DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
SAVANNAH DISTRICT
100 WEST OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3604

FEBRUARY 4, 2022

Regulatory Division

PUBLIC NOTICE

Savannah District
2021 Nationwide Permit Regional Conditions (RCs)

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 73522) announcing the reissuance of 40 existing nationwide permits (NWPs) and one new NWP. These 41 NWPs will go into effect on February 25, 2022, and they will expire on March 14, 2026:

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

- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

On January 31, 2022, the Corps South Atlantic Division Commander approved Savannah District's RCs (Enclosed). All uses of a NWP in Georgia must comply with all applicable NWP general conditions and RCs. The RCs are available at http://www.sas.usace.army.mil/Missions/Regulatory/Permitting/General-Permits/Nationwide-Permits/. Please note that the enclosed RCs supersede the RCs approved on March 8, 2021.

By letter dated December 15, 2020, the Georgia Department of Natural Resources, Environmental Protection Division (Georgia EPD) issued a conditional Water Quality Certification for use all of the NWPs in Georgia, pursuant to Section 401 of the Clean Water Act.

By letter dated December 29, 2020, the Georgia Department of Natural Resources, Coastal Resources Division (Georgia CRD) objected to the Corps' Federal Consistency Determination for the NWPs pursuant to the Coastal Zone Management Act (CZMA). Specifically, Georgia CRD has denied the use of the NWPs in tidally influenced areas as determined by the State within the 11 coastal counties (i.e., Bryan, Brantley, Camden, Charlton, Chatham, Effingham, Glynn, Liberty, Long, McIntosh and Wayne Counties). As a result, prospective permittees must obtain an individual CZMA consistency concurrence from Georgia CRD prior to commencing the activity authorized by the NWPs. Information on how to request an individual CZMA consistency concurrence can be found at the following link: https://coastalgadnr.org/. In addition, prospective permittees can contact Georgia CRD by phone at 912-264-7218.

There are 16 existing NWPs that were previously reissued and went into effect on March 15, 2021. These 16 NWPs are as follows:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

All final NWPs, general conditions, further information, and definitions and PCN form can be found at the following link http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx.

Enclosures
1. Savannah District 2021 Regional Conditions

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SAVANNAH DISTRICT
100 WEST OGLETHORPE AVENUE
SAVANNAH, GEORGIA 3140

FINAL REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS IN SAVANNAH DISTRICT (SAS)

Effective Date for Modified Regional Conditions for 16 NWPs: February 25, 2022
Effective Date for Regional Conditions for 41 NWPs: February 25, 2022
Expiration Date for Regional Conditions for All NWPs: March 14, 2026

This Regional Condition document supersedes all prior Regional Condition documents for the Savannah District.

A. BACKGROUND/APPLICABILITY

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Savannah District (SAS) for the following Nationwide Permits (NWPs):

   a. The NWPs published in the January 13, 2021 Federal Register (86 FR 2744) announcing the reissuance of twelve (12) existing NWPs (that is, NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and issuance of four (4) new NWPs (that is, NWPs 55, 56, 57, and 58), as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWPs were effective on March 15, 2021 and will expire on March 14, 2026; and

   b. The NWPs published in the December 27, 2021 Federal Register (86 FR 73522) announcing the reissuance of the remaining unmodified forty (40) existing NWPs (that is, NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54) and issuance of one (1) new NWP (that is, NWP 59). At this time, NWPs 26 and 47 are reserved. These 41 NWPs will be effective as of February 25, 2022 and will expire on March 14, 2026.

2. Status of Activities Under Prior NWPs and/or Regional Conditions.

   i. 16 NWPs: The regional conditions that were effective on March 15, 2021 have been modified and are incorporated in this document. These modified regional conditions **supersede** the previous regional conditions that were approved for the 16 NWPs **except** for the following scenarios:

      1. NWP verification letters for one or more of the 16 NWPs that were issued **prior** to February 25, 2022; or

2. NWP activities that did not require a pre-construction notification (PCN)[1], are covered by one or more of the 16 NWPs, and have either commenced, are under contract to commence, or have been completed **prior** to February 25, 2022.

ii. 40 NWPs: For information about whether an activity can continue under the 2017 versions of the 40 existing NWPs (for example, the status of prior permit verifications and pre-construction notifications) and, accordingly, the 2017 Regional Conditions, see the discussion in the Reissuance and Modification of Nationwide Permits at 86 FR 73522 in Section I.D. on page 73525 or contact the Savannah District Regulatory Office directly.

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.

4. 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.

B. EXCLUDED WATERS AND/OR AREAS

1. Use of NWPs 12, 14, 23, 33, 43, 44, 57 and 58 is prohibited for any project in waters of the U.S. that support anadromous fish, or in those waters that previously supported such fish and where restoration of fish migrations and populations is possible. The established limits for these waters are listed in the attached Appendix A and include adjacent and tributary waters located within 1,000 feet of these identified waters. This prohibition does not apply to NWP 12, 57 and 58 projects that would not involve a discharge of dredged or fill material or mechanized land clearing in waters (i.e., directional bore line installation and overhead utility crossings). A waiver from this condition will be considered on a case-by-case basis, in coordination with the National Marine Fisheries Service. A waiver may be granted when it is determined that the project would have minimal impact on anadromous fish or their restoration.

C. REGIONAL CONDITIONS APPLICABLE TO <u>ALL</u> NWPs

1. A Pre-Construction Notification (PCN) is required for all uses of NWPs within 2,000 feet of an approved mitigation bank. Locations of approved mitigation banks in Georgia can be found at the following link:

[1] The acronym “PCN” used throughout this document refers to *Pre-Construction Notification*, as defined in NWP General Condition 32.

https://data.georgiaspatial.org/index.asp?body=search&county=&keyword=mitigation&startdate=1950&enddate=2020&format=&submit=Run+Search

2. A PCN is required for use of any NWP that results in temporary and/or permanent adverse effects to 0.1 acre or more of wetlands, other special aquatic sites, and other waters (such as lakes and ponds), or 0.01 acre of stream.

3. A compensatory mitigation plan is required for NWP projects that result in an adverse effect to 0.1 acre or more of wetlands and/or 0.01 acre or more of stream that results in a loss in aquatic function. For a total linear project, if the sum of the adverse effects from all individual single and complete projects meets or exceeds 0.1 acre of wetland and/or 0.01 acre of stream, mitigation is required for all adverse effects that would result from construction of the total linear project.

4. The preferred form of compensatory mitigation for NWP authorized projects is the purchase of stream and/or wetland credits from a Corps' approved commercial mitigation bank. The mitigation bank(s) proposed for an NWP authorized project must comply with Savannah District's most recent credit purchase guidance. Credits purchased prior to Corps approval may not be accepted. The most recent credit purchase guidance can be found at the following link: https://www.sas.usace.army.mil/Missions/Regulatory/Mitigation/.

5. The amount and type of compensatory mitigation proposed for NWP authorized projects must comply with General Condition 23 (Mitigation) of the NWP Program; Savannah District's most recent guidance on compensatory mitigation requirements; and the 2008 Final Compensatory Mitigation Rule (33 CFR Parts 325 and 332). The most recent guidance on compensatory mitigation requirements can be found at the following link: https://www.sas.usace.army.mil/Missions/Regulatory/Mitigation/.

6. All impacts to wetlands must be calculated and reported in acres. Stream impacts must be calculated separately and reported in both linear feet and acres.

7. Use of these NWPs is limited to the permanent loss of no more than 0.05 acre of stream per single and complete project.

8. NWPs cannot be used to authorize projects that would impact compensatory mitigation sites or an approved compensatory mitigation bank unless that project's purpose is to enhance the mitigation site or bank. A Department of the Army standard permit application is required for these projects.

9. NWPs cannot be used to authorize a new stormwater treatment facility in a perennial stream. A Department of the Army standard permit application is required for these projects.

10. Temporary diversion methods will be used to install structures in perennial streams. These methods shall not result in the dewatering of the downstream reach of the stream. In addition, the temporary diversion method shall be designed to ensure aquatic life passage to the maximum extent practicable. The affected reach of the stream channel shall be returned to preexisting contours following the removal of the temporary diversion structure. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area be restored to pre-project conditions.

11. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, the PCN must include project drawings that have the following information: a) location of the edges of the Federal channel; b) the distance from waterward edge of the proposed structure or fill to the nearest edge of the channel and the Mean High and Mean Low water lines; and c) coordinates of both ends of the waterward edge of the proposed structure or fill (NAD 83 State Plane Coordinates in decimal degrees). This requirement is in addition to NWP General Condition 31, Activities Affecting Structures or Works Built by the United States, and General Condition 32, Pre-Construction Notification. Locations of the Federal projects are located on the Corps Mapviewer found at the following link: https://geospatial-usace.opendata.arcgis.com/.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs

1. NWPs 11, 15, 16, 23, 27, 32, 35, 36, 48 and 53. A PCN is required for all uses.

2. NWPs 3(b), 16, 19, and 35. A PCN for use of NWPs 3(b), 16, 19, and 35 must include a “Tier I” evaluation, in accordance with the Inland Testing Manual. The “Tier I” evaluation must contain adequate information necessary to document whether there is “reason to believe” that the material to be dredged may be contaminated. If the Savannah District determines that “Tier II” testing is necessary, the PCN will not be considered complete until a “Tier II” testing report is submitted. The Inland Testing Manual is available at https://www.epa.gov/sites/production/files/2015-08/documents/inland_testing_manual_0.pdf.

3. NWP 3. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

4. NWP 4. Use of mechanized harvesting devices is prohibited.

5. NWP 7. Associated intake structures must employ the best practicable means to minimize entrainment or impingement of fish and other aquatic life, and the inflow velocity of intake structures is limited to not more than 0.5 foot per second.

6. NWP 12. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

7. NWP 12. Associated intake structures must employ the best practicable means to minimize entrainment or impingement of fish and other aquatic life, and the inflow velocity of intake structures is limited to not more than 0.5 feet per second.

8. NWP 13. A PCN is required for all uses of NWP 13 in 100 linear feet or more of stream.

9. NWP 13. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

10. NWP 37. All projects authorized under NWP 37 must be under construction or under contract for construction within 2 year of authorization. This NWP cannot be used for projects that involve removal of debris other than in the immediate up and downstream reaches (300 feet) adjacent to bridges and other stream crossings; bank clearing which involves complete removal of trees and/or removal of logs/dead trees which are buried in the bank; channel deepening beyond original bottom; and/or levee construction.

11. NWP 41. Use of NWP 41 is prohibited for projects that would cause or perpetuate drainage of wetlands or other waters of the U.S., and/or result in the removal or modification of riparian vegetation that provides shade, bank stabilization, nutrients, cover, or other features that are beneficial to fish and wildlife.

12. NWP 41. This NWP does not authorize work in natural streams that have been subjected to some previous channelization.

13. NWP 41. Excavated materials shall be removed from the site. However, excavated materials may be placed on existing adjacent berms or on other previously used disposal sites, provided no additional wetlands are impacted and the material is stabilized to prevent erosion.

14. NWP 57. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

15. NWP 57. Associated intake structures must employ the best practicable means to minimize entrainment or impingement of fish and other aquatic life, and the inflow velocity of intake structures is limited to not more than 0.5 feet per second.

16. NWP 58. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

17. NWP 58. Associated intake structures must employ the best practicable means to minimize entrainment or impingement of fish and other aquatic life, and the inflow velocity of intake structures is limited to not more than 0.5 feet per second.

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS

1. A PCN for a project that includes the construction of a stormwater treatment facility in waters of the U.S. must also include the following information:

    a. A clear statement of the basic (primary) purpose of the stormwater treatment facility.

    b. An alternatives analysis must demonstrate that all other available stormwater treatment controls will be implemented and that a treatment facility in waters of the U.S. is the only available practicable alternative that would meet the basic project purpose. This analysis shall also include all project site specific factors that may render other stormwater detention/retention measures impractical.

    c. NWPs cannot be used to authorize a new stormwater treatment facility in a perennial stream. A Department of the Army standard permit application is required for these projects.

2. In cases where a proposed project cannot be constructed as required by a RC, there may be an acceptable alternative construction technique that could be used to ensure impacts to aquatic resources remain minimal. In cases where use of an alternative technique is requested, the PCN must include the following information:

    a. A detailed discussion of why the activity-specific RC cannot be met.

    b. Adequate scientific or engineering information necessary to document that the proposed alternative construction technique would achieve equal or better aquatic resource impact avoidance as the RC.

    Based on information provided in the PCN, the Corps will determine whether or not the project would comply with the RC.

3. Installation of New or Replacement Culverts in Perennial Streams:

    a. Bottomless or Arch-Span Culverts: If there are any impacts to aquatic resources, the overall width of a bottomless or arch-span culvert shall be approximately equal to, but not narrower than, the typical bankfull width of the stream channel. Additional pipes or culverts may be used to receive flows

exceeding bankfull, but the inlet(s) shall be baffled to or sit at the stream's bankfull elevation.

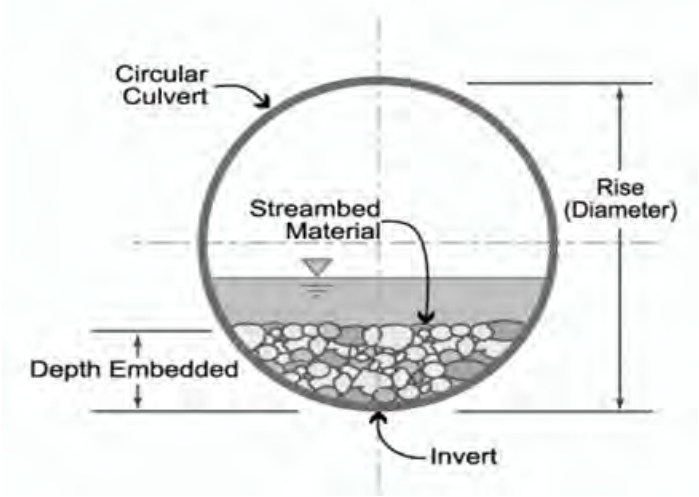
b. Box Culverts: The overall width of a single or multi-barrel box culvert shall be approximately equal to, but not narrower than, the typical bankfull width of the stream channel. Additional pipes or culverts may be used to receive flows exceeding bankfull, but the inlet(s) shall be baffled to or sit at the stream's bankfull elevation.

c. Circular Pipes/Culverts: The overall width of a circular pipe/culvert shall be approximately equal to, but not narrower than, the typical bankfull width of the stream channel. Multiple circular pipes/culverts may not be used to accommodate flows at bankfull width except in scenarios where a culvert replacement would result in additional impacts to waters. Additional circular pipes/culverts may be used to receive flows exceeding bankfull but shall sit at the stream's bankfull elevation.

d. Culverts shall be of adequate size to accommodate flows exceeding bankfull in a manner that does not cause flooding of associated uplands or disruption of hydrologic characteristics that support aquatic sites on either side of the culvert. This may be accomplished by installation of equalizer culverts in the floodplain.

e. Unless specifically described in the PCN, use of undersized culverts to detain stormwater or for pollutant treatment is not authorized.

f. Culvert Embedding: The upstream and downstream invert of culverts (except bottomless or arch-span culverts) shall be buried/embedded to a depth of 20% of the culvert height to allow natural substrate to colonize the structure's bottom and encourage fish movement. Additional culverts used to receive flows exceeding bankfull are not required to be embedded.



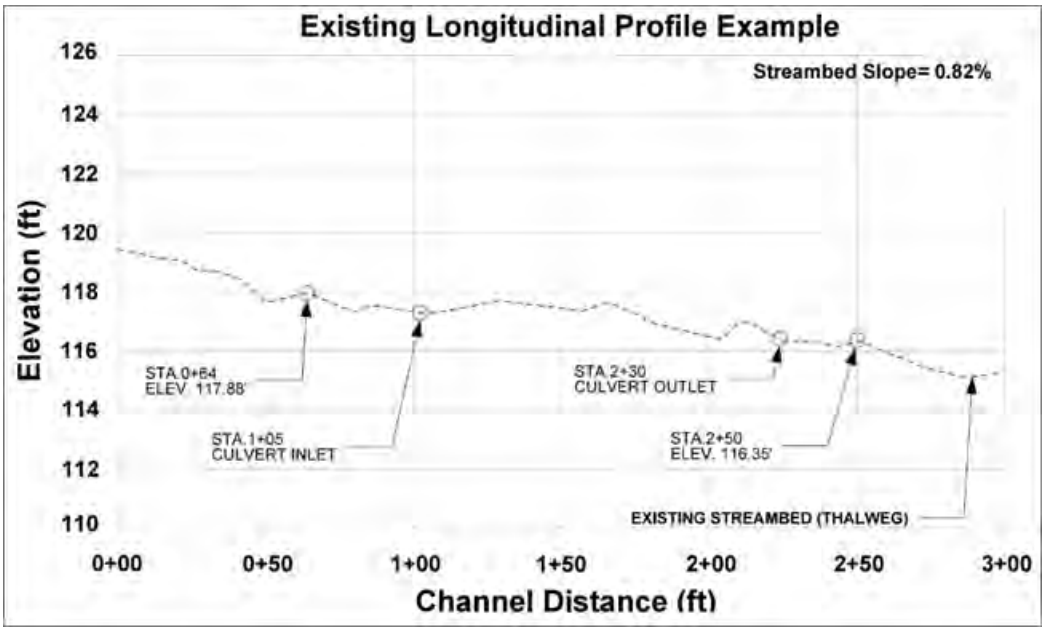
g. Culvert Slope: The culvert slope shall be set within 25% of the streambed slope (e.g., if streambed slope is 2%, the designed slope of the culvert shall be between 1.5% and 2.5%). In situations where culvert slope exceeds 4%, interior baffles on the bottom of the culvert or other measures shall be used to allow for sediment colonization and/or velocity attenuation.

h. See Appendix B for additional culvert design information.

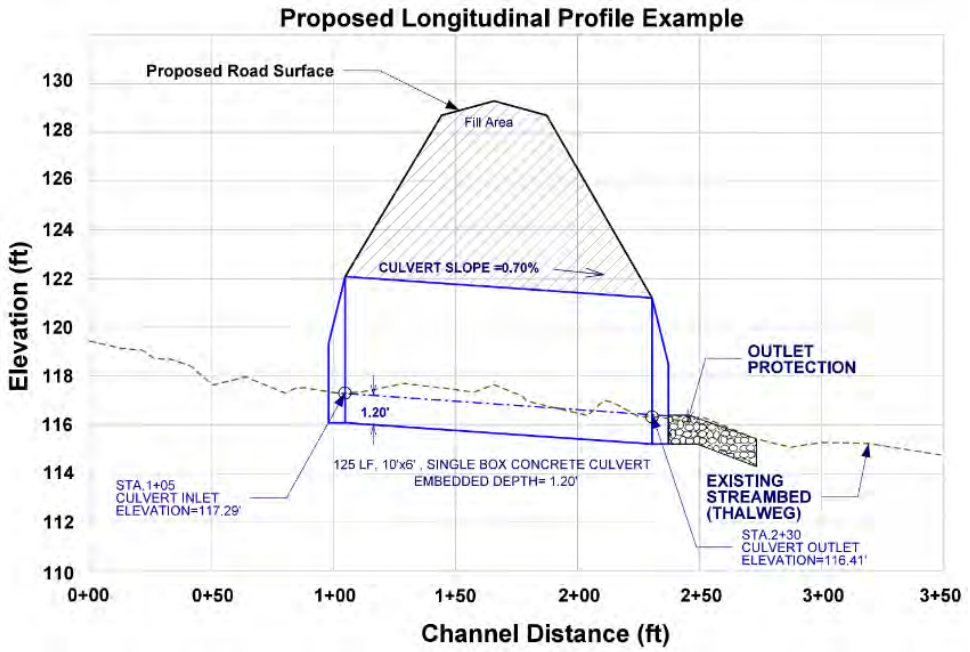
i. All PCNs shall provide the following information: (NOTE: See above RCs and Appendix B for additional culvert design information.)

(i) Plan view diagram of the existing and proposed conditions. The diagram shall depict the existing stream channel and direction of flow; proposed culvert information, including alignment, type and size, channel excavation (i.e., constructed channel between the existing stream channel and proposed culvert), and outlet protection; the proposed roadway; areas of cut and fill; and locations of cross-sections. The diagram shall include a scale and a north arrow.

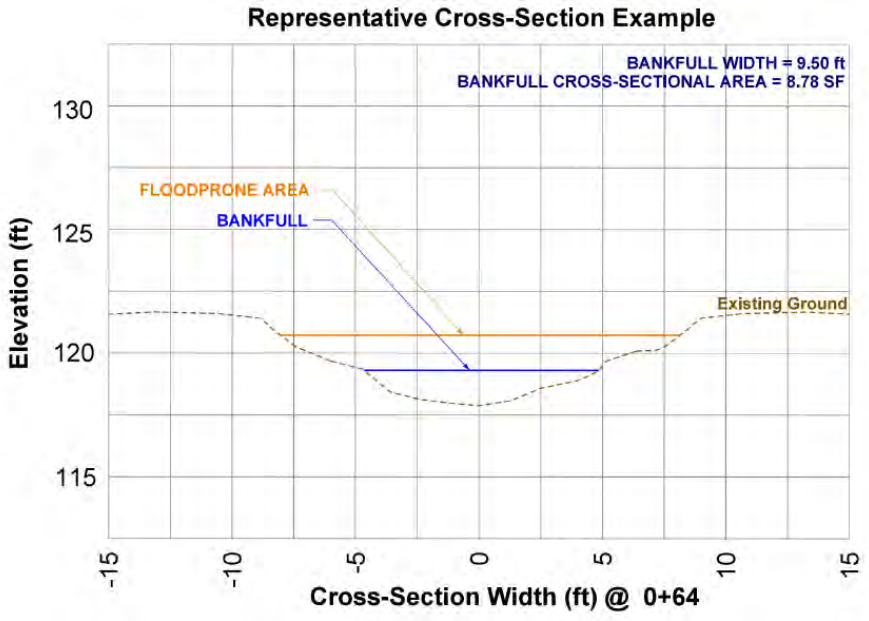
(ii) Longitudinal profile diagram of the existing stream channel beginning approximately 100 feet upstream of the proposed culvert inlet and continuing approximately 100 feet downstream of the proposed culvert outlet. The diagram shall depict the elevations of the existing streambed (along the thalweg), as well as locations of the proposed culvert inlet and outlet. Longitudinal profile measurements shall begin, if possible, at the head of a riffle and end at the head of a riffle. The change in elevation from head of riffle to head of riffle may be used to calculate streambed slope. For sand-bed dominated streams that are void of riffle features, the heads of ripples may be used as a substitute. The diagram shall note the streambed slope.



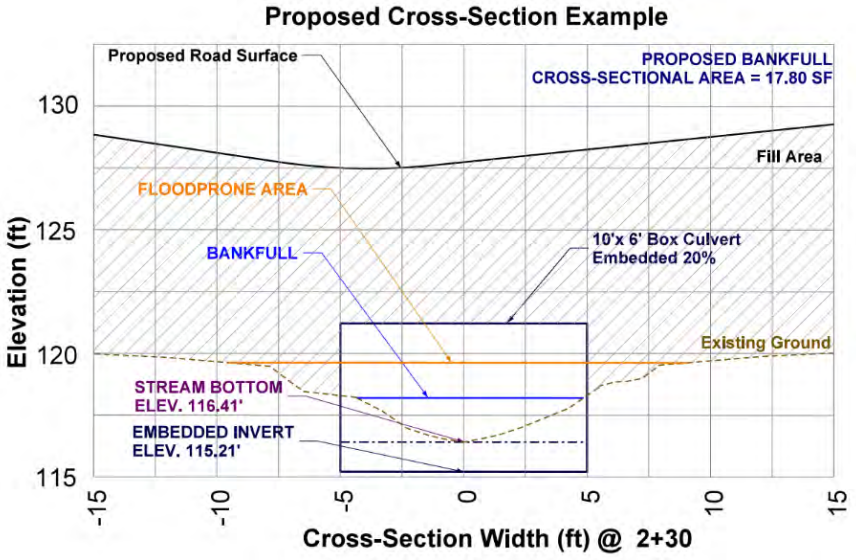
(iii) Longitudinal profile diagram of the proposed culvert, including the proposed culvert slope, type and size, invert elevations, and embedded depth; elevation of the existing streambed (along the thalweg); and locations of channel excavation (i.e., constructed channel between the existing stream channel and proposed culvert), headwalls, outlet protection, and energy dissipaters, as applicable.



(iv) At least one representative cross-section diagram of the existing stream channel. If the stream channel exhibits notable variation in width and/or maximum depth within the project area, multiple cross-sections shall be collected. Cross- section(s) shall be measured, if possible, at a stable riffle or ripple that is representative of the project reach and located within and/or directly adjacent to the project area. For culvert replacements, cross-sections shall be measured away from the influence of the existing culvert (usually 100 feet upstream and/or 100 feet downstream). The cross-section(s) shall depict the elevations of the stream channel bed and banks, bankfull, and floodprone area (i.e., 2x the maximum bankfull depth). The diagram shall note bankfull width and bankfull cross-sectional area. The X and Y axis must be at the same scale.



(v) Cross-sectional diagrams of the proposed culvert inlet and outlet, including location of the culvert in the stream channel; culvert type and size; proposed road surface and areas of cut and fill; and elevations of the culvert invert and stream bottom and stream channel bed and banks, bankfull, and floodprone area (i.e., 2x the maximum bankfull depth). The diagram shall note the proposed bankfull cross-sectional area. The X and Y axis must be at the same scale.



4. Installation of Culvert Extensions in Perennial Streams:

   a. Existing conditions of box and circular pipe culverts and any proposed extension thereof shall be assessed to determine if aquatic life passage is accommodated (e.g., perched culvert inlet or outlet). Justification shall be provided for any culvert that will be extended instead of replaced that does not accommodate aquatic life passage.

   b. Proposed culvert extensions shall be assessed to determine whether baffles or other measures may be used to improve conditions for aquatic life passage. Documentation shall be provided on whether measures to improve aquatic connectivity are practicable. When practicable, these measures shall be implemented.

5. Construction of Utility Lines:

   a. Wetland/stream crossings must be located and aligned to minimize the length of crossings, and/or to minimize impacts to wetlands/streams.

   b. For buried utility lines subject to Federal Energy Regulatory Commission (FERC) standards, the right-of-way corridor (i.e., impact area) cannot exceed the width as required by FERC standards. For all other buried utility lines, the width of the right-of-way corridor (i.e., impact area) cannot exceed 50 feet in wetlands.

c. Construction of individual pump stations that are associated with utility lines are limited to 0.1 acre of wetland impact; substations cannot be constructed within the banks of a stream.

d. Excavated material that is temporarily side-cast in waters of the U.S. shall be returned to the trench or removed within 60 days, unless a 30-day extension is requested and approved by the Corps.

e. Anti-seep collars, or other structures designed to prevent under-draining, will be installed on all buried utility lines in wetlands. If no anti-seep/drain device(s) is proposed, the applicant must provide information documenting why such a device is not required to prevent wetland drainage.

f. A PCN for a new utility line project or new linear transportation project must include the following information:

(i) A map depicting all waters of the U.S. located within the right-of-way of the total linear project. (NOTE: The term total linear project is discussed in the NWP definition of “single and complete linear project.”)

(ii) A map depicting the location of each “single and complete linear project” and all other work occurring in waters of the U.S. within the right-of-way for the total linear project. This map shall clearly identify the type of work that would occur in waters of the U.S., including access roads and substations.

(iii) A description of all work and resulting losses of and adverse effects to waters of the U.S.

6. Construction of Road Crossings:

a. An individual road crossing must begin on an existing natural high ground area (upland) and end on existing natural high ground.

b. Road-side ditches and medians associated with construction of an overall linear transportation project must be designed to prevent drainage of wetlands, and finished road elevations cannot be lower than surrounding wetlands.

F. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS

The State of Georgia Department of Natural Resources, Environmental Protection Division (EPD) has issued a Section 401 Water Quality Certification (WQC), which is subject to the following terms and conditions (see Appendix C):

1. To assure compliance with State water quality standards, the relevant Nationwide Permit applicant shall conduct all activities in a manner that will assure water quality adequate or necessary to protect and maintain designated uses. 33 U.S.C. § 313(a)-(d); O.C.G.A. § 12-5-23(c)(2),(6),(9),(15); Ga. Comp. R. and Regs. 391-3 -6-.03(2)(i), (ii).

    a. To prevent or avoid degradation of water quality downstream, the relevant Nationwide Permit applicant shall install in-water Best Management Practices (BMPs) to the extent practical and feasible, to minimize total suspended solids (TSS) and sedimentation for any work conducted within a state water or within the delineated boundaries of wetlands. 33 U.S.C. § 1313(a)-(d); O.C.G.A. § 12-5-23(c)(2), (6), (9), (15); O.C.G.A. § 12-5-29(a); O.C.G.A. §§ 12-7-6 to 7; Ga. Comp. R. and Regs. 391-3-6-.03(5).

    b. In order to prevent or avoid violations of state water quality standards, the relevant Nationwide Permit applicant must ensure that any fill placed in state waters must be clean fill that is free of solid waste, toxic, or hazardous contaminants. 33 U.S.C. §§ 1311 and 1313(a)-(d); O.C.G.A. § 12-5-23(c)(2), (6), (9), (15); O.C.G.A. § 12-5-29(a); Ga. Comp. R. and Regs. 391-3-6-.03(5), (6), (11), (14)-(16).

2. To ensure that other pertinent and appropriate State permissions are obtained, for bank stabilization projects conducted under NWP 13 or NWP 54, particularly those that involve work in state buffers, Nationwide Permit applicants should consult Georgia EPD's Streambank and Shoreline Stabilization Guidance, available at https://epd.georgia.gov/watershed-protection-branch/erosion-and-sedimentation and, as necessary, apply for and abide by the terms of any applicable Georgia stream buffer variance. 33 U.S.C. §§ 1311 and 1313(a)-(d); O.C.G.A. § 12-7-6; Ga. Comp. R. and Regs. 391-3-7-.05

CZMA: Georgia Department of Natural Resources, Coastal Resources Division did not concur with the District's CZMA consistency determination for all activities under all NWPs in tidally-influenced waters within the 11-county coastal zone (See Appendix D). Consequently, prospective permittees must obtain an individual CZM consistency concurrence prior to commencement of the activity authorized by the NWP within tidally influenced areas in the following counties: Chatham, Effingham, Bryan, Liberty, Long, McIntosh, Glynn, Wayne, Brantley, Camden and Charlton Counties.

G. APPENDICES

Appendix A. Anadromous Fish Waters in Georgia
Appendix B. Culvert Design Information
Appendix C. 401 Water Quality Certification
Appendix D. Coastal Zone Management Act Federal Consistency Denial Letter

H. DISTRICT POINT OF CONTACT

Sarah E. Wise
100 West Oglethorpe Avenue
Savannah, Georgia 31401
Phone: (912) 652-5550
Email: Sarah.e.wise@usace.army.mil

Anadromous Fish Waters in Georgia

1. **Savannah River** from the Atlantic Ocean to the Augusta Diversion Dam, including portions of Ebenezer (GA 119) and Brier (GA 121/US 25) Creeks. Anadromous fish restoration is in progress on the Savannah River and the limit of anadromous fish waters may be extended to include Stevens Creek and the Savannah River to Thurmond Dam. Currently there is limited upstream passage through the lock chamber at New Savannah Bluff Lock and Dam.

2. **Ogeechee River** from Ossabaw Sound to the GA 402/I-20/Carl Sanders Hwy Bridge, including portions of Black (GA 404/US 16/Jim Gillis Historic Savannah Pkwy), Mill (GA 24), Ogeechee (GA 17/Scarboro Hwy), Horse (GA 21/Millen Hwy), Williamson Swamp (GA 4-BUS/US 1-BUS/S Main St.) and Rocky Comfort (GA 88/Ferns Bridge Rd.) Creeks.

3. **Canoochee River** from its confluence with the Ogeechee River and its upper branches, including Lotts (GA 73/US 25/US 301) and Little Lotts (GA 46) Creeks above the I-16 Bridge.

4. **Altamaha River** from the Atlantic Ocean to its confluence with the Oconee and Ocmulgee Rivers, including portions of Doctor (GA57), Penholoway (GA 27/US 25/US 341/Golden Isles Pkwy), Beards (GA 196/Baxter-Durrence Rd.; Halls Bridge), Ten Mile (Ten Mile Rd.) and Cobb (GA 147; Perrys Mill Bridge) Creeks.

5. **Ohoopee River** from its confluence with the Altamaha River to the GA 31/US 319/Carter Rd. bridge near Wrightsville, including portions of Rocky (GA 178/Sid Newton Rd.) and Pendleton (GA 86/Earl Kemp Rd.) Creeks, and Little Ohoopee River to the GA 78/US 319/Elm St. Bridge.

6. **Oconee River** from its confluence with the Altamaha River to the Lake Sinclair Dam, including portions of Turkey (GA 31/US 319/US 441; Claxton Memorial Bridge), Big Sandy (GA 112/Nickelsville Toomsboro Rd.), Commissioner (GA 112/Main St.) and Buffalo (GA 24/W Church St.) Creeks.

7. **Ocmulgee River** from its confluence with the Altamaha and Oconee rivers to the East Juliette hydropower dam, including portions of Horse (GA 117), House (GA 11/US 129/Bowens Mill Hwy), Cedar (GA 11/US 129), Bluff (GA 11/US 129/Abbeville Hwy), Big (GA 11/GA 112/US 129/Abbeville Hwy), Big Indian (GA 247/US 129), Echeconnee (GA 11/Houston Rd.) and Tobesofkee (GA 11/GA 49/GA 247/US 41/US 129) Creeks.

8. **Little Ocmulgee River** from its confluence with the Ocmulgee River to the dam at Little Ocmulgee Lake in McRae, including portions of Alligator Creek (CR 197/GA 134).

9. **Satilla River** from St. Andrew Sound to the GA 158/Old Coffee Rd. Bridge west of Douglas, including portions the Alabaha River (GA 38/US 84) and Buffalo (GA 23/US 301), Big Satilla (GA 15/GA 121/Blackshear Hwy SE), Little Satilla (Nine Run Rd.), Colemans (Stanfield Rd.), and Pudding (Old Douglas Rd.) Creeks.

10. **Little Satilla River** from Jekyll Sound to the GA 25/US 17/Ocean Hwy bridge.

11. **St. Marys River** from the Atlantic Ocean to near the Florida/Georgia border at the CR 2/GA 94/Moniac Rd. Bridge.

12. **Chattahoochee River** from Lake Seminole to George W. Andrews Lock and Dam.

13. **Flint River** from Lake Seminole to the Flint River Dam.

Culvert Designs that Restrict Movement of Fish and other Aquatics

There are three common culvert design flaws that create migration barriers for fish and other aquatic species:

- Perched culverts with excess drop at the outlet;
- Poorly-sized or installed culverts that create high water velocity, turbulence, and/or inadequate water depths within the culvert; and
- Debris accumulation at the culvert inlet.

Perched Culverts: A perched culvert's downstream end hangs above the level of the stream bottom, so that water leaving the culvert forms a waterfall at the culvert lip. Perching can occur when culverts are installed directly on the stream bottom, rather than being sunk into the bed, or from years of channel scour caused by an undersized culvert.

Poorly-sized or Installed Culverts: Undersized culverts restrict natural stream flows, particularly during floods. Water exits the structure at a high velocity, causing channel and bank erosion. Overly-wide culverts spread a stream's flow out over a wide area, so water depths are too shallow for many fish and other aquatic organisms to swim or move through.

Multiple Pipe Culverts: Culverts designed with two or more widely-spaced pipes to move a stream's flow are prone to clogging, which may inhibit the movement of animals through the crossing and increase water velocity in the remaining pipes. Clogging can cause flooding into roadside ditches, resulting in problems for roadways and hazardous conditions for motorists. Clogged entries sometimes cause water to scour the channel banks, causing bank erosion and often increased maintenance costs. Many multiple pipe culverts are undersized to carry normal or flood flows.

Aquatic-Passage Friendly Culvert Designs

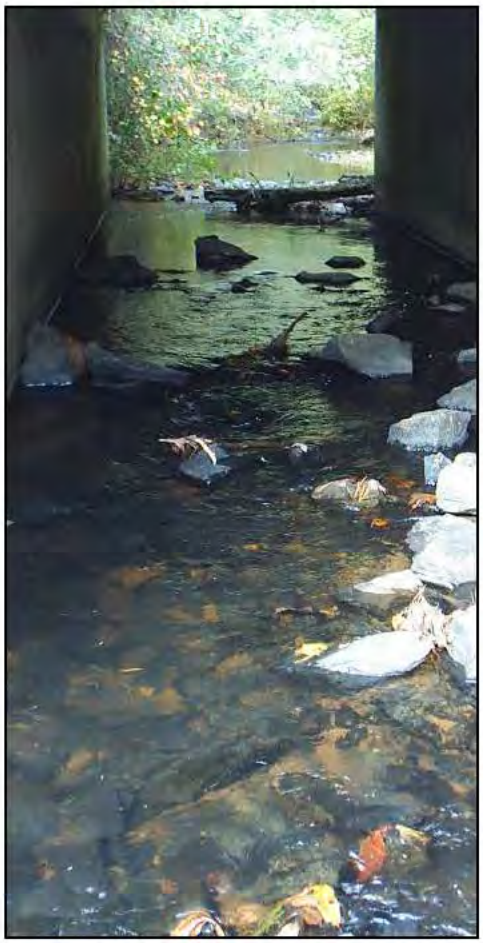
In general, bridges have less impact than culverts on aquatic species movement, because they typically do not constrict a stream channel to as great a degree as culverts and usually allow for vertical movement of the streambed. Bottomless culverts may be a good alternative for fish passage where foundation conditions allow their construction and width criteria can be met. All culverts should be designed to meet appropriate hydraulic capacity and structural integrity criteria.

Several methods exist for designing culverts for fish passage, including methods that focus on hydraulic design and stream simulation. The recommendations below borrow from, but do not replace, these more rigorous culvert design protocols.

The Fish and Wildlife Service recommends that culverts designed to facilitate movement of aquatic species should:

- Have a width equal to or slightly greater than the average streambed width
- Be installed at a relatively flat gradient
- Be countersunk (embedded) below the channel bed at least 20% of the culvert's diameter or rise
- Provide adequate flood capacity with extra culverts at bankfull elevation or in the floodplain.

These bottomless or embedded culverts were sized so they are wide enough to carry base flows without altering stream depth (i.e., width equal to or slightly greater than the average channel width).



The culvert is installed at a relatively flat gradient to allow substrate to colonize the culvert's interior and maintain natural flow velocity.

Culverts, set at bankfull elevation (top) or with baffles constructed at bankfull height carry flood waters but do not overwiden the channel at baseflow.

GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

EPD Director's Office
2 Martin Luther King, Jr. Drive
Suite 1456, East Tower
Atlanta, Georgia 30334
404-656-4713

December 15, 2020

Colonel Daniel Hibner
Commander
U.S. Army Corps of Engineers
Savannah District
100 West Oglethorpe Avenue
Savannah, Georgia 31401-3640

Re: Water Quality Certification
2020 Reauthorization of Nationwide Permits
Statewide

Dear Colonel Hibner:

In accordance with Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341, the State of Georgia has evaluated the 2020 Nationwide Permits submitted by the U.S. Army Corps of Engineers, an applicant for a federal permit or license related to proposed activity in, on, or adjacent to the waters of the State of Georgia.

The State has examined the information regarding the 2020 Nationwide Permits provided to it by Corps Savannah District Regulatory Program. In accordance with that information, the State of Georgia issues this Section 401 certification to U.S. Army Corps of Engineers. This Section 401 water quality certification is subject to the following terms and conditions:

1. To assure compliance with State water quality standards, the relevant Nationwide Permit applicant shall conduct all activities in a manner that will assure water quality adequate or necessary to protect and maintain designated uses. 33 U.S.C. § 1313(a)-(d); O.C.G.A. § 12-5-23(c)(2),(6),(9),(15); Ga. Comp. R. and Regs. 391-3-6-.03(2)(i), (ii).

    a. To prevent or avoid degradation of water quality downstream, the relevant Nationwide Permit applicant shall install in-water Best Management Practices (BMPs) to the extent practical and feasible, to minimize total suspended solids (TSS) and sedimentation for any work conducted within a state water or within the delineated boundaries of wetlands. 33 U.S.C. § 1313(a)-(d); O.C.G.A. § 12-5-23(c)(2), (6), (9), (15); O.C.G.A. § 12-5-29(a); O.C.G.A. §§ 12-7-6 to 7; Ga. Comp. R. and Regs. 391-3-6-.03(5).

    b. In order to prevent or avoid violations of state water quality standards, the relevant Nationwide Permit applicant must ensure that any fill placed in state waters must be clean fill that is free of solid waste, toxic, or hazardous contaminants. 33 U.S.C. §§ 1311; 1313(a)-(d); O.C.G.A. § 12-5-23(c)(2), (6), (9), (15); O.C.G.A. § 12-5-29(a); Ga. Comp. R. and Regs. 391-3-6-.03(5), (6), (11), (14)-(16).

2. To ensure that other pertinent and appropriate State permissions are obtained, for bank stabilization projects conducted under NWP 13 or NWP 54, particularly those that involve work in state buffers, Nationwide Permit applicants should consult Georgia EPD's Streambank and Shoreline Stabilization Guidance, available at https://epd.georgia.gov/watershed-protection-branch/erosion-and-sedimentation and, as necessary, apply for and abide by the terms of any applicable Georgia stream buffer variance. 33 U.S.C. §§ 1311; 1313(a)-(d); O.C.G.A. § 12-7-6; Ga. Comp. R. and Regs. 391-3-7-.05.

This certification does not waive any other permit or other legal requirement applicable to this project or relieve the applicant of any obligation or responsibility for complying with the provisions of any other federal, state, or local laws, ordinances, or regulations.

It is your responsibility to submit this certification to the appropriate federal agency. If you have any questions regarding this certification, please contact Stephen Wiedl at Stephen.Wiedl@dnr.ga.gov/404-651-8459.

Sincerely,

Richard E. Dunn, Director
Environmental Protection Division

cc: Mr. Sarah Wise, Corps
Mr. Eric Somerville, EPA
Mr. Bill Wikoff, FWS
Ms. Kelie Moore, CRD

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MARK WILLIAMS
COMMISSIONER

DOUG HAYMANS
DIRECTOR

December 29, 2020

Ms. Sarah Wise
USACE Savannah District Regulatory
sarah.e.wise@usace.army.mil

RE: Federal Consistency Determination for Nationwide Permit Reissuance and Regional Conditions for Savannah District: **Objection** for Use in Tidal Areas of Coastal Zone

Dear Ms. Wise:

Staff of the Georgia Coastal Management Program (GCMP, The Program) have reviewed the September 30, 2020 confirmation letter referencing the September 15, 2020 federal register notice to reissue the Nationwide Permits (NWPs) that serves the Corps' determination of Coastal Zone Management Act (CZMA) consistency, along with the Savannah District's final regional conditions for 2020 NWPs that was placed on public notice November 29, 2020.

The language of the NWPs and general conditions (GCs) published in the Federal Register on September 15, 2020 are subject to revision and final approval by US Army Corps of Engineers (USACE) Headquarters. The language of the Savannah District Regional Conditions (RCs) published in a District Public Notice on September 29, 2020 are subject to revision and final approval by USACE South Atlantic Division. A supplemental federal consistency determination may be required if the final approved language affects any costal use or resource substantially different than described in the reviewed documents as required by 15 CFR 930.46.

The Program **objects** to the use of any NWP in tidally-influenced areas, as determined by Georgia Department of Natural Resources' Coastal Resources Division (GaDNR/CRD), within the 11-county coastal zone (Chatham, Effingham, Bryan, Liberty, Long, McIntosh, Glynn, Wayne, Brantley, Camden and Charlton Counties).

The Program **concurs** with the use of all NWPs in non-tidal areas of the 11-county coastal zone and any other area of the state.

Within the non-tidal areas of Georgia's 11-county coastal management zone, issuance of a Clean Water Act Section 401 Water Quality Certification, pursuant to the Georgia Water Quality Control Act (O.C.G.A. 12-5-20 et seq.) is sufficient for unconditional federal consistency concurrence for NWP use. Within tidally influenced areas of the 11-county coastal zone

additional state authorizations are required from GaDNR/CRD prior to use of an NWP in Georgia. The Program has 3 primary enforceable policies governing tidal areas: Coastal Marshlands Protection Act (CMPA, O.C.G.A. 12-5-280, et seq.), Shore Protection Act (SPA, O.C.G.A. 12-5-230 et seq), and Revocable License Program (RL, O.C.G.A. 50-16-61). These Acts consider, among other things, obstruction to or alteration of the natural flow; increased erosion, shoaling and/or stagnant water; the conservation of fish, shrimp, oysters, crabs, clams, other marine life and wildlife; alteration of submerged lands or functions of the sand-sharing system; and access by and recreational use and enjoyment of pubic properties. These Acts require prospective NWP users to obtain separate written permission from the State under one or more of these enforceable policies prior to commencing work authorized by any NWP.

An alternative that would allow the proposed NWPs, GCs, and RPs to be consistent to the maximum extent practicable is for the Corps to require issuance of any applicable state authorization(s) from GaDNR/CRD within the tidal areas of the 11-county coastal zone prior to validation of an NWP. This would alleviate the need for prospective NWP users to obtain individual federal consistency certification concurrence and streamline the regulatory process.

If the Savannah District of the US Army Corps of Engineers (Savannah District) agrees to this alternative and modifies the RCs to include a condition for the NWP user to obtain any needed GaDNR/CRD authorization(s) prior to validation of the NWP, you must notify us before the RCs are authorized [15 CFR 930.43(e)]. If Savannah District decides to proceed over our objection you must notify us prior to authorization of the RCs [15 CFR 930.43(e)]. Please feel free to contact Kelie Moore or me if we can be of additional assistance.

Sincerely,

Doug Haymans, Director

DH/km

cc: Dr. Jeffrey L. Payne, NOAA OCM Director, Jeff.Payne@noaa.gov
Kerry Kehoe, NOAA OCM Senior Policy Analyst, Kerry.Kehoe@noaa.gov
Jill Andrews, GaDNR/CRD Coastal Management Program Section Chief, Jill.Andrews@dnr.ga.gov
Josh Noble, GaDNR/CRD Marsh and Shore Management Program Manager, Josh.Noble@dnr.ga.gov
Kelie Moore, GaDNR/CRD Federal Consistency Coordinator, Kelie.Moore@dnr.ga.gov