

U.S. ARMY CORPS OF
ENGINEERS
REGULATORY DIVISION
WILMINGTON DISTRICT

January 10, 2016



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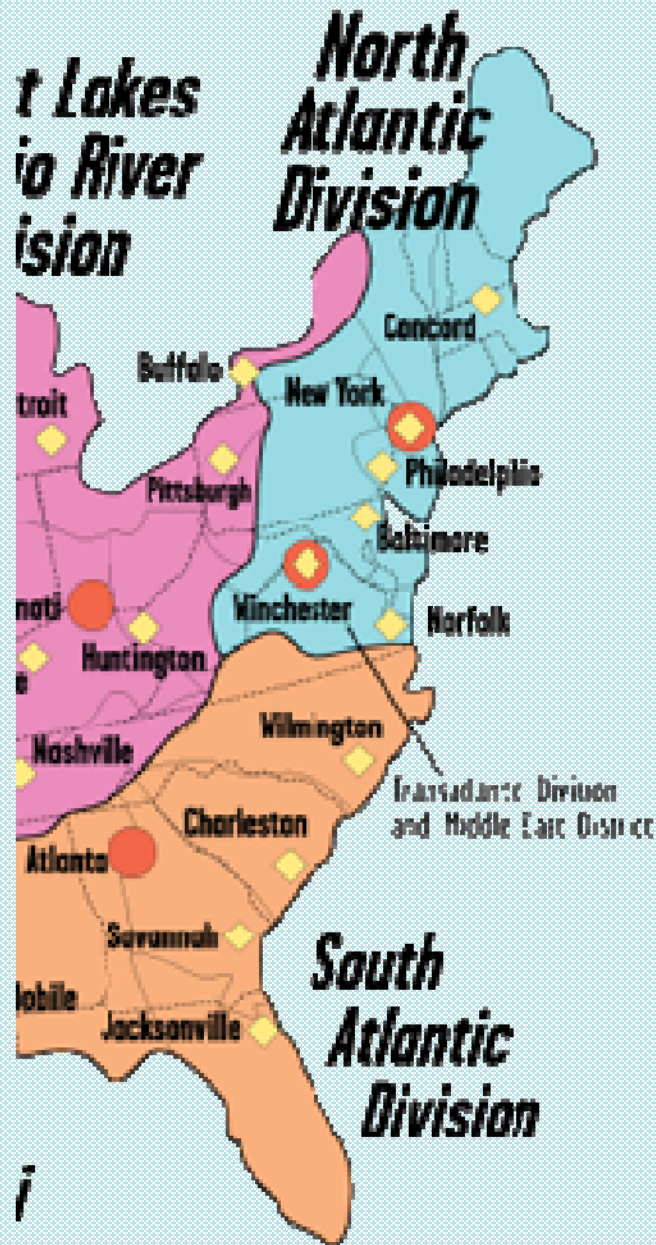
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<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Regulatory-Contacts/>



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MISSION

The Department of the Army Regulatory Program is one of the oldest in the Federal Government. Initially it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters. Time, changing public needs, evolving policy, case law, and new statutory mandates have changed the complexion of the program, adding to its breadth, complexity, and authority.

The Regulatory Program is committed to protecting the Nation's aquatic resources and navigation capacity, while **allowing reasonable development through fair and balanced decisions.** The Corps evaluates **permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands.**

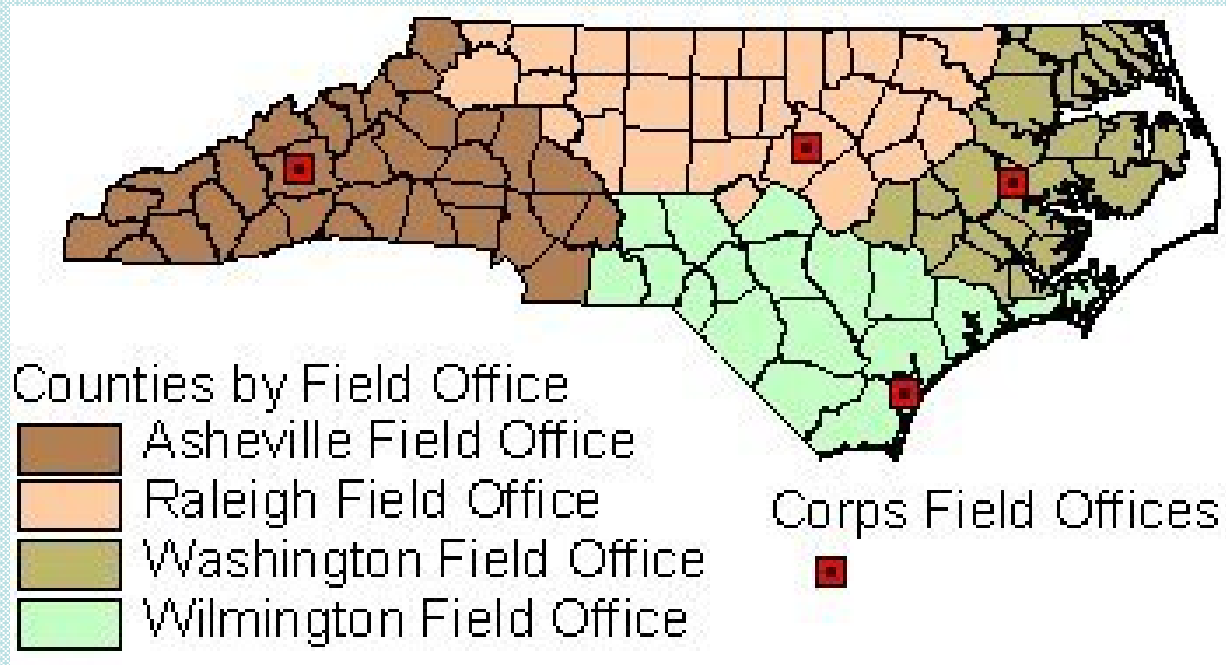


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Wilmington District

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

Wilmington Regulatory Division's has a main office located in Wilmington and field offices located Wilmington, Washington, Raleigh, Charlotte, and Asheville.



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Authorities

Section 10 of the Rivers and Harbors Act (1899)

Protection of the Nations navigable waters

Section 404 of the Clean Water Act (1972)

**To restore and maintain the chemical,
physical, and biological integrity of the
Nations waters.**



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Authorities – Section 10, RHA (33 U.S.C. 401, et seq.)

- Section 10 Rivers and Harbors Act of 1899
 - ◆ Regulates activities that affect course, location, and navigable capacity
 - ◆ Prohibits unauthorized obstruction or alteration of any navigable water of U.S.
 - ◆ All work (dredging, docks, pilings, marinas, fill, etc)
 - ◆ Authorizes the Secretary of the Army to issue permits in navigable waters.



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Section 10, RHA

Geographic definition (33 CFR 329.4)

- Navigational waters as defined as “those waters that are subject to the ebb and flow of the tide and/or are presently used,
- or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.”



Geographical definition cont...

Jurisdiction extends shoreward to the high tide line in tidal waters or the ordinary high water mark in non-tidal waters and waterward to 3 nautical miles.



Section 404, Clean Water Act

- Authorizes the Secretary of the Army to issue permits for the discharge of dredged or fill material.
- Regulates all waters of the United States for the discharge of dredged and/or fill material; including mechanized land clearing



Section 404, Clean Water Act

Geographic definition (33CFR 328.3 (a))

- (1) All waters which are currently used, or were used in the past, or may be **susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide**
- (2) All **interstate waters** including interstate wetlands
- (3) All other waters such as **intrastate** lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which **could affect interstate or foreign commerce** including any such waters:
 - i. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - iii. Which are used or could be used for industrial purpose by industries in interstate commerce;
- (4) All **impoundments** of waters otherwise defined as waters of the United States under the definition
- (5) **Tributaries** of waters identified in paragraphs (a)(1)-(4) of this section
- (6) The **territorial seas**
- (7) **Wetlands adjacent to waters** (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section



Permitting

The Corps, in making permit decisions, must consider a range of factors including environmental impacts, socioeconomic impacts and property ownership rights, and balance public benefits against public detriments



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Permitting

Types of Department of the Army Permits

1. Regional General- restricted to activities authorized within a specific state.
2. Nationwide General- available across the entire United States.
3. Individual (or Standard)



Regional General Permit

(Activities in NC)

- Maintenance dredging of existing channels and canals
- Bulkheads, rip-rap, and other shoreline stabilization
- Boat ramps
- Piers, docks, and boathouses
- Artificial Reefs



Regional General Permits.....

Specific Examples:

General Permit No. 198000291: TO AUTHORIZE THOSE CONSTRUCTION ACTIVITIES IN THE 20 COASTAL COUNTIES RECEIVING PRIOR APPROVAL FROM THE STATE OF NORTH CAROLINA IN THE FORM OF A COASTAL AREA MANAGEMENT ACT (CAMA) PERMIT, AND/OR A STATE DREDGE AND FILL PERMIT, AND IF REQUIRED, A WATER QUALITY CERTIFICATION, THAT ARE OTHERWISE NOT ELIGIBLE FOR FEDERAL AUTHORIZATION IN THE FORM OF A NATIONWIDE PERMIT OR ANOTHER REGIONAL GENERAL PERMIT.

General Permit No. 199602878: TO AUTHORIZE MAINTENANCE DREDGING WITHIN FEDERALLY AUTHORIZED NAVIGATION CHANNELS AND BORROW AREAS, AND THE DISCHARGE OF EXCAVATED AND/OR FILL MATERIAL WITHIN FEDERALLY APPROVED CONFINED UPLAND DISPOSAL AREAS OR, IN THE CASE OF BEACH QUALITY SAND, FEDERALLY AUTHORIZED BEACH RETENTION AREAS OR FEDERALLY AUTHORIZED BEACH NOURISHMENT PROJECT AREAS IN THE STATE OF NORTH CAROLINA.



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Nationwide Permit

- Authorizes on a nationwide basis for commonly recurring activities that have minimal cumulative adverse impacts to the environment.
- All have standard conditions and the most utilized NWP have regional conditions.
- Most require “Notification” (written application) to the District Engineer (DE) for verification that the work meets the terms and conditions of the permit.



Nationwide Permit Examples

- Nationwide Permit No. 2 (Structures in Artificial Canals)
- Nationwide Permit No. 3 (Maintenance)
- Nationwide Permit No. 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities)
- Nationwide Permit No. 8 (Oil & Gas Structures on the outer continental shelf)
- Nationwide Permit No. 12 (Utility Line)
- Nationwide Permit No. 14 (Road Crossings)
- Nationwide Permit No. 18 (Minor Discharge)
- Nationwide Permit No. 19 (Minor Dredging)
- Nationwide Permit No. 29 (Residential Developments)
- Nationwide Permit No. 35 (Maintenance Dredging of Existing Basins)
- *PROPOSED* Nationwide Permit No. 54 (Living Shorelines)



INDIVIDUAL PERMIT

- Activities not eligible for RGP or NWP
- Generally more complex
- Issuance of a Public Notice
- Longer processing time
- Increased coordination with State and Federal agencies
- Public Interest Review
- Involves either an Environmental Impact Statement or Environmental Assessment
- Statement of Findings with a conclusion to authorize or deny the permit request



Related Laws Affecting Permit Procedures and Policy

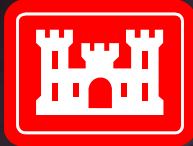
- National Environmental Policy Act (1969)
- Endangered Species Act (USFWS and/or NMFS)
- Magnuson-Stevens Fisheries Act (NMFS)
- Section 401, Clean Water Act (NC Division of Water resources)
- Coastal Zone Management Act (NC Division of Coastal Management)
- Fish and Wildlife Coordination Act (USFWS and NC Wildlife Resource Commission)
- National Historic Preservation Act (State Historic Preservation Office)



Regional

- Development of a programmatic BO for sand placement. Corps, FWS, DCM, and DEQ are currently working to finalize BA with the projected BO in 2017.
- South Atlantic Regional Biological Opinion (SARBO) for dredging activities. Expected completion is unknown.
- NMFS 1-Year Pilot Project for informal consultation (minimal effects, low litigation risk, requires a well-supported consultation request document, NMFS issues a letter of concurrence(LOC)).
- NC State Sediment Criteria for Beach Placement (2008)
- Environmental Windows





U.S. Army Corps
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Wilmington District

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