

**PUBLIC NOTICE**

**CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69A Hagood Avenue  
Charleston, South Carolina 29403-5107**

REGULATORY DIVISION  
Refer to: P/N # SAC-2012-01003

13 December 2012

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (48-39-10 et.seq.)

**NOTICE**

is hereby given that the District Engineer, Charleston District proposes to issue a General Permit to the South Carolina Department of Natural Resources (SCDNR) authorizing oyster reef restoration and creation projects in navigable waters of the United States (Section 10 Waters). The General Permit would authorize the discharge of dredged and/or fill material and the placement of structures required for oyster reef restoration and creation projects sponsored by the SCDNR for the purposes of commercial and/or recreational harvesting, ecological purposes, and/or research and experimental purposes.

**\*NOTE: A copy of the draft General Permit is attached to this Public Notice and contains the general and special conditions of the authorization.**

The purpose of this notice is to give all interested parties an opportunity to express their views on the proposed reissuance of the above referenced General Permit before action is taken. Written statements regarding the reissuance of this General Permit will be received at this office until

**FRIDAY, JANUARY 11, 2013**

from those interested in the activity and whose interests may be affected by the proposed work.

The District Engineer has concluded that the discharges associated with this project, both direct and indirect, should be reviewed by the South Carolina Department of Health and Environmental Control in accordance with provisions of Section 401 of the Clean Water Act. As such, this notice constitutes a request for certification that this General Permit will comply with applicable effluent limitations and water quality standards. The work included in the General Permit must also be certified as consistent with applicable provisions of the Coastal Zone Management Program (15 CFR 930). The District Engineer will not process this General Permit to a conclusion until such certification is received.

This public notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of this General Permit would impact estuarine substrates utilized by various life stages of species comprising the red drum, shrimp, and snapper-grouper management complexes. Our initial determination is that the General Permit would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service (NMFS). Our final determination is subject to review by and coordination with the NMFS.

Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the District Engineer has consulted the most recently available information and has determined that the project is not likely to adversely affect any Federally endangered, threatened, or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat. This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on this determination.

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), this public notice also constitutes a request to Indian Tribes to notify the District Engineer of any historic properties of religious and cultural significance to them that may be affected by the proposed undertaking.

This public notice constitutes a request for information regarding the potential effect that issuance of this General Permit may have on registered properties, or properties listed as being eligible for inclusion in the National Register of Historic Places.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this General Permit. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing.

The decision whether to issue this General Permit will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest and will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency (EPA), under authority of Section 404(b) of the Clean Water Act. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest. In cases of conflicting property rights, the Corps of Engineers cannot undertake to adjudicate rival claims.

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The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, or abandon this General Permit. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

If there are any questions concerning this public notice, please contact **Tracy Dotolo Sanders** at 843-329-8044 or toll free at 1-866-329-8187.

**General Permit No. SAC-2012-01003**

**Name of Applicant: S. C. Department of Natural Resources (SCDNR)**

**Effective Date:**

**Expiration Date:**

**DEPARTMENT OF THE ARMY**

**GENERAL PERMIT**

A General Permit to perform work in or affecting waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby issued by authority of the Secretary of the Army by the

District Engineer  
U.S. Army Engineer District  
Charleston  
Corps of Engineers  
69-A Hagood Avenue  
Charleston, South Carolina 29403

to authorize, subject to the following special and general conditions, the discharge of dredged and/or fill material and the placement of structures required for oyster reef restoration and creation projects in navigable waters of the United States (Section 10 Waters), within the boundaries of the Charleston District in the State of South Carolina.

This General Permit authorizes oyster reef restoration and/or creation projects sponsored by the South Carolina Department of Natural Resources (SCDNR) for the purposes of commercial and/or recreational harvesting, ecological purposes, and/or research and experimental purposes. "Ecological purposes" may include, but are not limited to, oyster reef restoration and/or creation projects constructed for shoreline and marsh stabilization, and/or for water quality benefits. This General Permit authorizes the use of loose oyster shell, shell bags, or other materials determined suitable by SCDNR for oyster reef restoration or creation projects. "Other materials" may include experimental materials being used by SCDNR for oyster research. Removal and relocation of clumps of live oysters from a site may occur manually if the restoration or creation project will bury the live oysters. The term "permittee," as used in this General Permit, means the South Carolina Department of Natural Resources (SCDNR) exclusively.

This General Permit Does NOT authorize the following:

- 1) Dredging and/or grading of intertidal and/or subtidal areas.
- 2) Oyster reef restoration and/or creation projects at sites that have 5% or more vegetative cover.
- 3) Oyster reef restoration and/or creation projects sponsored by others, even when SCDNR is consulted during project development.
- 4) Oyster reef restoration and/or creation projects that use oyster castles, reef balls, or similar structures constructed for shoreline and/or marsh stabilization.

**I. SPECIAL CONDITIONS:**

A. SCDNR will provide the U.S. Army Corps of Engineers (Corps or Charleston District) and National Marine Fisheries Service (NMFS) with a list of all oyster reef restoration and/or creation projects that were constructed during the previous season by no later than September 15 of each year. The list shall include the following information for each site:

1. Site name/number
2. Type of Site (Restoration or Creation)
3. Latitude/Longitude of site
4. Name of Waterbody where site is located
5. Type of Material Used (Loose shell, SCORE bags; combination of materials, etc.)
6. County of site
7. Estimated acreage of site
8. Shell/Fill amount (cubic yards)
9. Construction Dates
10. Purpose of project (Commercial, Recreational, Ecological, Experimental)

B. SCDNR will coordinate with appropriate National Wildlife Refuge staff when oyster reef restoration and creation project sites occur inside or in the vicinity of National Wildlife Refuge acquisition boundaries, owned, or leased lands. Coordination shall occur prior to conducting the work. SCDNR shall document all coordination that occurs and maintain a copy for the record of each applicable project site.

C. Prior to commencing work, SCDNR will search *ArchSite*, or equivalent resource, for any known archaeological resources that may be present at each potential oyster reef restoration and creation project sites. If archaeological resources are present at a site and SCDNR intends to pursue the site, then SCDNR will contact the Corps and also coordinate the project with the State Historic Preservation Office (SHPO) prior to conducting the work. SCDNR will also provide copies of all coordination correspondence (documents, maps, letters, etc.) with SHPO to the Corps. *ArchSite* can be found at <http://archsite.cas.sc.edu/ArchSite>. SCDNR shall document the search of *ArchSite* for each project site, regardless of whether an archaeological resource is present, and maintain a copy for the record.

D. Prior to commencing work, SCDNR will search the *Heritage Trust Database*, or equivalent resource, for the presence of Federally-listed threatened and/or endangered species that may be present in or near potential oyster reef restoration and creation project sites. If Federally-listed species and/or critical habitat are present in or in the vicinity of a site and SCDNR intends to pursue the site, then SCDNR will contact the Corps and also coordinate the project with the U.S. Fish and Wildlife Service (USFWS) prior to conducting the work. SCDNR will also provide copies of all coordination correspondence (documents, maps, letters, etc) with USFWS to the Corps. The *Heritage Trust Database* website can be found at <https://www.dnr.sc.gov:4443/pls/heritage/species.login>. SCDNR shall document the search of the *Heritage Trust Database*, or equivalent resource, for each project site, regardless of whether threatened and/or endangered species are present, and maintain a copy for the record.

E. For the oyster reef restoration and/or creation project sites where the oyster reef may be a navigational hazard to boaters during high water levels, SCDNR will mark clearly the sites with appropriate navigational signage to alert boaters to the potential submerged hazard and will insure that these signs are permanently maintained. This requirement will likely not be necessary for oyster reef restoration and/or creation projects that utilize loose shell and shell bags, but may be necessary when other high profile materials, such as oyster castles, are used. If the display of lights and signals on any structure authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

## **II. GENERAL CONDITIONS:**

**The activities authorized by this General Permit must comply with ALL of the following general conditions:**

A. This General Permit authorizes only those SCDNR-sponsored activities specifically addressed above. The permittee must obtain Department of the Army authorization, such as issuance of an Individual Permit, for all other activities that are regulated pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act within waters of the United States.

B. All activities identified and authorized herein shall be consistent with the terms and conditions of this General Permit; any variance not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this General Permit and may result in the modification, suspension, or revocation of the authorization, as set forth more specifically in General Condition F. below and in the institution of such legal proceedings as the United States Government may consider appropriate.

C. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to minimize any adverse impact to fish, wildlife, and other environmental resources.

D. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to avoid and minimize degradation of water quality.

E. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this General Permit is in accordance with the terms and conditions prescribed herein.

F. Authorization of a specific work or structure authorized herein may be summarily suspended in whole or in part upon a finding by the District Engineer that immediate suspension would be in the general public interest or that there has been violation of any terms or conditions of this General Permit. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate: 1) the extent of the suspension, 2) the reasons for this action, and 3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. A permittee shall take immediate action to comply with the provisions of this notice. Within ten (10) days following the receipt of this notice of suspension, the permittee may request a meeting with the District Engineer or public hearing to present information relevant to a decision whether its permit should be reinstated, modified, or revoked. If a public hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the public hearing or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the authorization of the specific work or structure will be reinstated, modified, or revoked. Any modification, suspension, or revocation under this General Permit shall not be the basis for any claim for damages against the United States.

G. Upon receipt of a notice from the District Engineer for failure to comply with the terms, conditions, or standards of this General Permit, the permittee must within sixty (60) days without expense to the United States and in such a manner as directed by the District Engineer or his authorized representative(s), effect compliance with the terms, conditions, and standards or remove the previously authorized work or structure.

H. This General Permit does not convey any property rights, either in real estate or material, or any exclusive privileges; it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws, nor does it obviate the requirement to obtain other Federal State, or local assent or to comply with any applicable standards required by ordinance for the activities authorized herein. Other Federal, State, or local agencies are not limited by this document and may impose more stringent requirements than those stated herein as they see fit.

I. Prior to commencing work, the permittee must contact the Corps if any Federally-listed threatened or endangered species or designated critical habitat might be affected or is in the vicinity of the project site, or if the project is located in designated critical habitat. Upon such occurrence, the permittee shall not begin work on the activity until notified by the District engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Any activity that may affect any Federally-listed threatened or endangered species, a species for proposed listing, or designated critical habitat is NOT authorized by

this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 C.F.R. § 325.

J. Prior to commencing work, the permittee must contact the Corps if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. Where the permittee has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the permittee shall not begin the activity until notified by the District Engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. Any activity that may affect any historic properties listed, or which may be eligible for listing, on the National Register of Historic Places is NOT authorized by this General Permit. Activities that may affect such properties will be evaluated under the individual permit review process as specified in 33 C.F.R. § 325.

K. The permittee should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Charleston District is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unidentified archeological remains or cultural resources within the area subject to this General Permit, the permittee agrees to cease work immediately and contact the District Engineer, so that further coordination with the South Carolina Institute of Archaeology and Anthropology and the South Carolina Department of Archives and History may be conducted.

L. As determined by the District Engineer, or his designee, there will be no unreasonable interference with navigation or the right of the public to riparian access by the existence or use of activities authorized by this General Permit.

M. (1) No authorized activity may cause more than a minimal adverse effect on navigation. (2) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable

waters, the permittee will be required, upon due notice from the Charleston District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

N. This General Permit does not authorize the interference with any existing or proposed Federal project and the permittee will not be entitled to compensation for damages or injury to the structures or work authorized herein that may be caused by or result from existing or future operations undertaken by the United States in the public interest.

O. Works or structures authorized herein may be subject to damage by wave wash from passing vessels and wind-driven waves. The issuance of this General Permit does not relieve the permittee from taking all proper steps to ensure the integrity of works permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

P. Activities authorized under this General Permit must comply with Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

### **III. PROHIBITED ACTIVITIES:**

All work that exceeds the terms and conditions specified herein is prohibited unless an Individual or Nationwide Department of the Army Permit has been obtained from the Corps. All work for purposes other than those specified herein is expressly not authorized by this General Permit.

### **IV. REQUIRED AUTHORIZATIONS:**

Prior to performing any of the work authorized herein, the permittee shall obtain all necessary state permits from the South Carolina Department of Health and Environmental Control and any other required Federal State or local authorizations.

### **V. PENALTIES FOR VIOLATIONS:**

Authorization obtained under this General Permit limits work and/or structures necessary for oyster reef restoration and creation projects sponsored by the SCDNR for the purposes of commercial and/or recreational harvesting, ecological purposes closed to harvesting, and/or research and experimental purposes closed to harvesting. Any deviation from the specifications, or other terms or conditions of the General Permit shall constitute a violation of Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act, and may result in the District Engineer seeking judicial relief to have the permittee remove the work and/or structure and/or restore the project area to its former condition, as well as the imposition of penalties as provided by law.

**VI. LIMITS OF FEDERAL LIABILITY:**

In issuing this General Permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

**VII. REVOCATION OF THE GENERAL PERMIT:**

This General Permit may be revoked by issuance of a public notice at any time where the District Engineer determines that the cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this General Permit will be processed as Individual or Nationwide Permits.

**VIII. DURATION OF THE GENERAL PERMIT.**

This General Permit will cover activities started within five (5) years and completed within six (6) years after the date of issuance unless this permit is revoked in the interim. At the end of the first year and every successive year, the Corps of Engineers and the Federal and State regulatory and resource agencies will jointly review activities authorized by this General Permit to determine if significant cumulative impacts have resulted. If the District Engineer determines that revocation of this permit, in whole or in part, may be in order due to cumulative impacts, a public notice of this intention will be issued. After a review of all additional data submitted, action will be taken to amend, modify or revoke this General Permit as appropriate. Revocation of the General Permit will not affect previously authorized work if such work is in accordance with the provisions contained herein.

This General Permit becomes effective as of the date when the Federal official, designated to act for the Secretary of the Army, has signed below.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

\_\_\_\_\_  
Edward P. Chamberlayne P.E.  
Lieutenant Colonel, U.S. Army  
Commander and District Engineer

\_\_\_\_\_  
Date

or his Designee  
Tina B. Hadden  
Chief, Regulatory Division