

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action Id. SAW-2013-02272 County: Dare U.S.G.S. Quad: NC-OREGON INLET

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Permittee: NCDOT, Division Engineer
Jerry Jennings
Address: 113 Airport Drive, Suite 100

Edenton, NC, 27932

Telephone Number:

Size (acres)	0.084 acres	Nearest Town	
Nearest Waterway	<u>Atlantic Ocean</u>	River Basin	<u>Pamlico Sound, North Carolina.</u>
USGS HUC	<u>3020105</u>	Coordinates	Latitude: <u>35.767499</u> Longitude: <u>-75.530101</u>

Location description: The project is located at Bridge Pile Bent #166 on Bridge #11 (Bonner Bridge) on NC Highway 12 crossing over and adjacent to Oregon Inlet which is between the Atlantic Ocean and Pamlico Sound in Dare County, North Carolina.

Description of projects area and activity: Applicant proposes to place 503 concrete A-jacks and 409 sandbags adjacent to bridge pile support Bent #166 to prevent further scour along and between bridge pile support bents. Placement of the A jacks will impact 0.05 acres of ocean bottom and placement of the sandbags will result in filling of 0.08 acres of ocn bottom.

Applicable Law: Section 404 (Clean Water Act, 33 USC 1344)
 Section 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: Regional General Permit Number or Nationwide Permit Number: **PGP 198000291**
SEE ATTACHED RGP or NWP GENERAL, REGIONAL AND SPECIAL CONDITIONS

Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted application and attached information dated November 22, 2013. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order and/or appropriate legal action.

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone 919-807-6300) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management in Elizabeth City, NC, at (252) 264-3901.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact Tracey Wheeler at 910-251-4627 or Tracey.L.Wheeler@usace.army.mil.

Corps Regulatory Official: _____ Date: December 4, 2013
Expiration Date of Verification: December 31, 2016

Determination of Jurisdiction:

- A. Based on preliminary information, there appear to be waters of the US including wetlands within the above described project area. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).
- B. There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- C. There are waters of the US and/or wetlands within the above described project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- D. The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued . Action ID: **SAW-** .

Basis For Determination: The Atlantic Ocean and Oregon Inlet are designated Section 10 Navigable Waters.

Remarks:

E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

F. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B and C above).

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers
South Atlantic Division
Attn: Jason Steele, Review Officer
60 Forsyth Street SW, Room 10M15
Atlanta, Georgia 30303-8801
Phone: (404) 562-5137

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by .

It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.

Corps Regulatory Official: _____
Tracey Wheeler

Date of JD: **December 4, 2013**

Expiration Date of JD: 12/4/2018

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our customer Satisfaction Survey online at <http://per2.nwp.usace.army.mil/survey.html> .

SPECIAL CONDITIONS

- a) All work authorized by this permit must be performed in strict compliance with the attached plans, which are a part of this permit. Any modification to these plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation.
- b) The permittee shall advise the Corps in writing prior to beginning the work authorized by this permit and again upon completion of the work authorized by this permit.
- c) The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, shall be available at the project site during construction and maintenance of this project.
- d) The Permittee shall fully abide by all conditions of the Minor Modification of CAMA Major Development Permit No. 128-04, dated November 27, 2013, issued by the North Carolina Division of Coastal Management, which are incorporated herein by reference.
- e) The permittee shall notify USACE if any endangered species are encountered during construction and if the encounter resulted in a take of the species. This notification will initiate consultation procedures with National Marine Fisheries Service, Protected Resource Division.

Action ID Number: SAW-2013-02272 County: Dare

Permittee: NCDOT, Division Engineer
Jerry Jennings

Project Name: NCDOT/Bridge #11 (Bonner Bridge)/NC Highway 12/TIP B-5014/Bent 166 Repair

Date Verification Issued: December 4, 2013

Project Manager: Tracey Wheeler

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
Attn: Tracey Wheeler

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: **NCDOT, Division Engineer
Jerry Jennings**

File Number: **SAW-2013-02272**

Date: **December 4, 2013**

Attached is:

See Section below

<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
District Engineer, Wilmington Regulatory Division, Attn: Tracey Wheeler

If you only have questions regarding the appeal process you may also contact:
Mr. Jason Steele, Administrative Appeal Review Officer
CESAD-PDO
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street, Room 10M15
Atlanta, Georgia 30303-8801
Phone: (404) 562-5137

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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For appeals on Initial Proffered Permits send this form to:

District Engineer, Wilmington Regulatory Division, Attn: Tracey Wheeler, 2407 West 5th Street, Washington, North Carolina 27889

For Permit denials, Proffered Permits and approved Jurisdictional Determinations send this form to:

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Jason Steele, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801
Phone: (404) 562-5137**

ACTION ID: SAW-2013-02272

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

1. Applicant: NCDOT, Division Engineer
Jerry Jennings

2. Project Location (*Waterway, Section, Township, Range, City, County, State*):

Nearest Waterway Atlantic Ocean

Nearest Town

County Dare

State NC

USGS HUC 3020105

Location description: The project is located at Bridge Pile Bent #166 on Bridge #11 (Bonner Bridge) on NC Highway 12 crossing over and adjacent to Oregon Inlet which is between the Atlantic Ocean and Pamlico Sound in Dare County, North Carolina.

3. Pre-Construction Notification Receipt Date: 11/22/2013

Complete? Yes No

4. Additional Information Requested Date(s): 11/26/2013

5. Pre-Construction Notification Complete Date: November 22, 2013

6. Waters of the US: Bent #166 Bonner Bridge Oregon Inlet

*see Jurisdictional Determination form(s) and/or Preliminary JD letter(s) dated: **December 4, 2013**

7. Authority:

8. Project Description (*Describe activities in waters of the U.S. considered for verification*):

Applicant proposes to place 503 concrete A-jacks and 409 sandbags adjacent to bridge pile support Bent #166 to prevent further scour along and between bridge pile support bents. Placement of the A jacks will impact 0.05 acres of ocean bottom and placement of the sandbags will result in filling of 0.08 acres of ocn bottom.

9. Type of Permit Requested: PGP 291

10. Pre-construction Notification Required: Yes

11. Waiver required to begin work (*see GC 31 (a)(2) as applied to appropriate NWP*s): Yes No

Rationale:

12. Coordination with Agencies/Tribes Needed: Yes No Date: _____

Resolution:

13. Commenting Agencies:

a. US Fish and Wildlife Service

- b. US Environmental Protection Agency
- c. National Marine Fisheries Service
- d. State Agency (list commenting state agencies)
- e. State Historic Preservation Office
- f. Other:

14. Substantive Issues Raised and Corps Resolution (*Consideration of Comments*): Project may impact sea turtles. Due to the emergency situation with the bridge, NMFS agreed to allow work to progress. Applicant must notify USACE if any species are encountered.

15. Compliance with Other Federal Laws (*If specific law is not applicable write N/A*):

a. Endangered Species Act: N/A

(1) Name of species present: Sea Turtle, Loggerhead (*Caretta caretta*) - Northwest Atlantic Ocean north of the equator

(2) Effects determination: No Effect

(3) Date of Service(s) concurrence: December 3, 2013

(4) Basis for “no effect” determination: Due to time of year and potential for structures to be covered with sand, there is little likelihood that the project will adversely effect sea turtles.

(5) Additional information (optional):

b. Magnuson-Stevens Act (Essential Fish Habitat): N/A

(1) Name of species present:

(2) Effects determination: No Effect

(3) Date of Service(s) concurrence:

(4) Basis for “no effect” determination:

(5) Additional information (optional):

c. Section 106 of the National Historic Preservation Act: N/A

(1) Known site present: yes no

(2) Survey required/conducted: yes no

(3) Effects determination: No Effect

(4) Rationale:

(5) Date consultation complete (if necessary):

(6) Additional information (optional):

d. Section 401 Water Quality Certification: N/A

(1) Individual certification required: yes no

(2) Individual Certification: Issued Waived Denied

(3) General Certification required: yes no

(4) Additional Information (optional):

e. Coastal Zone Management Act: N/A

(1) Individual certification (CAMA Major) required: yes no

(2) Individual certification: Issued Waived Denied

(3) Other CAMA permit required: yes no

(4) Additional information (optional):

f. Wild and Scenic Rivers Act: N/A

(1) Project located on designated or "study" river: yes no

(2) Managing Agency:

(3) Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:

(4) Additional information (optional):

g. Other: N/A

16. Special Conditions Required (*include rationale for each required condition/explanation for requiring no special conditions*): **Yes**

a. The activity is conducted in accordance with the information submitted and meets the conditions applicable to the NWP, as described at Part C of the NWP Program and the Wilmington District NWP Regional Conditions.

17. Compensatory Mitigation Determination: The applicant has avoided and minimized impacts to the maximum extent practicable.

a. Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level? No

[If "no," do not complete the rest of this section and include an explanation of why not here] Work will occur within the footprint of the existing bridge structure.

b. Is the impact in the service area of an approved mitigation bank? yes no

(1) Does the mitigation bank have appropriate number and resource type of credits available? yes no

c. Is the impact in the service area of an approved in-lieu fee program? yes no

(a) Does the in-lieu fee program have appropriate number and resource type of credits available? yes no

d. Check the selected compensatory mitigation option(s):

mitigation bank credits

in-lieu fee program credits

- permittee-responsible mitigation under a watershed approach
- permittee-responsible mitigation, on-site and/or in-kind
- permittee-responsible mitigation, off-site and/or out-of-kind

e. If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project):

Determination (*Reference Section D. District Engineer's Decision*):

The proposed activity, with proposed mitigation (if applicable) would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest provided the special conditions and/or modifications identified in the above sections are incorporated. This project complies with all terms and conditions of Regional General Permit 198000291, including any applicable regional conditions.

PREPARED BY:

Date: **December 4, 2013**