



# North Carolina Forest Service



A Division of the N.C. Department of Agriculture and Consumer Services  
 Steve Troxler, Commissioner

## BMP Newsletter

*Best Management Practices for Water Quality & Soil Conservation*



*This issue's cover photo is of small waterfall within a streamside management zone (SMZ) in Harnett County, North Carolina. This natural water feature is one of many reasons to maintain an effective SMZ.*

The fifth round of BMP implementation assessments have begun and water resources branch staff will again be examining forestry tracts. Staffers spend much of their time observing the margins of streamside management zones (SMZs) and measuring the SMZ width, visually inspecting for any sediment pathways, and answering a series of questions about whether BMPs were properly implemented. The BMP questions are derived from the 2021 [BMP Manual](#).

## An Assessment of Forestry BMPs in North Carolina

The fourth cycle of a statewide forestry BMP Implementation Assessment is complete and products have been [posted](#). Between 2018 and 2020 N.C. Forest Service (NCFS) staff visited 216 timber harvests in 98 of North Carolina's 100 counties. During these site visits, evaluators assessed whether BMPs were implemented according to the recommendations provided in North Carolina's 2006 BMP Manual. Evaluators also assessed whether risks to water quality were present.

The Water Resources Branch staff conducted these detailed BMP evaluations, which are performed in addition to the agency's responsibility of inspecting for compliance with the Forest Practices Guidelines. Any risks to water quality observed were promptly communicated to agency staff actively working with the responsible parties.

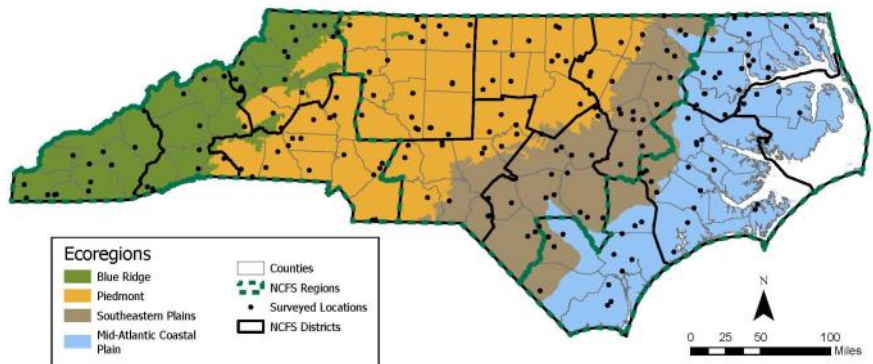
Data collected from the survey is an integral part of the agency's effort to reevaluate BMP recommendations, identify patterns in BMP use, and promote BMPs for the protection of soil and water resources.

**Overall, statewide BMP implementation was 83 percent.**

*Note: Not implementing or improperly implementing a BMP does not automatically mean a water quality risk occurred or is imminent.*

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*North Carolina ecoregions (Omernik 1987) overlaid with survey locations between 2018 and 2020, county boundaries and NCFS region and district boundaries.*

## Definition Changes for Waters of the US

On Dec. 30, 2022, the U.S. Environmental Protection Agency (EPA) and the Department of the Army announced another revision to the "Waters of the United States" (WOTUS) definition. This is important as it defines the extent of federal jurisdiction under the Clean Water Act (CWA). This change was made official when it was published in the *Federal Register* Jan. 18, 2023, and became active March 20, 2023.

Although federal laws protecting waters have been around for quite a while, a detailed definition of subject waters wasn't published until 2014. Since then, several revisions have been made, starting with the Obama administration in 2015, then repealed by the Trump administration in 2019 and replaced in 2020. Now the Biden administration has largely restored the rule to its "pre-2015" state, continuing to hone in on a definition that is implementable, reasonable and adequately protects the nation's water resources for current and future generations.

So, what does this mean for the forestry community? Notably, there have been no changes to Section 404(f)(1)(A), also informally known as the "Ag exemption" or "silvicultural exemption". The exemption does not grant permission to pollute but it exempts eligible activities from having to obtain a federal permit. Ditch exemptions from WOTUS have been further detailed with the new definition excluding "ditches (including roadside ditches) excavated wholly in and draining only dry land and that do not carry a relatively permanent flow of water." This version aligns closely with the pre-2015 version but is narrowed from the 2020 version, which exempted all ditches unless originally constructed in a stream or wetland which had perennial or intermittent flow and a surface water connection to a downstream water. If the ditch was built to relocate a tributary, it required 100% of the flow be diverted to qualify as a WOTUS. This was difficult to determine and often only a portion of the flow was diverted which would result in exclusion.

One of the most prominent changes in the new rule is the inclusion of both the significant nexus and the relatively permanent standard for determining the jurisdiction of tributaries and wetlands. This change combines the two previous methods, making any feature that meets either standard to be considered jurisdictional.



*The photo is an example of a water feature that foresters encounter. The feature holds water and has defined banks but does not connect to a flowing stream on the surface. This is because the ditch has a plug prior to reaching a flowing stream or the channel disappears and the connection to another stream is not visible at the surface.*



## Definition Changes for Waters of the US Continued...

The significant nexus standard includes “waters that, either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters, the territorial seas, or interstate waters”. The relatively permanent standard refers to standing or continuously flowing waters connected to, or having a continuous surface connection with, traditional navigable waters, territorial seas, or interstate waters.

Due to these changes, ephemeral features are no longer outright excluded and may be considered WOTUS if they meet the relatively permanent or significant nexus standard. It may take some time to determine how this rule will be interpreted on the ground and what its implications are, but this is a significant change from the previous version (the only iteration to exclude all ephemerals). Overall, the rule returns in large part to the pre-2015 policy, which offers protections to more waters than the Trump-era definition.

Litigation efforts are currently underway after the rule was published in January with those wishing to keep the Trump-era policy in place taking their arguments to court. Time will tell how that process plays out, but in the meantime, we can prepare for the new definition going into effect March 20.

While the direct impacts on forestry activities remain unclear, the forestry community needs to continue to make their concerns known. Staff with the N.C. Forest Service staff have been working with forestry advocacy groups to understand the proposed definitions of WOTUS and evaluate potential management implications.

\*Additional technical details not included. See final publication for additional information .

## Welcome Chris!

**Chris Bullock** advanced into the Region 1 water quality forester position after Jonathon Pearson was promoted to assistant regional forester of fire control in Region 1. Chris has been working as a service forester since 2020 in District 7. Before that, Chris worked as a utility forester outside of the agency and earned an ISA arborist credential. Chris graduated from the University of Kentucky with an undergraduate degree in forestry and recently became a North Carolina registered forester. We are thrilled to have Chris step into this role and continue serving our customers in the northern area of Region 1.

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### What's happening in this picture?

Runoff is no longer being diverted into the water turnout and is pooling until it crests over the road hump. This is an example of when this BMP needs maintenance. A dozer can regrade the turnout to allow runoff to flow off the road.

Decreasing the length in which the runoff flows can decrease soil eroded. Be sure to check out further BMP recommendations for controlling runoff and capturing sediment in Chapter 5 of the [BMP Manual](#).



For recorded and live webinars related to forestry and/or erosion control, check out: [The Forestry & Natural Resources Webinar Portal](#)  
[Source Water Protection Through Forestry Partnerships](#)  
[How The River Flows Podcast](#)

*N.C. Forest Service - Water Quality*  
[www.ncforestsservice.gov/water\\_quality/water\\_quality.htm](http://www.ncforestsservice.gov/water_quality/water_quality.htm)

*Healthy Trees, Healthy Lives*  
[www.healthytreeshealthy lives.org](http://www.healthytreeshealthy lives.org)

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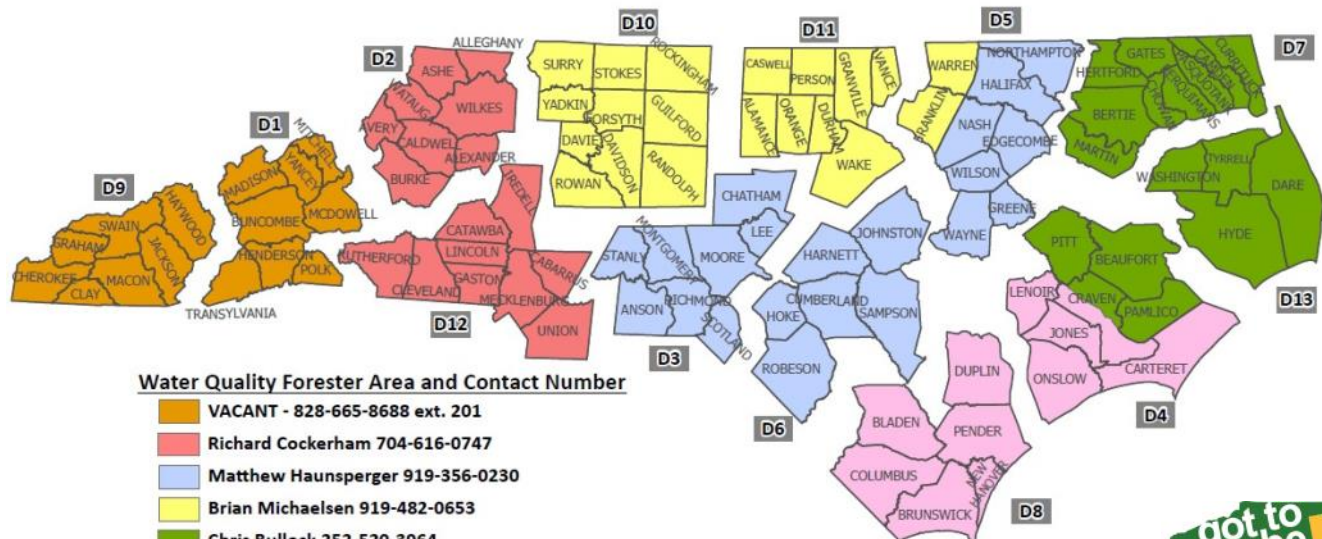
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