**

**4.1.1** The permittee shall submit a PCN to the district engineer prior to commencing construction or maintenance of living shorelines (see General Condition 32).

**4.1.2** This NWP does not authorize any activities along Atlantic Coast beaches.

**4.1.3** The landward edge of the sill shall be positioned no more than 5 feet waterward from the edge of locally growing wetlands or to the mid-tide depth contour, whichever is deeper. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the mean high water mark in tidal waterbodies or the ordinary high water mark in

**Commented [RDS23]:** Most of these conditions are similar and consistent with DCM's CAMA GP for living shorelines.

non-tidal waterbodies. For waterbodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one-sixth (1/6) the width of the waterbody. A waiver from this condition may be requested in writing. These requirements will be waived if the district engineer determines that the activity will result in no more than minimal adverse environmental effects.

4.1.4 The height of sills shall not exceed six inches above mean high water in tidal waterbodies or the ordinary high water in non-tidal waterbodies.

4.1.5 The sills shall have at least one five-foot opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot opening between sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these opening requirements shall be allowable following coordination with appropriate resource agencies or personnel.

4.1.6 The sill structure shall not exceed a slope of a one and a half foot rise over a one foot horizontal distance and a minimum slope of a one foot rise over a two foot horizontal distance. The width of the structure on the bottom shall be no wider than 15 feet.

4.1.7 Sills shall be marked at 50-foot intervals with reflectors extending at least three feet above mean high water in tidal water bodies or the ordinary high water mark in non-tidal waterbodies.

4.1.8 Sill material shall be free of loose sediment and exposed rebar.

4.1.9 The PCN shall include a restoration plan if the living shoreline or marsh sill project will involve marsh restoration. The restoration plan must describe the current and proposed grades of the restoration areas, the type and location of species that will be planted, and a monitoring plan.

4.1.10 Remedial action, including removal, will be required for structures that fail to restore marsh. This condition applies only projects that involve a marsh restoration component.

This picture is an example of a county map that will be posted on our website. This map will be used to locate the trout watersheds in western counties of North Carolina (see Regional Condition 2.7).

