



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, CHARLESTON DISTRICT
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

FINAL REGIONAL CONDITIONS FOR THE 2021 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)

Effective Date for Modified Regional Conditions for 16 NWP: January 19, 2022
Effective Date for Regional Conditions for 41 NWP: February 25, 2022
Expiration Date for Regional Conditions for All NWP: March 14, 2026

This Regional Condition document supersedes all prior Regional Condition documents for the Charleston 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 Charleston District (SAC) for the following Nationwide Permits (NWP):
 - a. The NWP published in the January 13, 2021 Federal Register (86 FR 2744) announcing the reissuance of twelve (12) existing NWP (that is, NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52) and issuance of four (4) new NWP (that is, NWP 55, 56, 57, and 58), as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP were effective on March 15, 2021 and will expire on March 14, 2026; and
 - b. The NWP published in the December 27, 2021 Federal Register (86 FR 73522) announcing the reissuance of the remaining unmodified forty (40) existing NWP (that is, NWP 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, NWP 26 and 47 are reserved. These 41 NWP will be effective as of February 25, 2022 and will expire on March 14, 2026.
2. Status of Activities Under Prior NWP and/or Regional Conditions.
 - i. 16 NWP: The modified regional conditions that were issued on January 19, 2022 and are incorporated in this document **supersede** the previous regional conditions that were approved for the 16 NWP that went into effect on March 15, 2021, **except** for the following scenarios:
 1. NWP verification letters for one or more of the 16 NWP that were issued **prior** to January 19, 2022; or

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2. NWP activities that do 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 January 19, 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 Charleston 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

Not applicable.

C. REGIONAL CONDITIONS APPLICABLE TO ALL NWPs

1. Use of nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations.
2. NWP activities are not authorized in areas known or suspected to have sediment contamination, with the exception of the following: (1) activities authorized by NWP 38; (2) activities authorized by NWP 53 when used in combination with NWP 38; (3) sediment sampling for dredging projects authorized by NWP 6; and (4) activities authorized by NWP 20.
3. For all proposed activities, both temporary and permanent, that would be located within a FEMA designated floodway, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.

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

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4. For all NWPs, the prospective permittee must submit a PCN to the District Engineer in accordance with General Conditions 31 and 32, for any activity that would be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects:
 - a. **USACE Civil Works projects:** Buck Creek in Horry County, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County, Wilson Branch in Chesterfield County, Edisto River in Orangeburg and Dorchester Counties, North Edisto River in Aitken and Orangeburg Counties, Folly Beach in Charleston County, Hunting Island Beach, waste water treatment plant and water line in Beaufort County, Myrtle Beach in Georgetown and Horry County, Pawleys Island Beach in Georgetown County, Edisto Island Beach in Charleston County, Crab Bank in Charleston County, Morris Island Lighthouse in Charleston County, Miller Corner Disposal area Phragmites Control in Georgetown County, Cape Marsh Management area (Santee Coastal Reserve) in Charleston County, Murphy Island in Charleston County, Pocolaligo River and Swamp in Clarendon and Sumter Counties, Pinopolis Dam in Berkeley County, Battery Pringle in Charleston County, Castle Pinckney in Charleston County, Pompion Hill Chapel along the Cooper River in Berkeley County, Drayton Hall in Charleston County, Indian Bluff in Orangeburg County, Singleton Swash at Shore Drive in Horry County, Turkey Creek Bridge at Pineview Drive in Lancaster, Big Dutchman Creek Bridge at West Oak Drive in Rock Hill, SC, Calabash Branch Bridge at Tom Joye Road in Clover, Blue Branch Bridge at Fortanberry Road in Gaffney, Glenn Creek Bridge at Sulphur Springs Road in Spartanburg County, Cow Castle Creek (Bowman) in Orangeburg County, Cowpen Swamp at Simpson Creek in Horry County, Crabtree Swamp in Horry County, Saluda River (North, South, and Middle Fork) in Greenville County, Shot Pouch Creek in Sumter County, Simpson Creek in Horry County, and Todd Swamp in Horry County.
 - b. **Defined Federal Navigation projects:** Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Atlantic Intracoastal Waterway ((AIWW) GA/SC line to SC/NC line), Brookgreen Garden Canal, Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard River, Savannah River (Below Augusta) and Town Creek McClellanville (i.e., Five Fathoms Creek, AIWW to Bulls Bay).
 - c. **Undefined Federal Navigation projects:** Adams Creek, Archers Creek (From intersection with Beaufort River for 2 miles), Edisto River (River mile 0.00 to 175.0), Great Pee Dee River (Waccamaw River via Bull Creek then to

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Smith Mills, then to Cheraw), Lynches River/Clark Creek (Clark Creek to Lynches River, River Mile 0.0 to 56.0), Mingo Creek (to Hemmingway Bridge), Salkehatchie River (5 miles above Toby's Bluff to Hickory Hill, River mile 20.4 to 62.3), Santee River (Closed to navigation at mile 87 (Santee Dam)), Waccamaw River (river mile 0.0 to 90 (state line)), Wateree River (Mouth to Camden), and Village Creek (Morgan River to Porpoise Fish Co., 2.2 miles).

5. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4.b, the project drawings must include the following information: (1) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the Federal channel; (2) the distance from the watermost edge of the proposed structure or fill to the nearest edge of the Federal channel; and (3) Mean Low Water line and the Mean High Water line.
6. For all NWPs requiring a PCN and when the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands, the PCN should include the following information: (1) a written description and/or drawings of the proposed conversion activity and (2) acreage of the permanent conversion.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs

1. For NWP 3, paragraph (a) activities, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32 for the repair, rehabilitation or replacement of existing utility lines, which include electric lines and/or telecommunication lines, constructed over navigable waters of the United States (i.e., Section 10 waters), and existing utility lines, electric lines, telecommunication lines and/or pipelines routed in or under navigable waters of the United States (i.e., Section 10 waters), even if no discharge of dredged or fill material occurs.
2. For NWP 3, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32, for maintenance activities related to stormwater management that would occur in tidal waters, including tidal wetlands.
3. For NWPs 3, 11, 12, 13, 14, 15, 20, 22, 33, 57, 58, and 59, temporary structures, fills, and/or work, including the use of temporary mats, are authorized for the minimum amount of time necessary to accomplish the work, which shall not exceed a period of 180 days without additional Corps approval. **However, temporary sidecast material authorized by NWPs 12, 57, or 58 cannot ever exceed a period of 180 days.** The temporary structures, fills, and/or work, including the use of temporary mats, shall be removed as soon as the work is

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complete and the disturbed areas be restored to pre-construction contours and conditions. The temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats.

4. For NWPs 3, 11, 12, 13, 14, 15, 20, 22, 33, 57, 58 and 59 that require PCNs and when the activity involves temporary structures, fills, and/or work, including the use of temporary mats, the PCN should include the following information: (1) a written description and/or drawings of the proposed temporary activities that will be used during project construction; (2) the timeframe that the proposed temporary activities will be in place; and (3) specifications of how pre-construction contours will be re-established and verified after construction. Temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats.
5. For NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 in accordance with General Condition 22(a) and for NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38 and 54, in accordance with General Condition 22(b), the ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters. Activities described in the NWPs listed herein are subject to the limitations and/or PCN requirements listed in General Condition 22 (a) and (b).
6. For NWPs 7 and 58 activities that involve intake structures, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms, and the inflow velocity of the associated intake structures cannot exceed 0.5 feet/second.
7. For NWPs 12, 57 and 58 activities that involve horizontal directional drilling beneath navigable waters of the United States (i.e., Section 10 waters), the PCN should include a proposed remediation plan (i.e., frac-out plan).
8. For NWPs 12, 14, 29, 39, 46, 51, 52, 57 and 58 activities that involve crossings, all culverts must be adequately sized to maintain flow. For these activities that require submittal of a PCN, the PCN should include the minimum size of and number of culvert/pipes that are proposed.
9. For NWPs 12, 14, 18, 43, 51, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32, for activities that involve the loss of greater than 0.005 acre of stream bed.
10. For NWPs 12, 14, 18, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, 58 and 59, activities that involve the loss of greater than 0.005 acre of stream bed, compensatory mitigation will be required and the PCN should include a compensatory mitigation plan.

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11. For NWPs 12, 14, 18, 21, 27, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57, 58, and 59, the discharge cannot cause the loss of greater than 0.05 acre of stream bed.
12. For NWPs 29 and 39, the discharges of dredged or fill material for the construction of stormwater management facilities in perennial streams are not authorized.
13. For NWP 33, the prospective permittee must submit a PCN to the District Engineer, in accordance with General Condition #32, for temporary construction, access, and dewatering activities that impact greater than 0.1 acre of non-tidal waters of the United States, including wetlands. In addition, the PCN should include a restoration plan.
14. For existing NWP 48 activities that involve changing from bottom culture to floating or suspended culture OR proposed NWP 48 activities that involve floating or suspended culture, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition #32.
15. For proposed NWP 48 activities involving floating or suspended culture and/or proposed NWPs 55 and 56 activities that will occur adjacent to property that is not owned by the prospective permittee, the PCN should include the following information:
 - a. A map or depiction that shows the adjacent property(ies) and adjacent property owners' contact information. Note: This information may be obtained online from the applicable county's tax information pages.
 - b. A signed letter(s) of "no objection" to the proposed mariculture activity from each of the adjacent property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner. Or, if the prospective permittee is unable to obtain a letter(s) of "no objection", the Corps will notify the adjacent property owner(s) of the proposed project by letter wherein the adjacent property owner will be given 15 days to provide comments.
16. For NWP 53, the PCN should include a Tier I evaluation, in accordance with the Inland Testing Manual, for the project area immediately upstream of the low-head dam. If the Tier I evaluation indicates contaminated sediments are present, a Tier II evaluation may be required.
17. The prospective permittee is advised of the following for activities under any NWP for which (1) the 401 Water Quality Certifications (WQC) were denied (see F.1.a), and/or (2) activities under the NWP were found to be inconsistent with the S.C. Coastal Zone Management Program and, therefore, concurrence with the Coastal Zone Consistency determination was denied (see F.2.a), and/or (3) the

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proposed activity is located in one of the “Critical Areas” of the Coastal Zone (see F.3):

- a. For NWPs 12, 14, 16, 17, 21, 23, 29, 34, 39, 44, 46, 49, 50, 54, 57, 58 and 59 where WQC was denied, the prospective permittee should provide to the Corps a copy of the Individual WQC or evidence demonstrating a waiver was granted.
- b. For NWPs 12, 14, 16, 17, 21, 23, 24, 29, 34, 35, 39, 42, 44, 46, 49, 50, 51, 55, 56, 57, 58 and 59 where concurrence with the Coastal Zone Consistency was denied, the prospective permittee should provide to the Corps a copy of the Individual CZC Concurrence or presumed concurrence for the proposed activity.
- c. For all NWPs in any of the “Critical Areas” of the Coastal Zone, an Individual Critical Area permit is required (see F.3). Therefore, the prospective permittee should provide a copy of the Individual Critical Area permit to the Corps for the proposed activity.

Note: For WQC conditions on activities under NWPs 43, 51, and 52, see F.1.b. For Coastal Zone Consistency conditions on activities under NWPs 43 and 52, see F.2.b.

18. For NWPs 12, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32 if the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands for a maintained right-of-way.

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS

Not applicable.

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

1. Water Quality Certification (WQC)

a. WQC Denied

The Water Quality Certifications (WQC) for the following NWPs are denied; therefore, an Individual WQC, or evidence demonstrating a waiver was granted, from the South Carolina Department of Health and Environmental Control (SCDHEC) will be required for authorization under these NWPs:

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NWPs 12, 14, 16, 17, 21, 23, 29, 34, 39, 44, 46, 49, 50, 54, 57, 58 and 59.

b. **WQC Granted With Conditions**

The following WQC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

- i. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds, that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities, such as sediment basins, sediment traps, or other similar structures."
- ii. For NWP 51, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."
- iii. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

c. **WQC Granted Without Conditions**

The WQCs for NWPs 3, 4, 5, 6, 7, 13, 15, 18, 19, 20, 22, 25, 27, 30, 31, 32, 33, 36, 37, 38, 40, 41, 42, 45, 48 and 53 were granted without conditions.

d. **No WQC Required**

NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35, 55 and 56 do not require WQCs.

2. **Coastal Zone Consistency (CZC)**

a. **CZC Concurrence Denied**

The following NWPs were found to be inconsistent with the S.C. Coastal Zone Management Program; thus, the CZC concurrence is denied and an Individual CZC concurrence, or presumed concurrence for the proposed activity, will be required for these NWPs:

NWPs 12, 14, 16, 17, 21, 23, 24, 29, 34, 35, 39, 42, 44, 46, 49, 50, 51, 54, 55, 56, 57, 58 and 59.

b. **CZC Concurrence Granted With Conditions**

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The following CZC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

- i. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures."
- ii. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

c. **CZC Concurrence Granted Without Conditions**

The CZCs for NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 15, 18, 19, 20, 22, 25, 27, 28, 30, 31, 32, 33, 36, 37, 38, 40, 41, 45, 48 and 53 were granted without conditions.

d. **No CZC required**

Not applicable.

3. **Coastal Zone Consistency (CZC) General Condition**

The following CZC General Condition, as stated in the SCDHEC 401/CZC Letter dated December 14, 2020, is considered a 2021 NWP Regional Condition:

For all NWPs, "Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM. SCDHEC OCRM's action on direct critical areas permits will serve as the consistency determination for the critical area activity."

G. **DISTRICT POINT OF CONTACT**

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