

PUBLIC NOTICE

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

REGULATORY DIVISION
Refer to: General Permit # 2016-00761 (REVISED)

AUGUST 1, 2016

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Charleston District Engineer proposes to reissue General Permit # 2011-00940. This permit will be issued to the General Public and authorizes the construction, installation, maintenance, and/or repair of piers, floating docks (including joint use docks and community docks), boat/jet ski lifts, mooring piles, dolphins, covered boat sheds, and dock covers for private, non-commercial uses within

NAVIGABLE WATERS OF THE UNITED STATES

within the regulatory jurisdiction of the Charleston District, within the State of South Carolina.

In order to give all interested parties an opportunity to express their views

NOTICE

is hereby given that written statements regarding the proposed issuance of the above referenced General Permit will be received by this office until

30 Days from the Date of this Notice

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

This General Permit, if issued, will be effective for a period of five (5) years.

For activities occurring within the eight (8) coastal counties (Horry, Georgetown, Berkeley, Dorchester, Charleston, Beaufort, Jasper, and Colleton), the proposed General Permit must be certified as consistent with applicable provisions of the Coastal Zone Management Program (15 CFR 930). The District Engineer will not issue this General Permit until such certification is received. This activity may also require evaluation for compliance with the S.C. Construction in Navigable Waters Permit Program. State review, permitting, and certification are conducted by the S.C. Department of Health and Environmental Control. ***NOTE: A copy of the draft General Permit is attached to this Public Notice and contains the general and special conditions of the authorization. This is a revision of the notice issued by the office on May 4, 2016. Only comments in response to this Public Notice will be considered.**

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

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

at: <http://www.sac.usace.army.mil/Missions/Regulatory/PublicNotices> . For those unable to access the website, a copy of this notice and the draft General Permit will be provided, upon receipt of a written request. The request must identify the project of interest by public notice number and a self-addressed stamped envelope must also be provided. Your request should be addressed to the

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

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 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 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). The District Engineer's final determination relative to project impacts is subject to review by and coordination with the NMFS.

Manatees: Pursuant to Section 7 of the Endangered Species Act of 1973 (as amended), the District Engineer has consulted the most recently available information and has determined that the activities proposed by this general permit may affect, but are not likely to adversely affect the West Indian manatee (*Trichechus manatus*). For activities located in the eight (8) coastal counties, standard manatee construction conditions will be included in the general permit.

Other Federally-listed T&E Species and designated critical habitat: For activities located outside the 8 coastal counties, the only activities that are immediately authorized by this general permit are the ones that would have no effect on any threatened or endangered species or critical habitat designated pursuant to the Endangered Species Act. In accordance with proposed General Condition L (below), any proposed activity that may affect listed species or designated critical habitat, will require consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. In the event that the Corps determines an activity proposed under this general permit may affect a listed species (excluding the West Indian manatee) or designated critical habitat, the Corps will initiate consultation pursuant to Section 7 of the Endangered Species Act.

Further, in accordance with proposed Special Conditions 4.a.xii-xiii and 4.b.vii-viii (below), specific pile driving installation methods are prescribed, and pile driving activities are limited to 12 hours per day with a 12-hour rest period between pile driving activities, to avoid potential cumulative noise impacts to Federally-listed Threatened and Endangered (T&E) species.

This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS) on the above determinations.

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 activities.

This public notice constitutes a request for information regarding the potential effect that reissuance 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 a permit will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. 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.

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 Ann Eaddy at 843-365-1709.

**DRAFT
DEPARTMENT OF THE ARMY
GENERAL PERMIT**

A General Permit to perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) is hereby issued by the 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 29403-5107

to authorize, subject to the following special and general conditions, the construction, installation, maintenance and/or repair of piers, floating docks (including joint use and community docks), boat/jet ski lifts, mooring piles, dolphins, covered boat sheds and dock covers, for private non-commercial uses within navigable waters of the United States in the State of South Carolina.

Projects authorized by this General Permit may also require other state or local authorizations. The installation of structures in state navigable waters is subject to the jurisdiction of South Carolina Department of Health and Environmental Control (SCDHEC). Projects located within Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties are subject to the South Carolina Coastal Zone Management Plan, which is administered by SCDHEC, Office of Ocean and Coastal Resource Management (OCRM). If the proposed project will occur in the critical area of the above listed counties, then a direct Critical Area Permit will be required from OCRM. Projects located outside of the critical area are also subject to the R. 19-450; Permit for Construction in Navigable Waters (et. Seq., 1976 S.C. Code of Laws, as amended). Activities within the Goose Creek Reservoir must be coordinated with and authorized by the Charleston Water System prior to construction.

SPECIAL NOTE: Activities covered under previously authorized General Permits for specific areas do not qualify for this general Permit. Those areas include: Lake Murray (2007-02506), Lakes Marion & Moultrie (2007-02505), Lake Wylie (2008-00328), Fishing Creek Reservoir (2008-00328), Great Falls (2008-00328), Rocky Creek (2008-00328), Lake Wateree (2008-00328), Lake Keowee (2008-00328), Ninety-Nine Islands (2008-00328), and Gaston Shoals (2008-00328).

I. SPECIAL CONDITIONS:

A. Piers and Floating Docks, Mooring Piles, Dolphins and Boat Lifts

SPECIAL NOTE: There are 4 categories of restrictions for structures listed below: 1) those located on or adjacent to a federal channel, 2) those located in the eight coastal counties 3)

those not located on or adjacent to a federal channel and 4) those for all structures regardless of their location. It is imperative that you read and comply with all terms and conditions. (All structures must meet the terms and conditions listed below in "1", "2" or "3" AND all terms and conditions listed in "4").

1. Structures located **ON OR ADJACENT TO FEDERAL CHANNELS:**

a. Federal channels include all or portions of the following waterways:

Adams Creek
Atlantic Intracoastal Waterway (AIWW)
Ashley River
Brookgreen Garden Canal
Calabash Creek
Charleston Harbor (including the Cooper River, Wando River and Town Creek)
Folly River
Georgetown Harbor (Winyah Bay, Sampit River, and Bypass Channel)
Jeremy Creek
Little River Inlet
Murrells Inlet (Main Creek)
Port Royal Harbor
Shem Creek (including Hog Island Channel & Mount Pleasant Channel)
Shipyard Creek
Village Creek

b. Prior to any work being done, written permission must be obtained from the Corps of Engineers **for all activities located on or adjacent to a federally authorized waterway prior to commencement of work.** In order to receive this written permission, a Pre-Construction Notification (PCN) is required. Failure to provide this PCN and obtain written permission prior to commencement of work will be considered a violation of federal law and appropriate legal action may be taken. The following information shall be submitted to the Charleston District Engineer in order to fulfill the requirements of the PCN (copies must be submitted to the SCDHEC OCRM and Bureau of Water):

- Completed "Joint Federal and State Application Form For Activities Affecting Waters Of The United States Or Critical Areas Of The State Of South Carolina",
- Plans of the proposed work (8.5 X 11" black and white drawings showing all proposed structures) in tidal areas relative to the mean high water (MHW) and mean low water (MLW) or in non-tidal areas relative to the mean sea level (MSL). Distance to the federal channel must be included. Plan view and cross-section diagrams are both required (all diagrams must be drawn to scale or include dimensions of all proposed structures).
- A survey completed by a registered land surveyor showing the proposed structure, including State Plane Coordinates(NAD 1983) for a minimum of two corners on each structure where it is closest to the federal channel. The survey shall also identify the distance of the proposed structure from the federal channel.

- Statement that the work will be conducted in compliance with the terms and conditions of this General Permit.

c. A signed compliance certification will be submitted to the Charleston District Engineer within 60 days following completion of the authorized work and shall include the following:

- A statement that the authorized work was done in accordance with this General Permit,
- The signature of the permittee certifying the completion of the work,
- As-built drawings which indicate all dimensions of the structure as well as the distance between the centerline of the federal channel and the waterward edge of the authorized structure. These drawings must be prepared by a registered land surveyor.

d. Structures located on or adjacent to federally authorized waterways shall extend **no closer than eighty feet (80') from the federal channel**, unless a variance has been granted by the Charleston District Engineer. **If located on the Charleston Harbor, Georgetown Harbor, or Port Royal Harbor, the existing setback is 125'**. A copy of the appropriate Federal Project Channel map can be obtained from our website (<http://www.sac.usace.army.mil>) or by writing to:

U.S. Army Corps of Engineers
Charleston District, Technical Services
69-A Hagood Avenue
Charleston, South Carolina 29403-5107

2. Structures located within the waterways of the **EIGHT (8) COASTAL COUNTIES** of South Carolina:

a. Coastal Counties include the following:

Beaufort
Berkeley
Charleston
Colleton
Dorchester
Horry
Georgetown
Jasper

b. Prior to any work being done, written permission must be obtained from the Corps of Engineers **for all activities located on waterbodies within the counties listed above prior to commencement of work**. In order to receive this written permission, a Pre-Construction Notification (PCN) is required. Failure to provide this PCN and obtain written permission prior to commencement of work will be considered a violation of federal law and appropriate legal action may be taken. The following information shall be submitted to the Charleston District Engineer in order to fulfill the requirements of the PCN (copies must be submitted to the SCDHEC OCRM and Bureau of Water):

- Completed "Joint Federal And State Application Form For Activities Affecting Waters Of The United States Or Critical Areas Of The State Of South Carolina",
 - Plans of the proposed work (8.5 X 11" black and white drawings showing all proposed structures) in tidal areas relative to the mean high water (MHW) and mean low water (MLW) or in non-tidal areas relative to the mean sea level (MSL), or ordinary high water mark (OHWM).
 - Statement that the work will be conducted in compliance with the terms and conditions of this General Permit.
- c. A signed compliance certification will be submitted to the Charleston District Engineer within 60 days following completion of the authorized work and shall include the following:
- A statement that the authorized work was done in accordance with this General Permit,
 - The signature of the permittee certifying the completion of the work,
 - As-built drawings which indicate all dimensions of the authorized structure. These drawings must be prepared by a registered land surveyor.
- d. In order to insure protection and reduce potential construction-related impacts to West Indian manatees that may enter the project area during construction activities, to discountable and insignificant levels, the permittee will comply with the following USFWS Standard Manatee Construction Conditions:
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) during May 15 – October 15.
 2. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing manatees which are protected under the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, and the Florida Manatee Sanctuary Act.
 3. Siltation barriers must be made of material in which manatees cannot become entangled, are properly secured, and regularly monitored to avoid manatee entrapment. Barriers must not block manatee entry to or exit from essential habitat.
 4. All vessels associated with the construction project must 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 manatee(s) are seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions must be implemented to

ensure protection of the manatee. These precautions must include the operation of all moving equipment no closer than 50 feet to a manatee. Operation of any equipment closer than 50 feet to a manatee shall necessitate immediate shutdown of that equipment. Activities will not resume until the manatee(s) has departed the project area of its own volition.

6. Any collision with and/or injury to a manatee shall be reported immediately to the Mr. Jim Valade of the U.S. Fish and Wildlife Service, North Florida Field Office, at (904) 731-3116 and to the S.C. Department of Natural Resources at (800)-922-5431.

3. Structures located in other areas (**NOT** located on or adjacent to federal channels):

a. The channelward extension of the structure shall not exceed the lesser of: one-third of the width of the waterbody, or the minimum length necessary to accomplish the project purpose provided there is no undue interference with navigation.

b. In situations where the navigable depth is not located in the center of the waterbody, the structure shall not extend further than one-third of the width of the navigable channel.

SPECIAL NOTE: The term waterbody, for the purposes of this General Permit, is defined as the area measured across the channel from vegetation to vegetation, or in non-vegetated areas, Mean High Water to Mean High Water or Ordinary High Water to Ordinary High Water.

4. **ALL** Structures:

a. Piers and Floating Docks (on both federal and non-federal channels):

i. All structures authorized by this General Permit shall be designed, located, and/or operated in a manner not to impede the full and free use by the public of all navigable waters. The following standards for the size of piers and floating docks will be followed unless the Corps determines in writing that a larger structure is authorized:

(1) Waterbodies smaller than 20 feet wide, as measured from vegetated areas on both sides, shall be restricted to a walkway with a fixed or floating structure no greater than 50 square feet;

(2) Waterbodies between 21 feet and 50 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 120 square feet;

(3) Waterbodies between 51 feet and 150 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 160 square feet;

(4) Waterbodies larger than 151 feet wide, as measured from vegetated areas on both sides, shall be restricted to a fixed pier and floating dock combination up to 600 square feet.

(5) Additional square footage will be allowed for joint use docks above and

beyond the size allowed for individual docks, not to exceed two times that allowed in subsections I.A.4(a)(i)(1) through (4), contingent upon the sharing of the walkway and pierhead.

ii. The maximum width for the dock approach (fixed walkway) shall be restricted to four (4) feet unless the Corps determines in writing that a greater width is necessary for safe use or to support a water dependent use that cannot otherwise occur. The dock approach shall also be elevated at least three (3) feet above mean high water (MHW) in tidal waters and at least three (3) feet above mean sea level or the ordinary high water mark (OHWM) in non-tidal waters.

iii. Structures located within twenty (20) feet of the waterward extension of the adjacent property lines are not authorized by this General Permit unless the adjacent property owners agree in writing to a variance in this dimension.

iv. The structure shall be constructed of uniform materials, and be structurally adequate and aesthetically compatible with other existing structures.

v. All wood piles and wooden exterior pile-supported structures must be pressure-treated with wood preservatives in strict compliance with the Registration/Registration Documents issued by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act for use in or above fresh water or marine environments, and in accordance with standards established by the American Wood Protection or evaluation reports issued by the International Code Council Evaluation Service.

vi. Flotation units of floating structures shall be constructed of material which will not become waterlogged or sink when punctured. Styrofoam billets or equivalent must be encapsulated. Barrels or similar devices are not permitted.

vii. Toilets, showers, or other equipment which will create or cause any liquid or solid waste to be discharged into waters of the United States are not authorized by this General Permit.

viii. Dock cover roofs may be gabled or monosloped. Gabled roofs will not exceed fifteen (15) feet in height from the top of the gable to the pier flooring. Monosloped roofs will not exceed twelve (12) feet in height from the top of the slope to the pier flooring.

ix. Enclosed buildings or other structures are not authorized. Boat lifts, boat sheds, and dock covers are permissible provided that they do not block cross-vision. Storage compartments are permissible but will not exceed 14 inches in width, 30 inches in height, and 8 feet in length.

x. Docks that require dredging or excavation in order to create or improve access to navigable waters are not considered single and complete projects and therefore are not authorized by this general permit. All dock structures that require dredging or excavation will be evaluated under an individual permit.

xi. This General Permit does not authorize the construction of more than one dock per individual parcel.

xii. That the permittee understands and agrees that pilings will be installed using a water jet or vibratory hammer. In the event standard pile driving (impact hammer) is utilized, the permittee understands and agrees that a soft-strike procedure (three strikes at 40%-60% energy level once a minute for 3 minutes) must be conducted prior to beginning pile driving activities and after any pile driving interruptions of more than 30 minutes.

xiii. That the permittee understands and agrees that pile driving activities must be limited to 12 hours per day with a 12-hour rest period between pile driving activities to avoid potential cumulative noise impacts to Federally-listed Threatened and Endangered (T&E) species.

b. Mooring Piles, Dolphins and Boat Lifts

i. Mooring piles, dolphins, boat/jet ski lifts and covered boat sheds that are associated with a fixed pier or floating dock shall be located no farther channelward and no farther than 30 feet from either end of the authorized structure.

ii. All mooring structures must be well marked in accordance with US Coast Guard regulations.

iii. Mooring piles or dolphins must be a minimum of twenty (20) feet from the waterward extension of the adjacent property lines. In addition, any vessels moored to these structures shall not swing or otherwise encroach into the riparian limits of the adjacent property unless the adjacent property owner agrees, in writing, to a variance in this dimension.

iv. Mooring piles or dolphins may not be included if the entire docking facility (including piles, dolphins, and/or floats) will provide docking space for more than 10 boats.

v. This General Permit does not authorize more than two (2) personal watercraft lifts.

vi. All wood piles and wooden exterior pile-supported structures must be pressure-treated with wood preservatives in strict compliance with the Registration/Registration Documents issued by the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act for use in or above fresh water or marine environments, and in accordance with standards established by the American Wood Protection or evaluation reports issued by the International Code Council Evaluation Service.

vii. That the permittee understands and agrees that pile driving activities must be limited to 12 hours per day with a 12-hour rest period between pile driving activities to avoid potential cumulative noise impacts to Federally-listed Threatened and Endangered (T&E) species.

viii. That the permittee understands and agrees that pilings will be installed using a water jet or vibratory hammer. In the event standard pile driving (impact hammer) is utilized, the permittee understands and agrees that a soft-strike procedure (three strikes at 40%-60% energy level once a minute for 3 minutes) must be conducted prior to beginning pile driving activities and after any pile driving interruptions of more than 30 minutes.

II. GENERAL CONDITIONS:

A. This General Permit authorizes only those activities and structures specifically addressed below. The permittee must obtain Department of the Army authorization, such as the issuance

of an individual permit, for all other activities that are regulated pursuant to 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 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, including shellfish beds.

D. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to avoid and minimize any 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 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 there has been a violation of any terms or conditions of this 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 a 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 a public hearing to present information relevant to a decision whether their 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 of authorization 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 structure owner must within sixty (60) days without expense to the United States and in such 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 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. 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.

J. The permittee shall maintain the work or structure authorized herein in good condition. If and when a permittee desires to abandon an authorized structure, unless such abandonment is part of a transfer procedure by which the individual is transferring ownership of the structure, the permittee may be required to remove the structure.

K. 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.

L. Any activity that may affect any federally listed threatened or endangered species, a species proposed for listing, or designated critical habitat is NOT authorized by this General Permit. Any proposed activity that may affect listed species or designated critical habitat, will require consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

M. Historic Properties.

(1) 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. Any proposed activity that would, or has the potential to, affect any sites that are listed, or are eligible for inclusion, in the National Register of Historic Places, will require consultation with the State Historic Preservation Officer or Tribal Historic Preservation Officer.

(2) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the proposed activity, or whether additional section 106 consultation is necessary.

(3) Non-federal permittees must submit a Pre-Construction Notice (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 from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places. 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.

(4) The District Engineer will notify the prospective permittee within 45 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 45 days, the applicant must still wait for notification from the Corps.

(5) 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.

N. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unknown historic or archeological remains within the area subject to Department of the Army authorization, the applicant agrees to cease work and notify this office immediately. The Corps will initiate the Federal, State, and/or Tribal coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

O. This general permit relates only to activities authorized herein and does not convey the right to place any structures for any non water-related commercial use on or adjacent to any piers, floating docks, mooring piles, dolphins, covered boat sheds and/or dock covers without the prior approval of the District Engineer.

P. 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 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.

Q. The Charleston District Engineer, at his discretion, may determine that this General Permit will not be applicable to a specific construction proposal. In such case, the procedure for processing an individual permit in accordance with 33 CFR 325 will be available.

R. This General Permit authorizes certain structures to be constructed on/or adjacent to areas subject to a prism and/or disposal easement held by the United States in perpetuity in

conjunction with a Congressionally authorized project for the maintenance and improvement of the federal channel. This General Permit does not convey any property rights either in real estate or material or any exclusive use privileges, nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of the federal channel pursuant to its easement rights.

S. If the District Engineer determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of the federal channel, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Engineer, and there shall be no entitlement to compensation from the United States for damage or injury,

T. No permanent structures will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Engineer.

U. The term "joint use dock" means the dock to be constructed can be used by no more than four (4) property owners.

V. The term "permittee" means the individual authorized by the District Engineer to accomplish work under this General Permit. The activities authorized under this permit are for private, non-commercial use. Work will not be considered private if its planned or ultimate purpose is commercial or industrial in nature, it is in support of operations that charge for the production, distribution, or sale of goods or service, or it will be for the use of the general public. In certain instances the term "permittee" may include corporations or other commercial entities that are requesting authorization to construct joint use or community docks as amenities to residential developments.

W. The term "community dock", for the purposes of this General Permit, means the structure shall be constructed for the use of those individuals within a specific community and shall provide temporary mooring space only.

X. A variance in the dimensions or locations of the activities herein may be granted in instances where conformity with existing structures would be practical and in cases where exceptions would be desired due to curvature and/or slope of the shoreline. Under normal circumstances, for activities not requiring a PCN that are **NOT ON OR ADJACENT TO FEDERAL CHANNELS**, private individuals may presume a variance is in effect for purposes of this general permit upon issuance of a permit by the South Carolina Department of Health & Environmental Control, Office of Ocean and Coastal Resource Management. For activities located **ON OR ADJACENT TO FEDERAL CHANNELS**, a variance must be granted in writing by the USACE District Engineer, prior to commencement of work. The District Engineer reserves the right to issue a specific or written variance if, in his judgment navigational, aesthetic or environmental concerns so require.

Y. Any activity that may affect shellfish aggregations and reefs are NOT authorized by this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

Z. Floating docks shall be located in areas of adequate depth to ensure that clearance between the float and the bottom is maintained at all times. In areas where the depth is not adequate to

maintain clearance, floating docks shall be fitted with structures (i.e. float stops) that prevent the float from contacting the bottom.

AA. The number of pilings shall be restricted to the least amount possible and distance between pilings should be maximized to the greatest extent practicable.

III. PROHIBITED ACTIVITIES:

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

IV. REQUIRED AUTHORIZATIONS:

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

B. For activities located in the Critical Area, the permittee shall obtain a Critical Area Permit and a Coastal Zone Consistency Certification from SCDHEC, Office of Ocean and Coastal Resource Management.

C. For activities located outside the Critical Area in Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, and Jasper Counties, the permittee shall obtain a Construction in Navigable Waters Permit and a Coastal Zone Consistency Certification from SCDHEC, Office of Ocean and Coastal Resource Management.

D. For activities located outside the eight coastal counties listed in IV(C) above, the permittee shall obtain a Construction in Navigable Waters Permit from SCDHEC, Bureau of Water.

V. PENALTIES FOR VIOLATIONS:

Authorization obtained under this General Permit limits the size, length and use of structures. 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 may result in the District Engineer seeking judicial relief to have the permittee remove the structure or work and/or restore the project area to its former condition, as well as the imposition of penalties as provided by law.

VI. REVOCATION OF THE GENERAL PERMIT:

This permit may be revoked by issuance of a Public Notice at any time 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 an Individual Department of the Army Permit or Nationwide Permit authorization.

VII. 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. Revoking the General Permit will not affect work performed in accordance with the conditions stated herein. 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 this General Permit to determine if significant cumulative impacts have resulted. If the District Engineer determines revocation of this permit, in whole or in part, may be in order due to cumulative impacts, a Public Notice of the intention will be issued and after a review of all additional data submitted, action will be taken to amend, modify or revoke this permit as appropriate. Revocation of the General Permit will not affect the work that had been authorized when the General Permit was in effect if such work is in accordance with the provisions contained herein.