

## Planning for Growth: aquatic ecosystems and the environmental review process

### State and Federal Laws: What do they mean for me?

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The major environmental laws that govern the interaction of local development projects and aquatic species in North Carolina are set out in the following table (federal programs are shaded):

Law	Lead agency	Triggers	Goals	Implications and notes
National Environmental Policy Act (NEPA)	[whichever federal agency is considering the triggering action]. Regulations by Council on Environmental Quality (CEQ) and lead agency.	Major federal action significantly affecting the quality of the environment. Any project with federal funding, control or permits is likely to be covered.	Force agency awareness of environmental consequences & consideration of alternatives and mitigation	If triggered, an environmental assessment (EA) and finding of no significant impact (FONSI) or an environmental impact statement (EIS) must be prepared, unless the action is categorically excluded (CATX).
State Environmental Policy Act (SEPA)	[whichever state agency is considering the triggering action]; State Clearinghouse in Dept. of Administration	1) a state action, 2) an expenditure of public money or private use of public land, and 3) a potential environmental effect. State permit or funding may trigger SEPA for local projects.	Force agency awareness of environmental consequences & consideration of alternatives and mitigation	If triggered, an environmental assessment (EA) and finding of no significant impact (FONSI) or an environmental impact statement (EIS) must be prepared, unless the action is covered by a minimum criterion.
Endangered Species Act	U.S. Fish and Wildlife Service, Dept. of Interior	Action which may take (kill, harass or harm directly or through habitat modification) a federally listed species	Prevent the loss of species	Potential "takes" require consultation with USF&W. Incidental take permit may be possible via habitat conservation plans or safe harbor provisions.
State Endangered Species Act & WRC Habitat	Wildlife Resources Commission, DENR	Action which may take (kill, harass or harm directly or	Prevent the loss of species; improve wildlife habitat	Potential takes or habitat degradation will result in mitigation suggestions

Conservation Program		through habitat modification) a state listed species or otherwise degrade game or non-game habitat		during SEPA review and possibly other permit reviews. Failure to heed suggestions may slow projects.
Instream flow; minimum release requirements for federally licensed dams	Federal Energy Regulatory Commission	Renewal or changes in licenses for federally regulated dams	Assure adequate flow for in-stream ecology along with other goals of Federal Power Act	Waste assimilation and water withdrawals may compete with mandated instream flow requirements
Instream flow; minimum release requirements for state regulated dams	Div. of Water Resources, DENR	Renewal or changes in permits for state regulated dams	Assure adequate flow for in-stream ecology	Waste assimilation and water withdrawals may compete with mandated instream flow requirements
Interbasin transfers of water certificate	Div. of Water Resources & Environmental Management Comm'n (EMC), DENR	Withdrawals from streams in excess of 2 mgd or 25% increase in existing transfer	Provide orderly allocation of surface water in state	Like permits for new wastewater discharges, certificates for interbasin transfers can take a long time. Both have implications for downstream communities.
Wetlands dredge or fill, Clean Water Act § 404	U.S. Army Corps of Engineers	Adding materials or structures or removing same from waters of the U.S.	Prevent encroachment on public trust rights in water; limit wetlands losses	Wetlands impacts will generate mitigation requirements—avoidance, restoration, protection
State water quality certification, Clean Water Act § 401	Div. of Water Quality & EMC, DENR	Federal permit or license for a discharge into surface water. Under U.S. Supreme Court case in PUD#1 v. Washington, state 401 review can include actions (such as instream flow requirements) well outside traditional concerns of the USACE.	Maintain surface water quality under § 303 of the federal Clean Water Act; maintain designated uses of water	State may have independent mitigation requirements for projects that involve fill, structures or dredging in surface water. NC has an Ecosystem Enhancement Program with fairly elaborate mitigation programs managed centrally.
State wetlands rules	Div. of Water Quality & EMC,	Disturbing isolated wetlands not	State has exercised its authority	Federal decisions limiting the extent of federal

	DENR	covered by § 404/401 program	independent of the federal Clean Water Act to regulate all wetlands, not just those under federal jurisdiction, due to the ecological importance of remaining wetlands	jurisdiction over isolated wetlands do not allow unregulated draining, ditching or other development on North Carolina wetlands.
NPDES discharge permit	Div. of Water Quality & EMC, DENR	Discharges to surface waters of the state	The original federal water pollution control act permitting program, designed to maintain water quality and designated water uses even in the presence of point source discharges of pollutants	Any point source discharge of pollutants to water requires thorough regulatory review. Some waters in North Carolina are "fully assimilated" meaning that further waste discharges are not allowed, unless other, existing discharges are removed.
Total Maximum Daily Load restrictions	Div. of Water Quality & EMC, DENR	Surface waters that fail to meet their designated uses and are thus "impaired"	When the discharge permitting programs have failed to bring water segments into compliance with their use classifications under § 303 of the Clean Water Act, state and federal agencies are to develop other strategies (TMDLs) to bring those water bodies into compliance	If you have impaired waters in or downstream from your jurisdiction, it is possible that all other water permitting (NPDES point source and stormwater, 404/401, etc.) will have an additional overlay of requirements designed to cure the cause of the water quality impairment.
Nutrient Sensitive Waters and other specially classed waters restrictions (including Water Supply Watersheds)	Div. of Water Quality & EMC, DENR	All waters of the state are classified, but some, such as waters with excess nutrients, trout waters, other high quality waters, outstanding resources waters, water supply	Protect special uses of water such as drinking water, shellfishing, trout habitat and important water recreation areas, as well as cure difficult nonpoint source problems such as	If your jurisdiction has specially classed waters in it, then projects that raise concerns about impairment of those special uses will get heightened regulatory scrutiny.

		watersheds, and shellfish waters, have special protections	excess nutrients	
Stormwater laws and rules	Div. of Water Quality, DENR or Div. Of Coastal Management, DENR	There are many state stormwater programs. Triggers include development in coastal areas of environmental concern, water supply watersheds, municipal separate stormwater systems in urbanized areas, and nutrient sensitive waters	Polluted stormwater is a leading cause of water quality degradation in the state, and thus programs to address stormwater pollution (both state and federal) have proliferated over the past two decades.	The newer stormwater programs (e.g. in nutrient sensitive water river basins and Phase II communities) have permit requirements, so SEPA review may more frequently be triggered. Local stormwater permits may have special provisions to address aquatic species problems.
Coastal Area Management Act (CAMA)	Div. of Coastal Management, DENR	Development in areas of environmental concern in the twenty coastal counties	Rapidly increasing coastal development clashes with sensitive waters of the estuaries and shore.	CAMA development is subject to its own set of local planning requirements.
Erosion and Sediment Control Act <i>SPCA - Sediment Pollution Control Act</i>	Div. of Land Resources, DENR	Land disturbing activity on one acre or more	Sedimentation is probably the state's worst water quality problem.	Monitoring and enforcement of erosion and sediment control plans is historically very under-resourced in the state, and pervasive clay soils are inherently hard to control once particles are suspended. So sedimentation remains a major problem despite a mature regulatory program.
Contaminated property restrictions	Div. of Waste Management, DENR	Sites with residual contamination (not fully cleaned up) may have restrictions that affect water use in and around them.	To facilitate cleanups, sites increasingly are left with residual contamination and some sort of controls on the use of the land.	It is increasingly likely that contaminated sites will have institutional and/or engineered controls that "run with the land" and that may affect future development in and around the contaminated property.