

PUBLIC NOTICE

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

REGULATORY DIVISION

DECEMBER 18, 2014

Refer to: P/N # SAC-2010-01346 MODIFICATION

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

NOTICE

is hereby given that the District Engineer, Charleston District proposes to modify Section III. SPECIAL CONDITIONS: c. and d. of General Permit #SAC 2010-01346 issued to the S.C. Department of Transportation. The modifications to the General Permit only alter the notification requirements for impacts resulting from maintenance activities in non-tidal, freshwater, waters of the United States. The modifications do not change the eligible activities, impact threshold(s), or any other terms or conditions associated with the General Permit.

***NOTE: A copy of the draft modifications for Section III. SPECIAL CONDITIONS: c. and d. of General Permit #SAC 2010-01346 is attached to this Public Notice. All other terms and conditions of the General Permit signed August 1, 2011, would remain in full force and effect.**

The purpose of this notice is to give all interested parties an opportunity to express their views on the *proposed modifications* to the above referenced General Permit before final action is taken. Comments regarding the terms and conditions of *current* General Permit will not be considered. Written statements regarding the approval of these Modifications will be received by this office until

12 O'CLOCK NOON, MONDAY, JANUARY 20, 2014

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

The District Engineer has concluded that the discharges associated with this project, both direct and indirect, should be reviewed by the South Carolina Department of Health and Environmental Control in accordance with provisions of Section 401 of the Clean Water Act. As such, this notice constitutes a request for certification that the Modifications to the General Permit will comply with applicable effluent limitations and water quality standards. The work included in the Modification to 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 Modification to a conclusion until such certification is received.

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

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

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

This public notice constitutes a request for information regarding the potential effect that the modifications to the 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 the Modifications to the General Permit. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing.

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

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The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue these Modifications to General Permit SAC-2010-01346. 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 Elizabeth Williams at 843-329-8044 or toll free at 1-866-329-8187.

General Permit No. SAC 2010-01346 Modification
Name of Applicant: S. C. Department of Transportation (SCDOT)
Effective Date: XXX
Expiration Date: August 1, 2016

Department of the Army, Regional General Permit SAC 2010-01346,
III. SPECIAL CONDITIONS: c. and d. will be revised to read:

III. SPECIAL CONDITIONS:

c. All **maintenance projects** eligible under this permit and complying with all general and special conditions which impact less than or equal to 0.5 acres and/or 300 linear feet of **non-tidal, freshwater,** waters of the United States can begin work prior to receiving written approval from the Charleston District, U. S. Army Corps of Engineers. Activities eligible for concurrent notification include those maintenance projects consisting of the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. Authorized activities under Special Condition c. also include the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

Authorized activities under Special Condition c also include the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure.¹ Temporary structures, fills, and work necessary to conduct the maintenance activity are also included. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

SCDOT will be required to submit the following information to the Corps ***concurrent with the commencement of work:***

¹ The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built.

- (1) Approximate-Preliminary, Jurisdictional Wetland Determination request to include:
 - A signed JD Request Form;
 - Accurate location map (from County Map, USGS Quad Sheet, etc.);
 - Soil survey sheet;
 - Aerial photograph(s);
 - Topographic maps;
 - A depiction of wetlands and waters within the project boundaries (to include total project acreage and acreage for each water/ wetland);
 - Wetland Determination Data Forms and/or photographs may also be provided but are not required.
- (2) Completed Corps application (Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina);
- (3) Detailed description of activities in waters of the US;
- (4) Location Map (directions, latitude/longitude);
- (5) Proposed Project Plans (plan view providing details of the impacts in waters of the US, including wetlands, cross sectional diagram (when applicable). Plans should be reproducible in black and white and on sheets no larger than 11" X 17";
- (6) Information pertaining to the presence and/or the projects potential affects to historic properties (to assist in complying with Section 106 of the National Historic Preservation Act of 1966);
- (7) Information pertaining to any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in a designated critical habitat. Documentation must be provided demonstrating compliance with the Endangered Species Act;
- (8) Mitigation Plan or Mitigation Statement (to comply with the 2008 Mitigation Rule and the 2010 SAC Guidelines for Preparing a Mitigation Plan or the current documents superseding either of these two documents).

d. All other activities eligible under this permit and complying with all general and special conditions, including impacts to **any tidal waters** of the United States will be required to submit the following information to the Corps prior to the commencement of work. SCDOT cannot begin work until written approval is received from the Corps.

- (1) Jurisdictional Determination (SAC #, approval letter, and map);
- (2) Location Map (directions, latitude/longitude);
- (3) Information pertaining to the presence and/or the projects potential affects to historic properties (to assist in complying with Section 106 of the National Historic Preservation Act of 1966);
- (4) Biological Assessment Report

- Federal and State Threatened and Endangered Species
- Habitat Survey
- (5) Essential Fish Habitat (EFH) Assessment and copies of all coordination with NMFS (as appropriate, when there are impacts to EFH);
- (6) Wetland and Stream Impact Assessment Worksheet;
- (7) Proposed Project Plans (cross section, bankfull, plan view, etc). Plans should be reproducible in black and white and on sheets no larger than 11" X 17";
- (8) Description of Avoidance and Minimization of waters of the United States
To include all on-site measures used to avoid and minimize impacts to wetlands, i.e. reduced side slopes, minimized widths of bike and pedestrian lanes through wetlands, shifts in alignment, reduced medians, etc.
- (9) Completed Corps application (Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina);
- (10) Mitigation Plan (to comply with the 2008 Mitigation Rule and the 2010 SAC Guidelines for Preparing a Mitigation Plan or the current documents superseding either of these two documents);
- (11) Copy of the approved National Environmental Policy Act (NEPA) document (if applicable);
- (12) Summary and copies of any coordination with resource agencies (as required by Section III.a.)

This permit amendment becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

This permit amendment shall become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

for: John T. Litz, PMP
Lieutenant Colonel, U.S. Army
Commander and District Engineer

Date

Tina B. Hadden
Chief, Regulatory Division