

NO WRITING REQUIRED

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890
Draft October 25, 2012

Regional General Permit No. NEW NUMBER
Name of Permittee: General Public
Effective Date: issue date in 2012
Expiration Date: 5 years after issue date in 2017

NO WRITING REQUIRED

**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT**

A regional general permit (RGP) to perform work in or affecting navigable waters of the United States and waters of the United States, upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby modified and re-issued by authority of the Secretary of the Army by the

District Commander
U.S. Army Engineer District, Wilmington
Corps of Engineers
69 Darlington Avenue
Wilmington, North Carolina 28403-1343

TO AUTHORIZE THE DISCHARGE OF DREDGED OR FILL MATERIAL IN WATERS OF THE UNITED STATES, INCLUDING WETLANDS, ASSOCIATED WITH VARIOUS MAINTENANCE, REPAIR, AND CONSTRUCTION PROJECTS CONDUCTED BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT).

Activities authorized are:

- a. Construction, maintenance, and repair of bridges, to include work on the approaches, where permanent impacts will be less than or equal to 300 linear feet (lf) of stream and/or 0.5 acre of wetland for each single and complete linear project**.
- b. Conversion of bridge to culvert, when permanent impacts to waters of the U.S. will be less than or equal to 300 lf of stream and/or 0.5 acre of wetland for each single and complete linear

project.

c. Minor widening projects that will have less than or equal to 300 lf of permanent stream impact and/or 1 acre of wetland for each single and complete linear project.

***Single and complete linear project:* A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of General Permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

same as
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On-site detours are considered as necessary components of the actions described above. However, if the construction of a detour includes standard undercutting methods, then removal of all material and backfilling with suitable material is required.

1. Special Conditions.

a. Written notice/application in the form of a Preconstruction Notification (PCN) to, and written confirmation from the Wilmington District Corps of Engineers (Corps), is NOT required for the activities described above, provided the applicant meets all Special and General Conditions attached to this general permit.

b. This permit does not authorize impacts to "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; "Contiguous Wetlands" as defined by the North Carolina Environmental Management Commission; or "Primary Nursery Areas" (PNA) as designated by the North Carolina Marine Fisheries Commission.

c. Should all or part of a proposed development activity be located in an Area of Environmental Concern (AEC) as designated by the North Carolina Coastal Resources Commission, a Coastal Area Management Act (CAMA) permit is required from the North Carolina Division of Coastal Management before the onset of the proposed activity. Should a Federal activity within any one of North Carolina's twenty coastal counties or which could affect a coastal use or resource in any one of North Carolina's twenty coastal counties be proposed by a Federal agency, a consistency determination pursuant to Subpart "C" of 15 CFR 930 must be prepared and submitted by that Federal agency to the North Carolina Division of Coastal Management before the onset of the proposed activity.

d. Discharges into waters of the United States designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the NCWRC as anadromous fish spawning area are prohibited during the period between February 15 and June 30.

e. Discharges into waters of the United States designated as sturgeon spawning areas are prohibited during the period between February 1 and June 30.

f. This permit does not authorize the use of culverts in areas designated as anadromous fish spawning areas by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC).

g. Upon completion of any work authorized by this RGP, all temporary fills (to include culverts) will be completely removed from waters of the U.S. and the areas will be restored to preconstruction conditions, to include restoring natural hydrology and stream corridors, and reestablishing native vegetation/riparian corridors; this work will be completed within 30 days of completion of work. If vegetation cannot be planted due to the time of the year, all disturbed areas will be seeded with a native mix appropriate for the impacted area, and permanent vegetation will be planted during the first fall planting season following completion of construction

h. In cases where new alignment approaches are to be constructed and the existing approach fill in waters of the U.S. is to be abandoned and no longer maintained as a roadway, the abandoned fill shall be removed and the area will be restored to preexisting conditions, to include restoring natural hydrology and stream corridors, and reestablishing native vegetation/riparian corridors; this work will be completed within 60 days of completion of construction. If vegetation cannot be planted due to the time of the year, all disturbed areas will be seeded with a native mix appropriate to the area impacted, and permanent vegetation will be planted during the first fall planting season following completion of construction. This permit does not allow for these activities to qualify for compensatory mitigation credit.

NO credit
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causeway
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i. Discharges of dredged or fill material into waters of the United States, including wetlands, must be avoided and minimized to the maximum extent practicable. This may include the evaluation of in-culvert baffles, or other design options that might result in less stream or wetland impacts.

j. No activity may result in substantial permanent disruption of the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. Pre-formed scour holes are acceptable when designed for velocity reduction. 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. Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation.

k. If the project is located within the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA), then all pipe and culvert inverts will be buried at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) quad sheets. If the project is not located within the twenty (20) counties of North Carolina designated as coastal counties by CAMA, then culvert inverts will be buried at least one foot below the bed of the stream for culverts greater than 48 inches in diameter. 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 potential for destabilization of the channel and head cutting upstream should be considered in the placement of the culvert. Culverts placed in wetlands do not have to be buried.

l. All activities authorized by this RGP shall, to the extent practicable, be conducted "in the dry", with barriers installed between work areas and aquatic habitat to protect that habitat from cement and other pollutants. Water in the work area will be pumped to holding and settling ponds as practicable, and water will not be allowed to re-enter the water column until the water meets applicable turbidity standards.

m. This permit does not authorize work in areas identified as Essential Fish Habitat (EFH) for federally managed species.

n. The activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows and the structure or discharge of dredged or fill material must withstand expected high flows.

o. The project must be implemented/conducted so that all reasonable and practicable measures to ensure that equipment, structures, fill pads, and work associated with the project do not adversely affect upstream and/or downstream reaches. Adverse effects include, but are not limited to, channel instability, flooding, and/or shoreline/stream bank erosion. During construction, the permittee shall routinely monitor for these effects, cease all work if/when detected, take initial corrective measures to correct actively eroding areas, and notify the Corps immediately. Permanent corrective measures may require additional authorization from the Corps.

p. Before discharging dredged or fill material into waters of the U.S. in the twenty-five

(25) mountain trout counties of North Carolina, NCDOT shall contact (in writing – e-mail is acceptable) the appropriate NCWRC office with a description of project location, scope, and type, to determine if the project is located in a trout stream* or is located less than 500 ft upstream of the confluence with a trout stream and which species of trout is present. If the project is located in either of the locations described above, the project will not qualify for this RGP and a PCN must be provided to the District Engineer prior to the commencement of work in Waters of the US.

If in trout stream or less than 500' upstream - need written

The twenty-five (25) designated trout counties of North Carolina include Alleghany, Caldwell, Watauga, Ashe, Mitchell, Wilkes, Avery, Burke, Stokes, Surry, Buncombe, Henderson, Polk, Cherokee, Jackson, Rutherford, Clay, Macon, Swain, Graham, Madison, Transylvania, Haywood, McDowell, and Yancey.

NCDOT may contact NCWRC at:

Non-TIP projects in the 27 trout counties:

North Carolina Wildlife Resources Commission
Mr. Dave McHenry
Mountain Region Coordinator
20830 Great Smoky Mtn. Expressway
Waynesville, NC 28786
(828) 452-0422, ext. 24 – phone
(828) 452-7772 – fax
david.mchenry@ncwildlife.org

TIP projects in the 27 trout counties:

North Carolina Wildlife Resources Commission
Ms. Marla Chambers
Western NCDOT Permit Coordinator
12275 Swift Road
Oakboro, NC 28129
Office & Fax: 704-485-8291
marla.chambers@ncwildlife.org

* The term "trout stream(s)" as used in this GP, means any stream on private or public lands where trout are present; it is not defined as state designated trout streams. NCDOT will coordinate separately with NCDLR regarding designated trout streams and work in the trout buffers of those streams.

q. Compensatory mitigation, satisfied by the NC Ecosystem Enhancement Program (NCEEP), will be required at the standard 2:1* ratio for all culvert/pipe and fill impacts. All Corps approved functional assessments must be used to verify that a mitigation ratio higher than 2:1 would not be applicable. If the assessment supports a ratio higher than 2:1, the project will need to be assessed individually and is not authorized by this General Permit. and All the mitigation will be located in the same 8-digit Hydrologic Cataloging Unit (HUC) as the impact. If mitigation is not available through NCEEP in the same 8-digit HUC, an adjacent HUC within the same river basin may be used, but the required amount of mitigation will be doubled (e.g., 40' of impact to a good quality (2:1) stream = 80 credits required. If mitigated in an adjacent HUC = 160 total credits required). If in-kind mitigation is not available, out-of-kind mitigation may be used for all resource types (excluding coastal wetlands), but the required amount of

temporary?

mechan cleaning? hand cleaning?

mitigation will be doubled (e.g., 40' of impact to an excellent quality (3:1) cold water stream = 120 credits required. If mitigated with a cool water stream = 240 total credits required).

If the project will require mitigation due to impacts to coastal wetlands and in-kind mitigation is not available in-HUC through NCEEP, the project will need to be assessed individually and is not authorized by this General Permit.

Mitigation will not be required for stream bank stabilization efforts provided no material is placed within the bed of the stream and the amount is limited to the minimum amount needed for stability.

Other forms of mitigation, such as mitigation bank credits or on-site mitigation may be considered acceptable mitigation, or in some cases a lower mitigation ratio may be appropriate; however these will need to be assessed on a case-by-case basis and are not authorized by this General Permit.

r. NCDOT shall submit a comprehensive, state-wide quarterly report that summarizes all Division mitigation requirements applicable to this permit to the Wilmington District Mitigation Coordinator, and will copy furnish all Corps NCDOT PMs. NCDOT shall use the spreadsheet provided by the Corps (see Attachment 1) for this report, which will require the following information:

~~appropriate Corps office (based on project location) that summarizes~~ (a) the location of each project by county, watershed, name of impact water(s), grid coordinates in decimal degrees, a vicinity map, a TIP number or road/bridge number, and NCDOT division number

~~;~~(b) amounts of permanent and temporary impacts, and the Corps approved functional assessment score at each impact area.

~~;~~(c) reasons for impacts (e.g., bank stabilization, culvert extension, etc.)

~~;~~(d) amount of mitigation and date of payment/secured appropriate credits including a completed Compensatory Mitigation Responsibility Transfer Form, and (ed) a signed certification that the project is complete and was conducted in accordance with all required special and general conditions of this RGP

Additionally, NCEEP acceptance letters for each project will be attached to the quarterly report. Each letter will note if the mitigation is out-of-HUC and/or out-of kind.

For projects where a bridge was replaced with a culvert, the quarterly report must include details of any on-site evaluations that were conducted to determine that installation of a culvert would not adversely affect passage of fish or other aquatic biota at the project site. This information must include factors such as the proposed slope of the culvert and determinations of how the slope would be expected to allow or impede fish passage, the necessity of baffles and/or sills to ensure passage, design considerations to ensure that expected baseflow would be maintained for passage and that post-construction velocities would not be expected to prevent passage, site conditions that would or would not allow proper burial of the culvert, existing structures (e.g.,

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Applies to Div. Quart reports, but may be useful for corps proposing culvert ~~or~~ replacing bridge.

perched culverts, waterfalls, etc.) and/or stream patterns up and downstream of the culvert site that could affect fish passage and bank stability, and any other considerations regarding fish passage. The level of detail for this information should be based on site conditions (i.e., culverts on a slope over 3% will most likely require more information than culverts on a slope that is less than 1%, etc.). Also, in order to evaluate potential impacts, describe bedforms that would be impacted by the proposed culvert – e.g., pools, glides, riffles, etc.

NCDOT shall submit these reports within 30 days of the end of each quarter (end of March, June, September, and December).

s. Temporary impacts cannot be in place more than 30 days from the time construction is complete.

t. Tree and shrub cover along the stream should be retained as much as possible in order to stabilize the stream banks.

u. No activity can occur if the project is located within the Qualla Boundary or any of the non-contiguous tracts of tribal land in North Carolina.

2. General Conditions.

a. Except as authorized by this RGP or any Corps approved modification to this RGP, no excavation, fill or mechanized land-clearing activities shall take place within waters or wetlands, at any time in the construction or maintenance of this project. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.

b. Authorization under this RGP does not obviate the need to obtain other federal, state, or local authorizations.

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

d. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

e. For all activities authorized by this RGP that involve 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 when it is no longer poses a threat to aquatic organisms.

f. The activities authorized by this RGP must not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for a reason other than safety.

g. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

h. The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the affected water of the United States to its former conditions.

i. The permittee will allow the Wilmington District Engineer or his representative to inspect the authorized activity at any time deemed necessary to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.

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

k. This permit does not authorize any injury to the property or rights of others.

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

m. In issuing this permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

n. Authorization provided by this RGP may be modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting for the Secretary of the Army, determines that such action would be in the best public interest. The term of this RGP shall be five (5) years unless subject to modification, suspension or revocation. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the United States Government.

o. This RGP does not authorize any activity, which the District Engineer determines, after any necessary investigations, may affect:

(1) Rivers named in Section 3 of the Wild and Scenic Rivers Act (15 U.S.C. 1273), those proposed for inclusion as provided by Sections 4 and 5 of the Act, and wild, scenic and recreational rivers established by state and local entities.

(2) Historic, cultural or archeological sites listed in or eligible for inclusion in the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act.

(3) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks.

(4) NOAA designated marine sanctuaries, National Estuarine Research Reserves, and coral reefs.

(5) Submerged Aquatic Vegetation (SAV) within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

This RGP does not authorize any activity that "may affect" any threatened or endangered species or a species proposed for such designation, or their designated critical habitat as identified under the Federal Endangered Species Act (16 U.S.C. 1531). Information on the location of threatened

and endangered species and their critical habitat can be obtained directly from the Corps field offices or at the following internet address: <http://www.ncnhp.org/Pages/heritagedata.html>. Permittees should notify the Corps if any listed species or designated critical habitat might be affected by the proposed project and may not begin work until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

p. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program that prohibits any development, including fill, within a floodway that results in any increase in base flood elevations. This RGP does not authorize any activity prohibited by the National Flood Insurance Program.

q. The permittee must make every reasonable effort to perform the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.

r. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

s. All activities authorized by this RGP that involve the use of riprap material for bank stabilization, the following measures shall be applied:

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

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

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

(6) Rip rap will not be placed in a manner that prevents or impedes fish passage.

t. The permittee must install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities.

For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office at (910) 772-2191.

u. The permittee must maintain any structure or work authorized by this permit in good condition and in conformance with the terms and conditions of this permit. The Permittee is not relieved of this requirement if the Permittee abandons the structure or work. Transfer in fee simple of the work authorized by this permit will automatically transfer this permit to the property's new owner, with all of the rights and responsibilities enumerated herein. The permittee must inform any subsequent owner of all activities undertaken under the authority of this permit and provide the subsequent owner with a copy of the terms and conditions of this permit.

v. At his sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this RGP will not be applicable to a specific proposal. In such case, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available.

x. The activity must comply with applicable FEMA approved state or local floodplain management requirements.

y. All fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

z. All excavated material will be disposed of in approved upland disposal areas.

aa. If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

bb. There will be no unreasonable interference with navigation or the right of the public to riparian access by the existence or use of activities authorized by this RGP.

cc. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Steven A. Baker
Colonel, U.S. Army
District Commander