

North Carolina Beach Sand Placement Projects Statewide Programmatic Biological Opinion

Why has a Statewide Programmatic Biological Opinion (SPBO) Been Developed?

The North Carolina Department of Coastal Management (NCDCM) requested development of the SPBO to expedite the Endangered Species Act (ESA) Section 7 consultation process for beach nourishment, navigation projects, and other activities involving placement of sand on the beach. The U.S. Fish and Wildlife Service worked with NCDCM, the U.S. Army Corps of Engineers (Corps), Bureau of Ocean Energy Management (BOEM), North Carolina Wildlife Resources Commission (NCWRC) and others to develop the SPBO and negotiate the requirements within it.

Which projects are covered by the SPBO?

The following types of activities in North Carolina are covered by the SPBO, if the minimization measures, Reasonable and Prudent Measures, and Terms and Conditions in the SPBO are applicable to the specific activity. If not, the Corps will consult separately on individual projects.

1. Sand placement on the sandy beach or dune by any non-federal public or private entity;
2. Sand placement as an associated authorization of sand extraction from the Outer Continental Shelf (OCS) by BOEM; and
3. Sand placement funded or conducted by a Federal agency, such as Coastal Storm Damage Reduction (CSDR) Projects, federal public assistance projects administered by FEMA or other federal agencies, and beach disposal from Operations and Maintenance (O&M) dredging of navigation channels (dredging is not included).

A complete list of the minimization measures, Reasonable and Prudent Measures, and Terms and Conditions are attached to this FAQ. Not all projects will be required to comply with all of the RPMs and Terms and Conditions. The main requirements for coverage under this SPBO:

- Work conducted within the winter work window (November 16 – April 30)
- Sand must be compatible for nesting sea turtles
- Pipeline placement must be coordinated with the State and Federal resource agencies
- A pre-construction meeting should be held with the Corp and State and Federal resource agencies
- Beach access points and vehicle travel along the beach should be limited to the maximum extent possible.
- Surveys of sea turtle nests, piping plover, red knots, and seabeach amaranth, as appropriate (this is spelled out in the SPBO)
- Surveys for escarpments and sand compaction
- Annual reporting to the Service

Which species are covered by the SPBO?

- Five species of nesting sea turtle - loggerhead, leatherback, green, hawksbill, and Kemp's ridley, and loggerhead terrestrial (nesting) critical habitat
- Piping plover and piping plover wintering critical habitat
- Red knot
- Seabeach amaranth

West Indian manatee is not covered by the SPBO, because only beach sand placement activities are considered. Manatees may be affected by dredging and other in-water activities, which are not covered by this SPBO. Potential affects to manatees will be considered separately for each individual project. Sea turtles, when in the water, are under the jurisdiction of National Marine Fisheries Service (NMFS). The SPBO only addresses activities that may impact nesting sea turtles, their nests and eggs, and hatchlings as they emerge from the nest and crawl to the sea. NMFS will assess and consult with the Corps concerning potential impacts to sea turtles in the marine environment.

How will the SPBO expedite the CWA Section 404 Permit process?

In most cases, for projects that properly fit within the SPBO approach, agreement that the Corps has met its ESA Section 7 requirements can be achieved within the 30-day public notice comment period (for individual permits) or the agency review period (for Regional or Programmatic General Permits). This review period is much shorter than the current 135-day formal ESA Section 7 consultation period.

What is the new process for Service review and agreement with a proposal to use the SPBO for a specific project?

Regulatory (permitted) projects: The Corps project manager for a specific proposed sand placement project will evaluate the proposed project to determine if it properly fits within the programmatic approach. If the Corps determines that the minimization measures, Reasonable and Prudent Measures, and Terms and Conditions in the SPBO are applicable to the project, then the Corps will notify the Service of its intent to cover the project using the SPBO, and request agreement. This notice will typically be provided in the public notice (individual permits) or in a request for agency review and comment (RGPs and PGP). The Service will review the information and provide an agreement decision within the timeframe of the respective review period. If the Service agrees with the Corps that the SPBO will cover the project, then consultation will be complete for that project. If the Service does not agree, the Corps will initiate formal consultation for that project.

Civil Works Projects: The Corps will evaluate a specific proposed sand placement project to determine if it properly fits within the programmatic approach. If the Corps determines that the minimization measures, Reasonable and Prudent Measures, and Terms and Conditions in the SPBO are applicable to the proposed activity, then the Corps will notify the Service in writing (by letter or email) of its intent to cover the project using the SPBO, and request agreement. The Service will typically respond to such requests and provide an agreement decision within 30 days of receipt of the request. If the Service agrees with the Corps that the SPBO will cover the project, then consultation will be complete for that project. If the Service does not agree, the Corps will initiate formal consultation for that project or activity.