

PUBLIC NOTICE

CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 Industrial Park Road, Room 140
Conway, South Carolina 29526

REGULATORY DIVISION
Refer to: SAC-2017-01776

April 6, 2023

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), the South Carolina Coastal Zone Management Act (48-39-10 et. seq.), and the S.C. Construction in Navigable Waters Permit Program (R. 19-450, et. seq., 1976 S.C. Code of Laws, as amended)

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 proposed General Permit, SAC-2017-01776, is attached to this Public Notice.**

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

May 6, 2023

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

Please note that this proposed General Permit, SAC-2017-01776, will replace the existing General Permit that expires on August 2, 2023.

NOTE: This public notice and proposed General Permit are available on the Corps' website at:

<http://www.sac.usace.army.mil/Missions/Regulatory/PublicNotices>.

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, the Corps has requested 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.

Essential Fish Habitat

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Activities authorized by this action would impact estuarine substrates and emergent wetlands utilized by various life stages of species comprising the shrimp, and snapper-grouper management complexes. The District Engineer's initial determination is that the proposed action 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). The proposed general permit includes conditions that minimize impacts to EFH. The District Engineer's final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

Endangered Species

Pursuant to Section 7 of the Endangered Species Act of 1973 (as amended), the proposed General Permit, which would be used in the Coastal Zone areas of South Carolina, may affect, but is not likely to adversely affect the American wood stork (*Mycteria americana*), Eastern black rail (*Laterallus jamaicensis*), Piping plover (*Charadrius melodus*), Rufa red knot (*Calidris canutus rufa*), West Indian manatee (*Trichechus manatus*), and Seabeach amaranth (*Amaranthus pumilus*). The proposed General Permit would have no effect on the remaining species that may be present in the Coastal Zone areas of South Carolina. This public notice serves as a request to the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for any additional information they may have on whether any listed or proposed endangered or threatened species or designated or proposed critical habitat may be present in the area which would be affected by the activity. This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on this determination.

If the Corps determines that an activity proposed under this General Permits may affect a listed species or designated critical habitat, the Corps will initiate consultation with the USFWS or NMFS pursuant to Section 7 of the Endangered Species Act.

Cultural Resources

In accordance with Section 106 of the NHPA, the District Engineer has consulted South Carolina ArchSite (GIS), for the presence or absence of historic properties (as defined in 36 C.F.R. 800.16(l)(1)) and has initially determined that historic properties may be present and affected by activities authorized by this General Permit. Any proposed activity that would, or has potential to, affect any sites that are listed, or are eligible for inclusion, in the National Register of Historic Places, will require concurrence or consultation with the State Historic Preservation Officer or Tribal Historic Preservation Officer. This public notice also serves as a request to the State Historic Preservation Office and other interested parties to provide any information they may have with regard to historic properties.

Corps' Evaluation

The decision whether to issue a General Permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed 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 and, as appropriate, the criteria established under authority of Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. 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 cannot undertake to adjudicate rival claims.

Solicitation of Public Comment

The Corps 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 to determine whether to issue, modify, condition, or deny a permit for this project. 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. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state, with

particularity, the reasons for holding a public hearing.

Please submit comments in writing, identifying the project of interest by public notice/file number (SAC-2017-01776), to Ronnie.D.Smith@usace.army.mil, or the following address:

**U.S. Army Corps of Engineers
ATTN: REGULATORY DIVISION
1949 Industrial Park Road, Room 140
Conway, South Carolina 29526**

If there are any questions concerning this public notice, please contact Ronnie Smith, at 803-806-9112, or by email at Ronnie.D.Smith@usace.army.mil.

HIGHLIGHTED AREAS ARE SUBJECT TO CHANGE

General Permit No. SAC-RGP-~~XXX~~ (SAC- 2017-01776)

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

Effective Date: August 2, 2023

Expiration Date: August 2, 2028

DEPARTMENT OF THE ARMY

REGIONAL GENERAL PERMIT

A Regional General Permit (RGP) to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or place structures or perform work in or affecting navigable waters of the United States pursuant to Section 10 of the Rivers and Harbors Act (33 U.S.C 403), 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

The geographic use of this RGP is limited to the coastal zone areas of Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties within the boundaries of the Charleston District in the State of South Carolina.

This RGP 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 RGP 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 RGP, means the South Carolina Department of Natural Resources (SCDNR) exclusively.

This RGP 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 the purpose of shoreline and/or marsh stabilization.

I. SPECIAL CONDITIONS:

The permittee must comply with ALL of the following special conditions:

A. For projects involving oyster castles, SCDNR will submit to the U.S. Army Corps of Engineers (Corps or Charleston District) a Pre-Construction Notification (PCN) prior to construction of any oyster restoration and/or creation activity. The Corps will review the proposed project for impacts to navigation. The PCN shall include a project map or sketch that shows the proposed project footprint, the Mean High Water (MHW) line, the Mean Low Water (MLW) line, the marsh line (if applicable) or shoreline, the width of the waterway at the project location, the location of adjacent structures such as docks and boat ramps (if applicable), the distance of the project footprint from adjacent structures, and the proposed location of informational or navigation markers. This required information is in addition to the information required in Special Condition D. (Note: Corps review may result in additional project-specific conditions).

B. For all projects located in or adjacent to the following 1) Defined Federal Navigation projects OR 2) Undefined Federal Navigation projects, the prospective permittee must submit a PCN to the District Engineer:

1. 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).

2. 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 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).

C. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project identified in Special Condition B.1 or B.2, , 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 water most 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. Engineered drawings are not required.

D. For projects that are more than 18 inches in height above substrate AND consist of structures or fill material, including, but not limited to, oyster castles, bagged oyster shell, and concrete covered crab traps, SCDNR will provide the Corps with, as part of the completion notification, as-built GPS drawings that indicate all dimensions of the constructed oyster reef, including one of the following three items: (1) the distance between the waterward edge of the authorized structure and the centerline of the Atlantic Intracoastal Waterway (AIWW); (2) the distance between the waterward edge of the authorized structure and the Defined Federal channel (as listed in Special Condition B.1.); OR (3) (where the authorized activity is not in or adjacent to the Defined Federal channel or the AIWW) the location of the Mean High Water Line on both sides of the waterway and the four (4) corners of the constructed oyster reef project area. These as-built GPS drawings shall be submitted within sixty (60) days of the completion of the structure.

E. SCDNR will submit to the Corps, the National Marine Fisheries Service (NMFS) and the South Carolina Department of Health and Environmental Control (SCDHEC) Bureau of Water (BOW) a list of all non-PCN oyster reef restoration and/or creation projects that were constructed during the previous season no later than September 30 of each year. SCDNR will submit a list of all non-PCN oyster reef restoration and/or creation projects that will be constructed to SCDHEC Office of Ocean and Coastal Resource Management (OCRM) Critical Area Permitting Section within the first quarter of each year prior to the construction activities. The lists shall include the following information for each constructed/proposed 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. Linear footage of project area
10. Construction Dates
11. Purpose of project (Commercial, Recreational, Ecological, Experimental)
12. Type of Signage
13. Clearance (feet) above material at Mean Low Water

F. SCDNR will send a copy of the constructed oyster reef as-built GPS drawings, as described in Special Condition D, and the list of all non-PCN oyster restoration and/or creation constructed the previous season, as described in Special Condition E, to the National Oceanic and Atmospheric Administration, Office of Coast Survey, Marine Chart Division, Nautical Data Branch, N/CS26, 1315 East West Highway, Silver Springs, Maryland 20910-3282, or to ocs.ndb@noaa.gov.

G. SCDNR will coordinate with appropriate National Wildlife Refuge (NWR) staff when oyster reef restoration and/or creation project sites occur inside or in the vicinity of NWR acquisition boundaries, NWR owned lands, or NWR leased lands. Coordination with NWR staff 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.

H. For projects that are 18 inches or less in height above substrate AND consist of structures or fill material, including, but not limited to, oyster castles, bagged oyster shell, concrete covered crab traps, and manufactured wire reef structure, SCDNR must install informational signs near the Mean High-Water Line to alert boaters to the presence of the project area. The signs must be made of reflective material or must include reflective tape on the sign or signpost. The signs must be located at each end of the project area and at 200-foot increments along the project area, if applicable.

Note 1: The Corps does not require the installation of informational or navigational signs for projects that include ONLY the use of loose shell. SCDNR must still contact the U.S. Coast Guard (USCG) for its requirements, if any, prior to commencing work (see H. Note 2 below).

Note 2: The U.S. Coast Guard (USCG) may require the project area to be marked. Prior to commencing work, the SCDNR shall contact the USCG at U. S. Coast Guard District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL 33131, or by phone at 305-415-6755 or 305-415-6750, regarding additional markers and/or lighting requirements. The SCDNR shall install all markers and/or lighting as required by the USCG. In the event that the USCG does not require markers and/or lighting, the informational (reflective) signs are still required by the Corps.

I. For projects that are more than 18 inches in height above the substrate AND consist of structures or fill material, including, but not limited to, oyster castles, bagged oyster shell, concrete covered crab traps, and manufactured wire reef structure, SCDNR must mark the project areas with diamond-shaped white day markers with orange border and black print stating “Danger Obstruction”. The signs shall be located at each end of the project area and at 200-foot increments along the project area, if applicable.

Note 1: The Corps does not require the installation of informational or navigational signs for projects that include ONLY the use of loose shell. SCDNR must still contact the U.S. Coast Guard (USCG) for its requirements, if any, prior to commencing work (see J. Note 2 below).

Note 2: Prior to commencing work, the SCDNR shall contact the USCG at U. S. Coast Guard Charleston District Seven, Waterways Management Branch, 909 SE 1st Ave, Suite 406, Miami, FL 33131, or by phone at 305-415-6755 or 305-415-6750, regarding potential project specific approval of the markers. The SCDNR shall install all markers and/or lighting as required by the USCG. In the event the USCG does not require these or other markers and/or lighting, the “Danger Obstruction” markers are still required by the Corps.

J. In order to ensure protection and reduce potential construction-related impacts to West Indian manatees that may be present in the vicinity of the project area during construction activities, to

discountable and insignificant levels, the permittee will comply with the following for all projects affecting the coastal waters of South Carolina:

1. The permittee shall instruct all personnel associated with the project of the potential presence of manatees and the need to avoid collisions with manatees. All construction personnel MUST monitor water-related activities for the presence of manatee(s).
2. Any collision with and/or injury to a manatee shall be reported immediately to the U.S. Fish and Wildlife Service contacts: Melanie Olds, South Carolina Manatee Lead, Charleston Field Office, at 843-727-4707 ext. 205; or Terri Calleson, Manatee Recovery Coordinator, North Florida Field Office, at 904-731-3286.

K. In order to ensure protection of any threatened or endangered species, and designated critical habitat that may be present in the vicinity of the project area during construction activities, the permittee will comply with the following:

1. The permittee shall instruct all personnel associated with the project of the potential presence of and the need to avoid collisions with protected species, which may include but is not limited to West Indian manatees, Atlantic sturgeon, shortnose sturgeon, sea turtles, wood stork, blue whale, fin whale, North Atlantic right whale, sei whale and sperm whale.
2. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing protected species, to include manatee(s), which are protected under the Marine Mammal Protection Act of 1972 and/or the Endangered Species Act of 1973.
3. Any siltation barriers used during the project shall be made of material in which protected species, to include manatee(s), cannot become entangled and must be properly secured, and regularly monitored to avoid protected species entrapment.
4. All vessels associated with the project shall operate at “no wake/idle” speeds at all times while in the construction area and while in water where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.
5. If protected species, to include manatee(s), are seen within 100 yards of the active construction area all appropriate precautions shall be implemented to ensure protection of the protected species, to include manatee(s). These precautions shall include the operation of all moving equipment no closer than 50 feet to a protected species, to include manatee(s). Operation of any equipment closer than 50 feet to a protected species, to include manatee(s), shall necessitate immediate shutdown of that equipment. Activities will not resume until the protected species, to include manatee(s), has departed the project area of its own volition.

6. Incidents where any individuals of sea turtles, Atlantic sturgeon, shortnose sturgeon, blue whale, fin whale, North Atlantic right whale, sei whale and sperm whale listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this DA permit shall be reported to NOAA Fisheries, Office of Protected Species at (727) 824-5312, the SCDNR Hotline at 1-800-922-5431, and the Regulatory Office of the Charleston District of the U.S. Army Corps of Engineers at (843) 329-8044. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
7. The permittee understands and agrees that all in-water lines (rope, chain, and cable, including the lines to secure turbidity curtains) must be stiff, taut, and non-looping. Examples of such lines are heavy metal chains or heavy cables that do not readily loop and tangle. Flexible in-water lines, such as nylon rope or any lines that could loop or tangle, must be enclosed in a plastic or rubber sleeve/tube to add rigidity and prevent the line from looping and tangling. In all instances, no excess line is allowed in the water. Where appropriate, in water wires should be fitted with PVC sleeve from the surface to the bottom to prevent any potential scraping of the passing manatees.

L. For all proposed activities that would be located in waters that are designated critical habitat under Section 7 of the Endangered Species Act (ESA), and waters that are proposed critical habitat, SCDNR will submit to the Corps a Pre-Construction Notification (PCN) prior to construction of any oyster restoration and/or creation activity. Refer to the following National Oceanic and Atmospheric Administration (NOAA) Fisheries website for the most up-to-date information regarding Critical Habitat designations under the jurisdiction of the National Marine Fisheries Service (NMFS):

http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/

II. GENERAL CONDITIONS:

The activities authorized by this RGP must comply with ALL of the following general conditions:

A. This RGP authorizes only those SCDNR-sponsored activities specifically addressed above. The permittee must obtain Department of the Army (DA) 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.

B. All activities identified and authorized herein shall be consistent with the terms and conditions of this RGP; any variance not specifically identified and authorized herein shall

constitute a violation of the terms and conditions of this RGP 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 RGP 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 RGP. 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 RGP 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 RGP, 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 RGP 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. Endangered Species. SCDNR or the designated representative must notify the Corps if the proposed activity may affect any federally listed threatened or endangered species, a species proposed for listing, or designated critical habitat.

1. No activity is authorized which:

(i) Is likely to jeopardize the continuing existence of a threatened or endangered species, or species proposed for such designation, as identified under the Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species

(ii) "May affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(iii) Involves the "take" of a threatened or endangered species as defined under the ESA without separate authorization (e.g., a Biological Opinion with "incidental take" provisions) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service.

2. Applicants shall include in their PCN information regarding the presence of any federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work.

J. Historic Properties.

1. SCDNR or the designated representative must submit a PCN to the District Engineer 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. For such activities, the PCN must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought by using the Subscriber View Map of the SCArchSite website or from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places. Additionally, the South Carolina Institute of Archaeology and Anthropology (SCIAA) and/or the Maritime Research Division at SCIAA can be contacted for assistance in determining the location of or potential for archaeological sites or submerged cultural resources. Based on the information submitted and these efforts, the District Engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant 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.

2. The District Engineer will notify the prospective permittee within 60 days of receipt of a complete PCN whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties. If NHPA section 106 consultation is required and will occur, the District Engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 60 days, the applicant must still wait for notification from the Corps.

3. Prospective permittees of this General Permit should be aware that Section 110k of the NHPA (16 U.S.C. 470h-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 effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, 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, SHPO/THPO, 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 a legitimate interest in the impacts to the permitted activity on historic properties.

K. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this RGP, you must immediately notify the State Historic Preservation Office and the District Engineer of what you have found, and to the maximum extent *practicable*, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. Archeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, *structures*, or non-recent (i.e., older than 100 years) vessel ruins.

L. The permittee must notify the South Carolina Institute of Archaeology and Anthropology-Maritime Research Division (MRD) in accordance with the South Carolina Underwater Antiquities Act of 1991 (Article 5, Chapter 7, Title 54 Code of Laws of South Carolina, 1976) in the event archaeological or paleontological remains are found during the course of the work. MRD may be contacted at 803-576-6565. Archeological remains consist of any materials made or altered by man which remains from the past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures or non-recent (i.e., older than 100 years) vessel

ruins. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusk, bone or entire skeletons.

M. 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 RGP. Use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.

N. A copy of the project-specific authorization and drawings must be available at the site of the permitted activity during construction.

O. (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.

P. This RGP 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.

Q. Works or structures authorized herein may be subject to damage by wave wash from passing vessels and wind-driven waves. The issuance of this RGP 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.

R. 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 their 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 Corps of Engineers, 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.

S. Activities Affecting Structures or Works Built by the United States. If a RGP activity also requires review by, or permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See Section I.B. of this RGP. An activity that requires section 408 permission and/or review is not authorized by this RGP until the appropriate Corps

office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the District Engineer issues a Regional General Permit verification letter.

T. Activities authorized under this RGP 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 RGP.

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 RGP 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, and/or research and experimental purposes. Any deviation from the specifications, or other terms or conditions of the RGP 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 RGP, 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. DURATION AND REVOCATION OF THE REGIONAL GENERAL PERMIT:

These General Permits will cover activities for five (5) years until the Regional General Permits expire on April 2, 2028, unless the District Engineer modifies, suspends, or revokes these Regional General Permits in the interim. At the end of the first year and every succeeding year, the Corps of Engineers and the Federal and State regulatory and resource agencies will jointly review activities authorized by these Regional General Permits to determine if significant cumulative impacts have resulted. If the District Engineer determines that revocation of these permits, in whole or in part, may be in order due to cumulative impacts, a public notice will be issued and after a review of all additional data submitted, action will be taken to amend, modify or revoke these permits, as appropriate. Revocation of a Regional General Permit will not affect the work that had been authorized when the Regional General Permit was in effect if such work is in accordance with the applicable conditions contained herein. Following revocation, applications for future activities in areas covered by the regional general permit shall be processed as applications for individual permits.

This permit shall become effective on the date of the District Engineer's (or an authorized designee's) signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Andrew C. Johannes, PhD PE PMP
Lieutenant Colonel, U.S. Army
Commander and District Engineer

Date

or an authorized Designee

Amanda L. Heath
Chief, Regulatory Division