



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT  
69 DARLINGTON AVENUE  
WILMINGTON, NC 28403

February 13, 2026

**PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE  
ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS**

**REISSUANCE OF NWP**s: On January 8, 2026, the U.S. Army Corps of Engineers (USACE) published a final action in the Federal Register (91 FR 768) announcing the reissuance of 56 existing nationwide permits (NWPs) and one new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. One NWP was not reissued. These 57 NWPs will go into effect on March 15, 2026, and will expire on March 15, 2031:

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions

33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
55. Seaweed Mariculture Activities
56. [Reserved]
57. Electric Utility Line and Telecommunications Activities
58. Utility Line Activities for Water and Other Substances
59. Water Reclamation and Reuse Facilities
60. Activities to Improve Passage of Fish and Other Aquatic Organisms

The USACE has also issued final decision documents for the new and reissued NWP. These final decision documents are available at [www.regulations.gov](http://www.regulations.gov) at docket number COE-2025-0002. Furthermore, the national NWP decision documents will be supplemented by Division Commanders to address decisions concerning the addition of regional conditions to the NWPs.

The NWP general conditions and definitions that were issued in the final action that was published in the January 8, 2026, issue of the Federal Register (91 FR 768) apply to the 56 reissued NWPs and the new NWP 60 that were published in the Federal Register on January 8, 2026.

The 56 existing NWPs published in the January 8, 2026, final action replace the 2021 versions of these NWPs. The 2021 versions of these NWPs expire on March 14, 2026.

With the publication of this Federal Register notice, USACE Divisions began finalizing Regional Conditions for these 57 NWPs. Division Commanders will prepare supplemental documentation to address decisions concerning the addition of Regional

Conditions to the 57 NWP's. Regional Conditions will provide additional protection for the aquatic environment and will help ensure that the NWP's authorize only those activities that have no more than minimal adverse environmental effects. The Wilmington District's proposal to add Regional Conditions was noticed on June 18, 2025. On February 10, 2026, the USACE South Atlantic Division Commander approved Wilmington District's Regional Conditions (Enclosure 1). All uses of a NWP in North Carolina must comply with all applicable NWP General Conditions and Regional Conditions. The Wilmington District's Regional Conditions are available at <https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#permitting>.

Pursuant to the Clean Water Act (CWA), the North Carolina Division of Water Resources (NCDWR) issued final Water Quality Certification (WQC) decisions, waivers and/or denials on December 15, 2025, (Enclosure 2). Pursuant to the CWA, the Eastern Band of Cherokee Indians (EBCI) issued final WQC decisions/waivers on December 12, 2025, (Enclosure 3) with the exception of the WQC for NWP 27. The WQC for NWP 27 was issued on December 15, 2025 (Enclosure 4). Below is a summary of the WQC decisions:

A. North Carolina Division of Water Resources (NCDWR)

- Denied WQCs for NWP's: 17, 21, 34, 38, 43, 49 and 50.
- The Wilmington District did not request WQC for NWP's 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55. NCDWR did not issue a WQC for NWP's 1, 2, 8, 10, 11, 24, 28 and 55. However, NCDWR denied a certification for NWP 9 and issued a WQC with conditions for NWP 35.
- Issued WQCs with conditions for NWP's: 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27, 29, 30, 31, 32, 33, 35, 36, 37, 39, 40, 41, 42, 44, 45, 46, 48, 51, 52, 53, 54, 57, 58, 59 and 60 (A). These WQC conditions are incorporated as Regional Conditions and the Permittee is responsible for compliance as such.

B. Eastern Band of Cherokee Indians (EBCI)

- The Wilmington District did not request WQCs for NWP's 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55. EBCI did not issue a WQC for NWP's, 1, 2, 8, 9, 10, 11, 24, 28, 35 or 55.
- Issued WQCs with conditions for NWP's: 3, 5, 7, 13, 14, 22, 30, 33, 36, 37, 38, 39, 41, 43, 45, 51, 53, 57, 58, and 59. These WQC conditions are incorporated as Regional Conditions and the Permittee is responsible for compliance as such.
- Issued a WQC with conditions and special conditions for NWP 27.
- Waived WQCs for NWP's: 4, 6, 12, 15, 16, 17, 18, 19, 20, 21, 23, 25, 29, 31, 32, 34, 40, 42, 44, 46, 48, 49, 50, 52, 54, 55, and 60 (A).

By letter dated August 19, 2025, (Enclosure 5) the North Carolina Division of Coastal Management concurred with the USACE Federal Consistency Determination for use of all NWP's, pursuant to the Coastal Zone Management Act (CZMA).

The January 8, 2026, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2026/01/08/2026-00121/reissuance-and-modification-of-nationwide-permits>

As an alternative, interested parties can access the January 8, 2026, final action and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

#### Enclosures

1. Wilmington District 2026 Regional Conditions
2. NCDWR 401 Water Quality Certification Letter
3. EBCI 401 Water Quality Certification Letter
4. EBCI 401 Water Quality Certification Letter for NWP 27
5. Coastal Zone Management Act Federal Consistency Letter



DEPARTMENT OF THE ARMY  
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**REGIONAL CONDITIONS FOR 2026 NATIONWIDE PERMITS IN  
WILMINGTON DISTRICT (SAW)**

**A. BACKGROUND**

1. The following Regional Conditions have been approved by the Wilmington District for the Nationwide Permits (NWP) published in the June 18th, 2025, Federal Register. As specified, under NWP General Condition #27, Regional and Case-By-Case Conditions: The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
2. Note: The acronym "PCN" used throughout this document refers to *Pre-Construction Notification* as further defined in NWP General Condition #32.
3. The following regional conditions will provide additional protection for the aquatic environment that is necessary to ensure that the NWPs authorize only those activities with no more than minimal adverse environmental effects.

**B. EXCLUDED WATERS AND/OR AREAS**

1. **Anadromous Fish Spawning Areas.** Work in waters of the U.S. designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are prohibited from February 15th through June 30th, without prior written approval from the Corps and the appropriate wildlife agencies (NCDMF, NCWRC and/or the National Marine Fisheries Service (NMFS)). Work in waters of the U.S. designated by NCWRC as primary nursery areas in inland waters are prohibited from February 15th through September 30th, without prior written approval from the Corps and the appropriate wildlife agencies. Work in waters of the U.S. designated by NCDMF as primary nursery areas shall be coordinated with NCDMF prior to being authorized by this NWP. Coordination with NCDMF may result in a required construction moratorium during periods of significant biological productivity or critical life stages.
2. **Trout Waters Moratorium.** Work in waters of the U.S. in the designated trout watersheds of North Carolina are prohibited from October 15th through April 15th without prior written approval from the NCWRC, or from the Eastern Band of Cherokee Indians (EBCI) Fisheries and Wildlife Management (FWM) office if

the project is located on EBCI trust land. (See Section C.3. below for information on the designated trout watersheds).

3. **Sturgeon Spawning Areas.** No in-water work shall be conducted in waters of the U.S. designated by the National Marine Fisheries Service as Atlantic sturgeon critical habitat from February 1st through June 30th. No in-water work shall be conducted in waters of the U.S. in the Roanoke River designated as Atlantic sturgeon critical habitat from February 1st through June 30th, and August 1st through October 31st, without prior written approval from NMFS.
4. **Submerged Aquatic Vegetation.** Impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP, except NWP 48, NWP 55 and NWP 56, unless Essential Fish Habitat (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 verified.

### C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs

1. **Critical Habitat in Western NC.** For proposed activities within waters of the U.S. that require a Pre-Construction Notification (PCN) and are located in the thirteen counties listed below, permittees must provide a copy of the PCN to the U.S. Fish and Wildlife Service (USFWS), 160 Zillicoa Street, Asheville, North Carolina 28801 and the Corps Asheville Regulatory Field Office. Please see General Condition 18 for specific PCN requirements related to the Endangered Species Act and the below 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 U.S. Fish and Wildlife Service: Avery, Cherokee, Graham, Haywood, Henderson, Jackson, Macon, Mecklenburg, Mitchell, Swain, Transylvania, Union and Yancey.

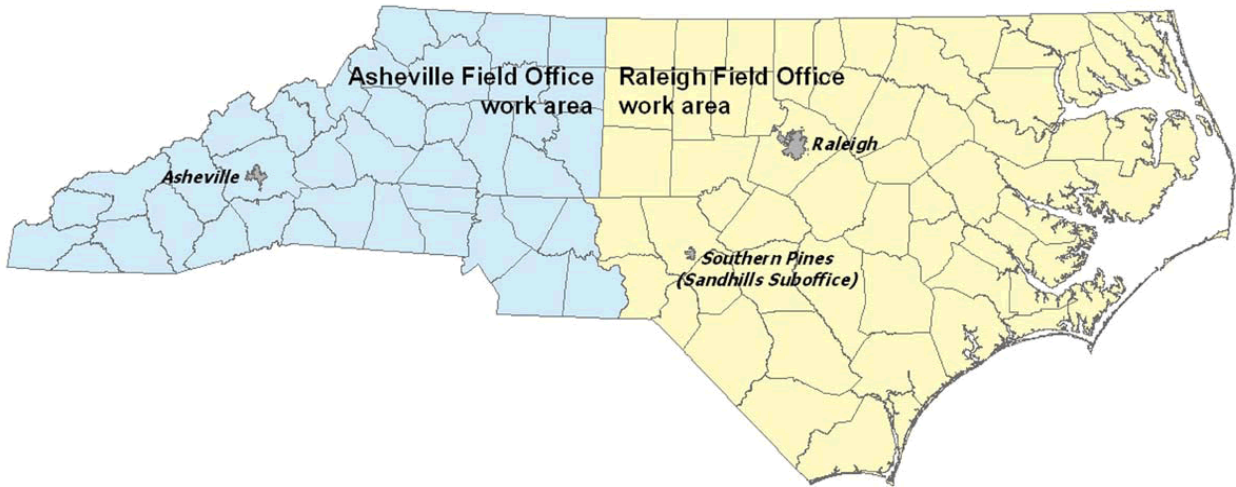
Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for permittees which provides guidelines on how to review linked websites and maps in order to fulfill NWP General Condition 18 (Endangered Species) requirements:

<https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#endangered-species-and-critical-habitat>.

Permittees who do not have internet access may contact the appropriate U.S. Fish and Wildlife Service offices listed below or Corps at (704) 510-1441.

Below is a map of the USFWS Field Office Boundaries:



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

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

Raleigh U.S. Fish and Wildlife Service Office counties: All counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

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

2. **Special Designation Waters.** Prior to the use of any NWP that involves a discharge of dredged or fill material in any of the following identified waters and/or adjacent wetlands in North Carolina, permittees shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32). The North Carolina waters and wetlands that require additional PCN requirements are:

“Primary Nursery Areas” (PNA), including inland PNA, as designated by the North Carolina Marine Fisheries Commission and/or the North Carolina Wildlife

Resources Commission. The definition of and designated PNA waters can be found in the North Carolina State Administrative Code at Title 15A, Subchapters 3R and 10C (15A NCAC 03R .0103; 15A NCAC 10C .0502; and 15A NCAC 10C .0503) and at the following web page:

<http://reports.oah.state.nc.us/ncac.asp?folderName=%5CTitle%2015A%20-%20Environmental%20Quality>

3. **Trout Waters.** Prior to any discharge of dredge or fill material into streams, waterbodies, or wetlands within the currently 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. Current designated trout waters can be found at this link: <https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#western-north-carolina-trout-watersheds>. (These maps are periodically updated as new trout distribution and habitat data become available). The permittee shall also provide a copy of the PCN to the appropriate NCWRC office, or to the EBCI FWM Office (if the project is located on EBCI trust land), to facilitate the determination of any potential impacts to designated Trout Waters.

NCWRC and NC Trout Watersheds:

NCWRC Contact**	Counties that may have trout waters
Mountain Coordinator 645 Fish Hatchery Rd., Building B Marion, NC 28752 (828) 400-4223  For NCDOT Projects:  Western NCDOT Coordinator, 20830 Great Smoky Mountain Expressway, Waynesville, NC 28786 (828) 476-1966	Alleghany      Jackson Ashe              Macon Avery              Swain Graham           Transylvania Haywood         Watauga Burke Buncombe Caldwell Cherokee Clay Henderson Madison McDowell Mitchell Polk Rutherford Surry Wilkes Yancey

<b>NCWRC Contact**</b>	<b>Counties that may have trout waters</b>
<b>EBCI Contact**</b>	<b>Counties that are within Trout Watersheds*</b>
Office of Natural Resources P.O. Box 1747, Cherokee, NC 28719 (828) 359-6113	Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties.

\*NOTE: To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps showing trout watersheds in each County at the following webpage:  
<https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#western-north-carolina-trout-watersheds>.

\*\*If a project is located on EBCI trust land, submit the PCN in accordance with Regional Condition C.16. Contact the Corps Asheville Regulatory Field Office at (828) 271-7980 with questions.

4. **Western NC Waters and Corridors.** The permittee shall submit a PCN (see General Condition 32) to the District Engineer prior to commencing the activity in waters of the U.S. if the activity will occur within any of the following identified waters in western North Carolina, within 0.5 mile on either side of these waters, or within 0.75 mile of the Little Tennessee River, as measured from the top of the bank of the respective water (i.e., river, stream, or creek):

Brasstown Creek  
 Burningtown Creek  
 Cane River  
 Caney Fork  
 Cartoogechaye Creek  
 Chattooga River  
 Cheoah River  
 Cowee Creek  
 Cullasaja River  
 Deep Creek  
 Ellijay Creek  
 French Broad River  
 Garden Creek  
 Hiwassee River  
 Hominy Creek  
 Iotla Creek

Little Tennessee River (within the river or within 0.75 mile on either side of this river)  
Nantahala River  
Nolichucky River  
North Fork French Broad River  
North Toe River  
Nottley River  
Oconaluftee River (portion not located on trust/EBCI land)  
Peachtree Creek  
Shooting Creek  
Snowbird Creek  
South Toe River  
Stecoah Creek  
Swannanoa River  
Sweetwater Creek  
Tuckasegee River (also spelled Tuckaseegee or Tuckaseigee)  
Valley River  
Watauga Creek  
Watauga River  
Wayah Creek  
West Fork French Broad River

To determine PCN requirements, contact the Corps Asheville Regulatory Field Office at (828) 271-7980 or view maps for all corridors at the following webpage: <https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#designated-waters>.

5. **Limitation of Loss of Stream Bed.** NWP's may not be used for activities that may result in the loss of more than 0.05 acre of stream bed, except for NWP 32.
6. **Pre-Construction Notification for Loss of Stream Bed Exceeding 0.02 acre.** The permittee shall submit a PCN to the District Engineer prior to commencing the activity (see General Condition 32) prior to the use of any NWP for any activity that results in the loss of more than 0.02 acre of stream bed. This applies to NWP's that do not have PCN requirements as well as those NWP's that require a PCN.
7. **Mitigation for Loss of Stream Bed.** For any NWP that results in a loss of more than 0.02 acre of stream bed, the permittee shall provide a mitigation proposal to compensate for more than minimal individual and cumulative adverse impacts to the aquatic environment, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse effects of the proposed activity are minimal. For stream bed losses of 0.02 acre or less that require a PCN, the District Engineer may determine, on a case-by-case basis, that compensatory mitigation is required to

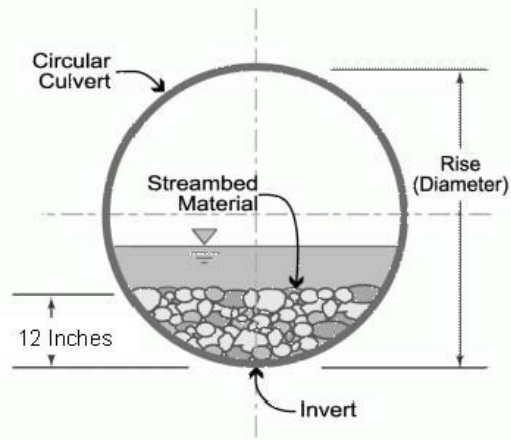
ensure that the activity results in minimal adverse effect on the aquatic environment.

8. **Riprap.** For all NWP's that allow for the use of riprap material for bank stabilization, the following conditions shall be applied:
  - a. 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 pushed or "keyed" into the bank of the waterbody. A waiver from the specifications in this Regional Condition must be requested in writing.
  - b. Riprap shall 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.
9. **Culvert Placement.** For all NWP's that allow for culvert placement, the following conditions shall be applied:
  - a. For all NWP's that involve the construction/installation of culverts, measures shall be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms.

Placement of culverts and other structures in streams shall be below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than or equal to 48 inches. If the culvert outlet is submerged within a pool or scour hole and designed to provide for aquatic passage, then culvert burial into the streambed is not required.

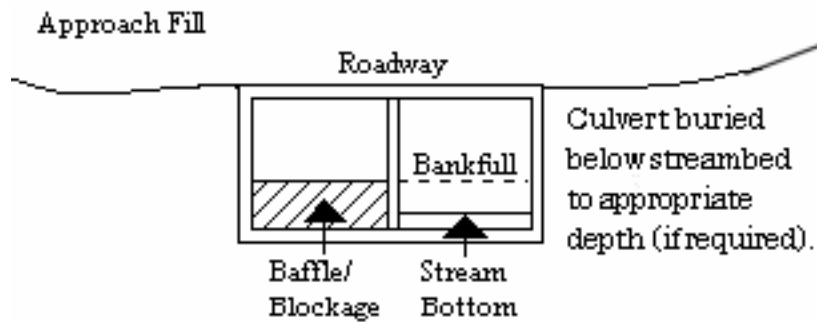
Culvert burial is not required for structures less than 72-inch diameter/width, where the slope of the culvert will be greater than 2.5 percent, provided that all alternative options for flattening the slope have been investigated and aquatic life movement/connectivity has been provided when possible (e.g., rock ladders, cross vanes, sills, baffles etc.). Culvert burial is not required when bedrock is present in culvert locations.

Installation of culverts in wetlands shall ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. When roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges shall be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.



A waiver from the depth specifications in this condition may be requested, in writing, by the permittee and issued by the Corps. This waiver request must be specific as to the reasons(s) for the request. The waiver will be issued if it can be demonstrated that the proposed design would result in less impacts to the aquatic environment. Culverts placed across wetland fills purely for the purposes of equalizing surface water do not have to be buried, but the culverts must be of adequate size and/or number to ensure unrestricted transmission of water.

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



c. Culverts shall be designed and installed in such a manner that the original stream profiles are not altered and allow for aquatic life movement during low flows. The dimension, pattern, and profile of the stream above and below a pipe or culvert shall not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed culvert shall be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. If the width of the culvert is wider than the stream channel, the culvert shall include multiple boxes/pipes, baffles, benches and/or sills to maintain the natural width of the stream channel. If multiple culverts/pipes/barrels are used, low flows shall be

accommodated in one culvert/pipe and additional culverts/pipes shall be installed such that they receive only flows above bankfull.

10. **Utility Lines.** For all NWP's that allow for the construction and installation of utility lines, the following conditions shall be applied:

a. Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the U.S. (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

b. 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 permittee is required to provide this information to the Corps with the initial PCN package.

c. 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, as appropriate, with species of canopy, shrub, and herbaceous species. The permittee shall not use fescue grass, or any other species identified as invasive or exotic species by the NC Native Plant Society (NCNPS): <https://ncwildflower.org/invasive-exotic-species-list/>.

d. Any permanently maintained corridor along the utility right of way within forested wetlands shall be considered a loss of aquatic function. A compensatory mitigation plan will be required for all such impacts associated with the requested activity if the activity requires a PCN and the cumulative total of permanent conversion of forested wetlands exceeds 0.1 acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate, or the adverse effects of the proposed activity are minimal.

Where permanently maintained corridor within forested wetlands is 0.1 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.

e. 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 of any unintended discharges.

11. **Temporary Access Fills.** 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 0.1 acre of wetlands or 0.02 acre of stream channel for the construction of temporary access fills and/or temporary road crossings. 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.
12. **Federal Navigation Channel Setbacks.** Authorized structures and fills located in or adjacent to Federally authorized waterways must be constructed in accordance with the latest setback criteria established by the Wilmington District Engineer. You may review the setback policy at: <https://www.saw.usace.army.mil/Missions/Navigation/Setbacks/>. 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 to obtain a written verification prior to the construction of any structures or fills within the Federally Authorized Channel Setback.
13. **Endangered and Threatened Species.** The NWP General Condition 18 (Endangered Species) states that no activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. The Wilmington District uses numerous Standard Local Operating Procedures for Endangered Species (SLOPES) and Programmatic Biological Opinions (PBOs) to ensure compliance with General Condition 18. These SLOPES/PBOs have been developed in consultation with the U.S. Fish and Wildlife Service (USFWS) and/or other appropriate state and federal agencies. All current SLOPES/PBOs are listed on the Wilmington District website and will be used, where appropriate, to facilitate/determine ESA Section 7 compliance. All PBOs can be found on our website at: <https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#endangered-species-and-critical-habitat>.
14. **West Indian Manatee Protection.** In order to protect the endangered West Indian manatee (*Trichechus manatus*) the Permittee shall implement the USFWS’ Manatee Guidelines and strictly adhere to all requirements therein. The guidelines can be found at: <https://www.fws.gov/sites/default/files/documents/Manatee%20guidelines%20NC.pdf>.
15. **ESA Programmatic Biological Opinions.** The Wilmington District, USFWS, NCDOT, and the FHWA have conducted programmatic Section 7(a)(2) consultation for a number of federally listed species and designated critical

habitat (DCH), and programmatic consultation concerning other federally listed species and/or DCH may occur in the future. The result of completed programmatic consultation is a Programmatic Biological Opinion (PBO) issued by the USFWS. These PBOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with “incidental take” of whichever species or critical habitat is covered by a specific PBO. Authorization under NWP is conditional upon the permittee’s compliance with all the mandatory terms and conditions associated with incidental take of the applicable PBO (or PBOs), which are incorporated by reference in the NWPs. Failure to comply with the terms and conditions associated with incidental take of an applicable PBO, where a take of the federally listed species occurs, would constitute an unauthorized take by the permittee, and would also constitute permittee non-compliance with the authorization under the NWPs. If the terms and conditions of a specific PBO (or PBOs) apply to a project, the Corps will include this/these requirements in any NWP verification that may be issued for a project. For an activity/project that does not require a PCN, the terms and conditions of the applicable PBO(s) also apply to that non-notifying activity/project. The USFWS is the appropriate authority to determine compliance with the terms and conditions of its PBO and the ESA. All PBOs can be found on our website at: <https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#endangered-species-and-critical-habitat>.

16. **Work on Eastern Band of Cherokee Indian Land.**

Notifying NWPs - All PCNs submitted for activities in waters of the U.S. on Eastern Band of Cherokee Indians (EBCI) trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), must comply with the requirements of the latest MOU between the Wilmington District and the EBCI.

Non-notifying NWPs - Prior to the use of any non-notifying NWP for activities in waters of the U.S. on EBCI trust land (i.e., Qualla Boundary and non-contiguous tracts of trust land located in portions of Swain, Jackson, Haywood, Graham and Cherokee Counties), all prospective permittees must comply with the requirements of the latest MOU between the Wilmington District and the EBCI; this includes coordinating the proposed project with the EBCI Natural Resources Program and obtaining a Tribal Approval Letter from the Tribe.

The EBCI MOU can be found at the following URL:  
<https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#cultural-resources>.

17. **Sedimentation and Erosion Control Structures and Measures.**

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

**D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWP's**

1. **NWP 3.** In designated trout watersheds, a PCN is not required for impacts to a maximum of 0.02 acre for temporary dewatering 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 C.3 above and General Condition 32) to the District Engineer prior to commencing the activity if: 1) impacts (other than temporary dewatering to work in dry conditions) to streams or waterbodies exceed 0.008 acre, 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceeds 0.02 acre, 3) the project will involve impacts to wetlands, 4) the project involves the replacement of a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States, or 5) the activity will be constructed during the trout waters moratorium (October 15 through April 15).
  
2. **NWP 5.**
  - a. Permittees must submit a PCN to the District Engineer prior to the construction of weirs and flumes 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 Waters.
  
  - b. In designated trout watersheds (see Regional Condition C.3 above and General Condition 32), PCN is not required if: 1) the quantity of discharged material will be less than or equal to 25 cubic yards below the plane of the ordinary high water mark, 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry condition are 0.02 acre or less, and 3) the activity will be constructed outside of the trout waters moratorium (October 15 through April 15).
  
3. **NWP 13.** In designated trout watersheds, a PCN is not required for impacts up to 0.02 acre of stream for temporary dewatering, and up to 100 linear feet for all other impacts to streams or waterbodies for bank stabilization activities that are not adjoining, adjacent to, or in the relative vicinity of existing stabilization structures. Materials for the stabilization structure(s) and design of the project

must be constructed to withstand normal and expected high stream flows. In designated trout waters, the permittee shall submit a PCN (see Regional Condition C.3 above and General Condition 32) to the District Engineer prior to commencing the activity if: 1) impacts (other than temporary dewatering to work in dry conditions) to streams and waterbodies exceed 100 linear feet, 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceed 0.02 acre of stream channel, or 3) the activity will be constructed during the trout waters moratorium from October 15th through April 15th.

#### **4. NWP 14**

a. If appropriate, 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 (e.g., use of the North Carolina Stream Assessment Methodology). Compensatory mitigation may be required for stream relocations.

Natural Channel Design means 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.ops.usace.army.mil/ords/f?p=107:2:.....>

b. In designated trout watersheds, a PCN is not required for impacts to a maximum of 0.007 acre (0.02 acres for temporary dewatering) or 1/10-acre of jurisdictional aquatic resources for proposed structures not adjoining, adjacent to, or connected to existing structures. In designated trout waters, the permittee shall submit a PCN (see Regional Conditions C.3. above and General Condition 32) to the District Engineer prior to commencing the activity if: 1) impacts (other than temporary dewatering to work in dry conditions) to jurisdictional aquatic resources exceed 0.007 acre or 1/10-acre, 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions exceed 0.02 acre, 3) the project will involve impacts to wetlands, 4) the primary purpose of the project is for commercial development, 5) the project involves the replacement of

a bridge or spanning structure with a culvert or non-spanning structure in waters of the United States, or 6) the activity will be constructed during the trout waters moratorium (October 15 through April 15).

5. **NWP 18.** In designated trout waters (see Regional Condition C.3. above), a PCN is not required if: 1) the quantity of discharged material is less than or equal to 10 cubic yards below the plane of the ordinary high water mark, 2) temporary impacts to streams or waterbodies associated with dewatering to work in dry conditions are 0.02 acre or less, and 3) the activity will be constructed outside of the trout waters moratorium (October 15 through April 15).
6. **NWP 23.** 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 .06 acre of stream bed for each single and complete project.
7. **NWP 27.** The permittee shall submit a PCN to the District Engineer prior to commencing any activities associated with this permit (see General Condition 32). Additionally, coordination is required for all NWP 27 PCNs as indicated under GC 32 (d)(1) and (3), except for those proposed projects that are being developed pursuant to a mitigation banking or in-lieu fee program instrument and have previously been coordinated through the North Carolina Interagency Review Team (NCIRT). For those projects that have undergone IRT review, further coordination may still be required with USFWS/NMFS for the purpose of completing consultation under Section 7 of the Endangered Species Act (ESA) as part of the permit review process.
8. **NWPs 29, 39, 42, 43, 51.**
  - a. Discharges in streams and wetlands for stormwater management facilities are prohibited under this NWP.
  - b. Discharges of dredged or fill material into waters of the U.S., including wetlands, within the floodway\* or mapped FEMA 100-year floodplain resulting in permanent above-grade fills are not authorized by this NWP.

\* NOTE: Floodway means 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.
9. **NWP 36.** 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 ordinary high water mark elevation contour in non-tidal areas. A waiver from this condition may be requested in writing. The District Engineer may issue a waiver if the

proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment.

10. **NWP 41**. This NWP does not authorize impacts to channelized streams or natural streams.

11. **NWP 48**.

a. The permittee shall submit a PCN to the District Engineer prior to commencing the activity if lease areas will be sited within areas that contain SAV that exceed and/or do not meet the criteria established in the latest NCDMF protocol for evaluating shellfish lease areas in SAV.

b. 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. No lease site shall be sited within 20 feet of a wetland area, except for shell on bottom, unless approved by the Corps and the NMFS - Habitat Conservation Division. Shell on bottom activities shall be sited 5 feet or more from wetland areas.

c. This NWP does not authorize the discharge of any earthen fill material into any waters of the U.S.

d. Lease areas cannot be sited or located farther than one-third the width of a waterbody, unless approved by the District Engineer. This condition does not apply to aquaculture methods that use only cultch-on-bottom or clam-on-bottom methods.

e. Lease sites shall not be located within marked or unmarked established navigation channels.

12. **NWP 53**.

a. The PCN shall include an estimate of the amount of sediment stored behind the dam and a description of the methodology used to make that estimation.

b. The PCN shall include a sediment removal plan. This plan shall describe the methods of sediment removal, dewatering and the location of the disposal area(s). This requirement will be waived if the permittee demonstrates that: 1) the release of sediment from behind the dam will not result in a discharge of dredged or fill material, 2) that the removal of sediment is not practicable, and/or 3) sediment removal and/or disposal would be more damaging to the aquatic environment than the release of sediments from behind the dam.

13. **NWP 55**.

- a. No lease site shall be sited within 20 feet of a wetland area, unless approved by the Corps and the NMFS - Habitat Conservation Division.
- b. Lease areas cannot be sited or located farther than one-third the width of a waterbody (measured from the Ordinary High Water Mark (OHWM) or Mean High Water Mark (MHWM), unless approved by the District Engineer.
- c. Lease sites shall not be located within marked or unmarked established navigation channels.

**E. ACTIVITY SPECIFIC REGIONAL CONDITIONS**

N/A.

**F. SECTION 401 WATER QUALITY CERTIFICATION AND/OR COASTAL ZONE MANAGEMENT ACT CONSISTENCY DETERMINATION CONDITIONS**

SEE APPENDIX B FOR WATER QUALITY CERTIFICATION CONDITIONS.

**WQC:** North Carolina Division of Water Resources (NCDWR)

- Denied WQCs for NWP: 17, 21, 34, 38, 43, 49 and 50.
- The Wilmington District did not request WQC for NWP: 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55. NCDWR did not issue a WQC for NWP: 1, 2, 8, 10, 11, 24, 28 and 55. However, NCDWR denied a certification for NWP 9 and issued a WQC with conditions for NWP 35.
- Issued WQCs with conditions for NWP: 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27, 29, 30, 31, 32, 33, 35, 36, 37, 39, 40, 41, 42, 44, 45, 46, 48, 51, 52, 53, 54, 57, 58, 59 and 60 (A). These WQC conditions are incorporated as Regional Conditions and the Permittee is responsible for compliance as such.

**WQC:** Eastern Band of Cherokee Indians (EBCI)

- The Wilmington District did not request WQCs for NWP: 1, 2, 8, 9, 10, 11, 24, 28, 35 and 55. EBCI did not issue a WQC for NWP: 1, 2, 8, 9, 10, 11, 24, 28, 35 or 55.
- Issued WQCs with conditions for NWP: 3, 5, 7, 13, 14, 22, 30, 33, 36, 37, 38, 39, 41, 43, 45, 51, 53, 57, 58, and 59. These WQC conditions are incorporated as Regional Conditions and the Permittee is responsible for compliance as such.
- Issued a WQC with conditions and special conditions for NWP 27.
- Waived WQCs for NWP: 4, 6, 12, 15, 16, 17, 18, 19, 20, 21, 23, 25, 29, 31, 32, 34, 40, 42, 44, 46, 48, 49, 50, 52, 54, 55, and 60 (A).

**CZM:** North Carolina Division of Coastal Management (NCDCM)

The CZMA consistency determination and all WQCs can be found at:

<https://www.sad.usace.army.mil/Missions/Regulatory/North-Carolina/#permitting>.

**G. DISTRICT POINT OF CONTACT**

Andrew Williams

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Wake Forest, North Carolina 27587

Phone: 919-440-0119

Email: [andrew.e.williams2@usace.army.mil](mailto:andrew.e.williams2@usace.army.mil)

**JOSH STEIN**  
Governor

**D. REID WILSON**  
Secretary

**RICHARD E. ROGERS, JR.**  
Director



December 15, 2025

Tommy E. Fennel, Chief  
Regulatory Division, Wilmington District  
US Army Corps of Engineers  
69 Darlington Avenue  
Wilmington NC 28403-1343

**Subject:** Response to Certification of the Proposed 2026 Nationwide Permits

Dear Chief Fennel,

On June 18, 2025, the North Carolina Department of Environmental Quality's (Department) Division of Water Resources (Division) received the U.S Army Corps of Engineers' (USACE) request for a 401 Water Quality Certification for specific Nationwide Permits (NWP) that may result in a discharge to Waters of the United States (certification request).

As the USACE identified in its certification request, a Federal Register publication was issued June 18, 2025 for the USACE's proposal to reissue the NWP. The Wilmington District of USACE proposed Regional Conditions to the NWP that were public noticed June 18, 2025. This authorization is specific to the language and scope of the proposed NWP and Wilmington District's proposed Regional Conditions as detailed in the Federal Register and referenced public notices. Any material changes in the Wilmington District's proposed Regional Conditions, shall not be considered authorized by this certification.

The Division has chosen to certify Nationwide Permit 35 with conditions to ensure compliance with water quality standards.

The below table provides the Division's certification response for each proposed Nationwide Permit for which you requested a 401 certification. Drafts of these General Certification decisions and drafts of these General Certifications were put on public notice for 30 days starting on September 9, 2025, in Compliance with the Clean Water Act section 401(a)(1) and 15A NCAC 02H.0503. A copy of each General Certification issued by the Division is attached to this letter.



It is the Division’s intention to update the cover page of each General Certification with an effective date upon notice of the associated Final Nationwide Permit and effective date in the Federal Register. Updated General Certifications with effective dates will then be posted on the Division’s [website](#).

<b>Nationwide Permit Number</b>	<b>Activity</b>	<b>DWR 401 Certification Decision</b>
3	Maintenance	Granted with Conditions per 401 Water Quality General Certification #8562
4	Fish & Wildlife harvesting, enhancement, & attraction devices	Granted with Conditions per 401 Water Quality General Certification #8563
5	Scientific measurement devices	Granted with Conditions per 401 Water Quality General Certification #8564
6	Survey activities	Granted with Conditions per 401 Water Quality General Certification #8565
7	Outfall structures and associated intake structures	Granted with Conditions per 401 Water Quality General Certification #8566
9	Structures in fleeting and anchorage areas	Denied. Individual WQC required.
12	Oil or Natural Gas Pipelines	Granted with Conditions per 401 Water Quality General Certification #8567
13	Bank Stabilization	Granted with Conditions per 401 Water Quality General Certification #8568
14	Linear Transportation Projects	Granted with Conditions per 401 Water Quality General Certification #8569
15	US Coast Guard Approved Bridges	Granted with Conditions per 401 Water Quality General Certification #8570
16	Return Water from Upland Contained Disposal Areas	Granted with Conditions per 401 Water Quality General Certification #8571
17	Hydropower Projects	Denied. Individual WQC required.
18	Minor Discharges	Granted with Conditions per 401 Water Quality General Certification #8572
19	Minor Dredging	Granted with Conditions per 401 Water Quality General Certification #8573
20	Response Operations for Oil or Hazardous Substances	Granted with Conditions per 401 Water Quality General Certification #8574



21	Surface Coal Mining Activities	Denied. Individual WQC required.
22	Removal of Vessels	Granted with Conditions per 401 Water Quality General Certification #8575
23	Approved Categorical Exclusions	Granted with Conditions per 401 Water Quality General Certification #8576
25	Structure Discharges	Granted with Conditions per 401 Water Quality General Certification #8577
27	Aquatic Habitat Restoration, Enhancement, & Establishment	Granted with Conditions per 401 Water Quality General Certification #8578
29	Residential Developments	Granted with Conditions per 401 Water Quality General Certification #8579
30	Moist Soil Management for Wildlife	Granted with Conditions per 401 Water Quality General Certification #8580
31	Maintenance of Existing Flood Control Facilities	Granted with Conditions per 401 Water Quality General Certification #8581
32	Complete Enforcement Actions	Granted with Conditions per 401 Water Quality General Certification #8582
33	Temporary Construction, Access, and Dewatering	Granted with Conditions per 401 Water Quality General Certification #8583
34	Cranberry Production Activities	Denied. Individual WQC required.
35	Maintenance Dredging of Existing Basins	Granted with Conditions per 401 Water Quality General Certification #8584
36	Boat Ramps	Granted with Conditions per 401 Water Quality General Certification #8585
37	Emergency Watershed Protection and Rehabilitation	Granted with Conditions per 401 Water Quality General Certification #8586
38	Clean up Hazardous and Toxic Waste	Denied. Individual WQC required.
39	Commercial and Institutional Developments	Granted with Conditions per 401 Water Quality General Certification #8587
40	Agricultural Activities	Granted with Conditions per 401 Water Quality General Certification #8588
41	Reshaping Existing Drainage and Irrigation Ditches	Granted with Conditions per 401 Water Quality General Certification #8589
42	Recreational Facilities	Granted with Conditions per 401 Water Quality General Certification #8590
43	Stormwater Management Facilities	Denied. Individual WQC required.
44	Mining Activities	Granted with Conditions per 401 Water Quality General Certification #8591



45	Repair of Uplands Damaged by Discrete Events	Granted with Conditions per 401 Water Quality General Certification #8592
46	Discharges in Ditches	Granted with Conditions per 401 Water Quality General Certification #8601
48	Commercial Shellfish Mariculture Activities	Granted with Conditions per 401 Water Quality General Certification #8593
49	Coal Remining Activities	Denied. Individual WQC required.
50	Underground Coal Mining Activities	Denied. Individual WQC required.
51	Land-Based Renewable Energy Generation Facilities	Granted with Conditions per 401 Water Quality General Certification #8594
52	Water-based Renewable Energy Generation Pilot Projects	Granted with Conditions per 401 Water Quality General Certification #8595
53	Removal of Low-Head Dams	Granted with Conditions per 401 Water Quality General Certification #8596
54	Living Shorelines	Granted with Conditions per 401 Water Quality General Certification #8597
57	Electric Utility Line and Telecommunications Activities	Granted with Conditions per 401 Water Quality General Certification #8598
58	Utility Line Activities for Water and Other Substances	Granted with Conditions per 401 Water Quality General Certification #8599
59	Water Reclamation and Reuse Facilities	Granted with Conditions per 401 Water Quality General Certification #8600
A	Activities to Improve Passage of Fish and Other Aquatic Organisms	Granted with Conditions per 401 Water Quality General Certification #8602

**Explanation of Denials**

**Nationwide Permit #9 - Structures in fleeting and anchorage areas**

DWR 401 Certification Decision:  
 Denied. Individual Water Quality Certification Required.

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*  
 North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and



that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

Fleeting and anchorage areas often contain SAV and PN and other areas significant to water quality. These projects have significant potential to violate water quality standards based on their area of impact. Therefore, DWR cannot certify that the discharges authorized under this NWP will comply with water quality standards without project specific review under an individual 401 certification.

### **Nationwide Permit #17 – Hydropower Projects**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina's surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

Discharges, including in-stream structures, machinery, and channel diversions, necessary for the construction of hydropower facilities typically disrupts the natural function of a stream and preclude the stream from maintaining usages, such as aquatic life survival and maintenance of biological integrity. These projects also have significant potential to violate water quality standards, including temperature, dissolved oxygen, and turbidity. Therefore, DWR cannot certify that the discharges authorized under this NWP will comply with water quality standards without project specific review under an individual 401 certification.

### **Nationwide Permit #21 – Surface Coal Mining Activities**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.



Mine drainage and the discharge of processing wastewater and/or stormwater contains chemicals and/or byproducts such as sulfuric acid and dissolved iron. The discharge from these activities with these parameters present would indicate a high potential for violations of water quality standards listed in 15A NCAC 02B .0211. Therefore, DWR cannot certify that the discharges authorized under this NWP will comply with water quality standards specified in 15A NCAC 02B .0208 or .0211 without project specific review under an individual 401 certification.

### **Nationwide Permit #34 – Cranberry Production Activities**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

*40 C.F.R. §121.7(e) A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

DWR does not have empirical data or experience relating to the water quality impacts stemming from cranberry production activities in North Carolina and is, therefore, unable to certify that discharges authorized under this NWP will comply with water quality standards. Project specific review under an individual 401 certification is required.

### **Nationwide Permit #38 – Cleanup of Hazardous and Toxic Waste**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

*40 C.F.R. §121.7(e) A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

As indicated in the NWP activity description, projects eligible for coverage under NWP 38 involve disturbance of land or water where hazardous and/or toxic chemicals are present. The



discharges that result from these activities have a high potential for violations of water quality standards for a variety of the standards listed in 15A NCAC 02B .0211, such as metals, hardness, toxic substances, pesticides, etc; therefore, DWR cannot certify that discharges authorized under this NWP will comply with water quality standards specified in 15A NCAC 02B .0208 or .0211. Project specific review under an individual 401 certification is required.

### **Nationwide Permit #43 – Stormwater Management Facilities**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

Surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

Stormwater management facilities are constructed to treat stormwater runoff from impervious surfaces that may contain oils, deleterious substances or other wastes, as well as hazardous or toxic materials. Treatment of such chemicals through stormwater management facilities constructed within waters of the State would involve discharges which would have significant potential to cause violations of water quality standards for parameters listed in 15A NCAC 02B .0211 as well as others. Therefore, DWR cannot certify that discharges authorized under this NWP will comply with water quality standards, specifically with regards to aquatic life propagation, survival and maintenance of biological integrity, without individual review in all circumstances, regardless of type or size of impacts.

### **Nationwide Permit #49 – Coal Remining Activities**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.



DWR does not have empirical data or experience relating to the water quality impacts stemming from coal remining activities in North Carolina and is, therefore, unable to certify that discharges authorized under this NWP will comply with water quality standards. Project specific review under an individual 401 certification is required.

### **Nationwide Permit #50 – Underground Coal Mining Activities**

DWR 401 Certification Decision:  
Denied. Individual Water Quality Certification Required.

40 C.F.R. §121.7(e) *A statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements:*

North Carolina surface water quality standards require that conditions of waters be suitable for all best uses provided for in state rule (including, at minimum: aquatic life propagation, survival, and maintenance of biological integrity; wildlife; secondary contact recreation; agriculture); and that activities must not cause water pollution that precludes any best use on a short-term or long-term basis.

DWR does not have empirical data or experience relating to the water quality impacts stemming from underground coal mining activities in North Carolina and is, therefore, unable to certify that discharges authorized under this NWP will comply with water quality standards. Project specific review under an individual 401 certification is required.

Thank you for your consideration of this time-sensitive matter. Please contact Catherine Otero at 919-707-9141 or [catherine.otero@deq.nc.gov](mailto:catherine.otero@deq.nc.gov) with any questions.

Sincerely,

DocuSigned by:

*Richard E. Rogers, Jr.*

B2B16AD426A64B6...

Richard E. Rogers, Jr., Director  
Division of Water Resources

cc: Tyler A. Crumbley, USACE (via email)  
Andy Williams, USACE (via email)  
Michael Pjetraj, NC DWR (via email)  
Paul Wojoski, NC DWR (via email)  
Stephanie Goss, NC DWR (via email)  
Todd Bowers, EPA (via email)  
DWR 401 & Buffer Permitting Unit





Eastern Band of Cherokee Indians  
(EBCI)

Water Quality Office (WQO)

Mailing address:

P.O. Box 1925

Cherokee, NC 28719

Phone (828) 359-6771

Physical address:

Water Quality Office

2000 Old #4 Road

Cherokee, NC 29719

## 401 Water Quality Certification GRANT

Applicant: US Army Corps of Engineers, (USACE)

Issued: 12-12-2025

Pursuant to CWA Section 401(33 U.S.C. 1251, 1341), the Eastern Band of Cherokee Indians (EBCI) is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, The EBCI Water Quality Office (WQO) requires reasonable assurance that the activity will not violate provisions of EBCI Water Quality Standards, Administrative Procedure Act, Cherokee Code, Chapter 150, provisions of EBCI Fish & Game Regulations and Guidelines, and other EBCI water protection provisions, law or regulations.

The Eastern Band of Cherokee Indians Water Quality Office (WQO) issues this letter to serve as notification of water quality certification as required for USACE nationwide permits 3. Maintenance, 5. Scientific Measuring Devices, 7. Outfall Structures and Associated Intake Structures, 13. Bank Stabilization, 14. Linear Transportation Projects, 22. Removal of Vessels, 30. Moist Soil Management for Wildlife, 33. Temporary Construction, Access and Dewatering, 36. Boat Ramps, 37. Emergency Watershed Protection and Rehabilitation, 38. Cleanup of Hazardous and Toxic Waste, 39. Commercial and Institutional Developments, 41. Reshaping Existing Drainage and Irrigation Ditches, 43. Stormwater Management Facilities, 45. Repair of Uplands Damaged by Discrete Events, 51. Land-Based Renewable Energy Generation Facilities, 53. Removal of Low-Head Dams, 57. Electric Utility Line and Telecommunications Activities, 58. Utility Line Activities for Water and Other Substances, and 59 Water Reclamation and Reuse Facilities.

Based on information submitted as part of the application for a 401 Water Quality Certification, followed by a Technical Review, the EBCI Water Quality Office and EBCI Fish & Game Office have concluded to grant this application with required general conditions.

Therefore, the EBCI WQO is issuing this grant with general conditions of 401 Certification, subject to the 401 General Conditions attached. This certification is issued to US Army Corps of Engineers for Nationwide Permits listed above.

I, Rainee Tetreault grant subject to general conditions CWA 401 Water Quality Certification to USACE for the implementation of the nationwide permits listed in this letter.

Signed

Cc: Mr. Michael LaVoie, Natural Resources Director

## **EBCI 401 CERTIFICATION GENERAL CONDITIONS.**

1. Measures shall be taken to prevent or control spills of fuels, lubricants or other toxic materials used in construction from entering the watercourse.
  
2. All dredged material shall be removed to an upland location and/or graded on adjacent areas (so long as such areas are not regulated wetlands), to obtain original streamside elevations, i.e. overbank flooding shall not be artificially obstructed.
  
3. In areas not riprapped or otherwise stabilized, revegetation of stream banks and riparian zones shall occur concurrently with project progression. At a minimum, revegetation will approximate pre-disturbance conditions.
  
4. To the maximum extent practicable, all instream work under this certification shall be performed during low flow.
  
5. Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances where such instream work is unavoidable, then it shall be performed in such a manner and duration as to minimize suspension of sediments and disturbance to substrates and bank or riparian vegetation.
  
6. Any fill or riprap including refuse fill, shall be of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created because of its placement.
  
7. If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when work will be done.
  
8. Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.
  
9. Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the EBCI Water Quality Section shall be notified immediately by calling 828-359-6771.

\* EBCI Water Quality Standards are incorporated as Section 113E of the Cherokee Code.

JOSH STEIN  
Governor  
D. REID WILSON  
Secretary  
TANCRED MILLER  
Director



August 19, 2025

Brad A. Morgan  
Colonel, U.S. Army  
District Commander  
Wilmington District, Corps of Engineers  
69 Darlington Avenue  
Wilmington, NC 28403-1343

SUBJECT: Consistency Concurrence Regarding the proposed reissuance of the Draft Nationwide Permits (NWP) including draft regional conditions in North Carolina (DCM#2025043)

Dear Colonel Morgan:

The Division of Coastal Management (DCM) received notice that the U.S. Army Corps of Engineers (USACE) announced the proposed reissuance of its draft NWPs. This announcement initiated the Coastal Zone Management Act (CZMA) federal consistency review process. The Federal Register announced a 60-day review period with a deadline of approximately August 19, 2025. DCM has reviewed both the proposed reissuance of the NWPs and the regional conditions, and this letter provides both state agency feedback and serves as the final federal consistency determination for the proposed reissuance of the draft NWPs.

Several state resource agencies have expressed substantive concerns with specific elements of the proposed NWP reissuance and modifications, particularly where changes may increase impacts to sensitive coastal and estuarine habitats or reduce the effectiveness of existing protections. The Division of Marine Fisheries (DMF) notes that the Corps' proposed definition of "nature-based solutions" is overly broad, encompassing hardened structures such as textured seawalls and bulkheads that do not replicate the ecological functions of natural features like marshes, oyster reefs, or gently sloping shorelines. DMF recommends revising the definition to emphasize truly "soft" or "green" approaches that incorporate natural coastal features and processes and urges that the use of coarse fill materials for living shorelines be restricted to areas where they are compatible with natural sediment conditions to avoid adverse effects on benthic communities, sediment dynamics, and submerged aquatic vegetation.

The Wildlife Resources Commission (WRC) raises related concerns over NWP 13 examples of nature-based solutions, which include rock revetments and other bank-hardening measures. WRC recommends prioritizing bioengineering approaches over hard structures and siting erosion-control measures to avoid submerged aquatic vegetation, coastal wetlands, and shellfish habitats.



North Carolina Department of Environmental Quality | Division of Coastal Management  
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The Division of Water Resources (DWR) echoes concern about overly broad definitions, urging that “nature-based solutions” be clearly and consistently defined across NWP’s and that the term “ecological reference” be limited to high-quality, unaltered past ecosystems. DWR also has concerns with the proposed changes to NWP 27 that would allow the conversion of one aquatic resource type to another, potentially reducing ecological function, and that would remove the requirement for detailed delineation and pre-construction notification for certain projects. DWR stresses that accurate delineation is essential to ensure all aquatic resources are identified and protected during project planning.

North Carolina’s coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State’s Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina’s Administrative Code, and the land use plan of the County and/or local municipality. It is the objective of the DCM to manage the State’s coastal resources to ensure that proposed Federal activities would be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State’s coastal waters.

DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 7H and 7M of Chapter 7 in Title 15A of the North Carolina Administrative Code and concurs that the proposed Federal activity by the U.S. Army Corps of Engineers is consistent, to the maximum extent practicable, with North Carolina’s certified coastal management program.

Should the proposed action be modified further, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered, a supplemental consistency certification may be required. If you have any questions, please contact Cameron Luck at (252) 515-5419 or via email at [Cameron.luck@deq.nc.gov](mailto:Cameron.luck@deq.nc.gov).

Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,

*Daniel Govoni*

Daniel Govoni  
Policy Section Chief  
N.C. Division of Coastal Management





Eastern Band of Cherokee Indians  
(EBCI)  
Water Quality Office (WQO)  
Mailing address:  
P.O. Box 1925  
Cherokee, NC 28719  
Phone (828) 359-6771

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Water Quality Office  
2000 Old #4 Road  
Cherokee, NC 29719

## **401 Water Quality Certification** **GRANT WITH SPECIAL CONDITIONS**

Applicant: US Army Corps of Engineers, (USACE)

Issued: 12-15-2025

Pursuant to CWA Section 401(33 U.S.C. 1251, 1341), the Eastern Band of Cherokee Indians (EBCI) is required to certify whether the activity described below will not violate applicable water quality standards. Accordingly, The EBCI Water Quality Office (WQO) requires reasonable assurance that the activity will not violate provisions of EBCI Water Quality Standards, Administrative Procedure Act, Cherokee Code, Chapter 150, provisions of EBCI Fish & Game Regulations and Guidelines, and other EBCI water protection provisions, law or regulations.

The Eastern Band of Cherokee Indians Water Quality Office (WQO) issues this letter to serve as notification of water quality certification with special conditions as required for USACE Nationwide Permit 27. Aquatic Ecosystem Restoration, Enhancement and Establishment Activities.

Based on information submitted as part of the application for a 401 Water Quality Certification, followed by a Technical Review, the EBCI Water Quality Office and EBCI Fish & Game Office have concluded to grant this application with required general conditions and special conditions.

Therefore, the EBCI WQO is issuing this grant with general conditions of 401 Certification, subject to the 401 General Conditions and Special Conditions attached. This certification is issued to US Army Corps of Engineers for Nationwide Permit 27.

I, Rainee Tetreault grant subject to general conditions CWA 401 Water Quality Certification to USACE for the implementation of the USACE Nationwide Permit 27.

Signed

Cc: Mr. Michael LaVoie, Natural Resources Director

## **EBCI 401 CERTIFICATION GENERAL CONDITIONS.**

1. Measures shall be taken to prevent or control spills of fuels, lubricants or other toxic materials used in construction from entering the watercourse.
  
2. All dredged material shall be removed to an upland location and/or graded on adjacent areas (so long as such areas are not regulated wetlands), to obtain original streamside elevations, i.e. overbank flooding shall not be artificially obstructed.
  
3. In areas not riprapped or otherwise stabilized, revegetation of stream banks and riparian zones shall occur concurrently with project progression. At a minimum, revegetation will approximate pre-disturbance conditions.
  
4. To the maximum extent practicable, all instream work under this certification shall be performed during low flow.
  
5. Heavy equipment, e.g. bulldozers, backhoes, draglines, etc., if required for this project, should not be used or operated within the stream channel. In those instances where such instream work is unavoidable, then it shall be performed in such a manner and duration as to minimize suspension of sediments and disturbance to substrates and bank or riparian vegetation.
  
6. Any fill or riprap including refuse fill, shall be of such composition that it will not adversely affect the biological, chemical or physical properties of the receiving waters and/or cause violations of water quality standards. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions will not be created because of its placement.
  
7. If there are water supply intakes located downstream that may be affected by increased turbidity and suspended solids, the permittee shall notify the operator when work will be done.
  
8. Removal of existing riparian vegetation should be restricted to the minimum necessary for project construction.

9. Should evidence of stream pollution or jurisdictional wetland impairment and/or violations of water quality standards occur as a result of this activity (either from a spill or other forms of water pollution), the EBCI Water Quality Section shall be notified immediately by calling 828-359-6771.

\* EBCI Water Quality Standards are incorporated as Section 113E of the Cherokee Code.

### **EBCI 401 CERTIFICATION SPECIAL CONDITIONS.**

Activities that are eligible for US Army Corps of Engineers Nationwide Permit 27 qualify for coverage under this General Certification unless they meet one of the criteria/conditions listed below. Activities meeting any one (1) of the criteria/conditions listed below are denied coverage under this General Certification and require an Individual 401 Water Quality Certification from the Eastern Band of Cherokee Indians (EBCI):

1. Reversion: Any reversion activities where the restoration or aquatic enhancement activities were funded by federal or state grants or tribal government dollars.
2. Reversion: In the case of a reversion of an aquatic ecosystem restoration, enhancement and establishment activity funded by an individual or NGO, any proposed activities where the EBCI determines that compensatory mitigation is required.