

PUBLIC NOTICE

**CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 INDUSTRIAL PARK ROAD, ROOM 140
CONWAY, SOUTH CAROLINA 29526**

REGULATORY DIVISION

Refer to: P/N SAC-2014-00299

July 16, 2020

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), the U.S. Army Corps of Engineers, Charleston District, District Engineer, proposes to re-issue General Permit SAC# 2014-00299 for Emergency Beach Nourishment. This permit would be issued to the General Public and would authorize certain Emergency Beach Nourishment Activities within

THE ATLANTIC OCEAN

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

NOTICE

is hereby given that written statements regarding the proposed work will be received by the **Corps** until

30 Days from the Date of this Notice,

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

For activities occurring within six (6) of the coastal counties (Horry, Georgetown, 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. 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 public notice is available on the Corps' website at:

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

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. 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 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.

The District Engineer has consulted the most recently available information and has determined that the proposed General Permit is not likely to adversely affect any federally

endangered, threatened, or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat within the regulatory jurisdiction of U.S. Fish and Wildlife Service. Provisions have been made in the form of general conditions to the proposed General Permit, which should ensure activities covered under the proposed General Permit would have no effect on federally endangered, threatened, or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat within the regulatory jurisdiction of the National Marine Fisheries Service. 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 or any additional information they may have on whether any listed or proposed endangered or threatened species or designated or proposed critical habitat may be affected by the proposed General Permit, pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended).

In accordance with the National Historic Preservation Act (NHPA), the District Engineer has evaluated the proposed General Permit regarding its potential to affect historic properties (as defined in 36 C.F.R. 800.16)(I)(1)) and has initially determined that there will be no adverse effect on historic properties. Provisions have been made in the form of general conditions to the proposed General Permit, which should prevent any adverse effects to cultural resources. To ensure that historic properties that the District Engineer is not aware of are not overlooked, this public notice also serves as a request to the State Historic Preservation Office (SHPO) and any other interested parties to provide any information they may have with regard to historic properties. This public notice serves as a request for concurrence within 30 days from the SHPO (and/or Tribal Historic Preservation Officer (THPO)).

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

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.

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 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.

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. **Please submit comments in writing, identifying the project of interest by public notice number, to 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 Erica L. Stone, Project Manager, at (843) 365-4239, or by email at Erica.L.Stone@usace.army.mil.

General Permit No.: SAC-TBD
Name of Permittee: GENERAL PUBLIC
Effective Date: TBD
Expiration Date: TBD

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

A General Permit 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 to place structures and/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), upon the recommendation of the Chief of Engineers, is hereby issued by the authority of the Secretary of the Army by the

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

for the excavation and placement of material waterward of the high tide line (HTL) for Emergency Ocean Front Beach Nourishment activities for private, commercial, and public uses, specifically within those waters of the Atlantic Ocean, within the State of South Carolina, subject to the following special and general conditions, and for the purpose of providing immediate erosion relief, in the form of beach restoration, to eroded areas threatening inhabited structures or developed properties.

I. SPECIAL CONDITIONS:

A. The work authorized by this general permit includes, to the extent separate authorization is necessary, implementation of local cooperation requirements and the operation, maintenance, repair, replacement and rehabilitation (OMRR&R) activities associated with the Federal shore protection project. It also includes and is otherwise limited to emergency situations requiring immediate remedial action to provide temporary erosion relief. An emergency situation exists when there is an imminent threat to public health and safety or the environment, an unacceptable hazard to life, or which would result in significant loss of property. In such cases, this permit is intended for use after discrete events causing excessive erosion and for one-time use per event per property being protected. This permit does not authorize continuing or reoccurring beach nourishment work or beach maintenance other than that ancillary to the Federal project. Persons or entities planning to do ocean front beach nourishment activities on a regular basis should apply for a standard individual permit. These re-occurring activities will be evaluated under the standard individual permit review process as specified in 33 CFR 325.

B. The carrying-out of local cooperation requirements and OMRR&R activities for an authorized Federal coastal storm risk management (CSR) project, to the extent that any additional authorization is necessary, is covered by this general permit. These activities are those required by the Local Cooperation Agreement (LCA), O&M Manual, or study and

authorization documents for the Federal project. When carried out by or at the direction of the non-federal sponsor for the project, a Pre-Construction Notice (PCN) prior to commencement of these activities is not required. The filling-in of erosional areas landward of the Federal project which have been identified by the Corps as necessary for the function and integrity of the project and/or project environmental concerns is included, provided the filling is with beach quality, compatible sand and is stabilized with fencing and vegetation as required by the Corps. Activities carried out under this paragraph are not subject to the General Conditions which follow, but shall be evaluated for compliance purposes with reference to the Federal project documents.

C. The following activities are authorized by this General Permit provided a PCN is submitted prior to commencement of any covered activity, and subject to the conditions which follow:

1. Mechanical excavation/sand scraping is only authorized between the HTL and mean low water (MLW) contours in non-vegetated beach areas. The depth of excavation shall not exceed two feet. The permittee shall make every effort to contour and shape the excavated area such that the average depth decreases with proximity to the shoreline.
2. Mechanical excavation/sand scraping is limited to the area directly in front of the property being protected, within the extended property lines of the subject property, and landward of MLW.
3. Hydraulic excavation is not authorized.
4. This General Permit does not authorize the excavation of shoals or sand bars.
5. All excavation and filling activities shall be conducted during low tides.
6. Any material utilized for beach nourishment activities must be compatible with the soils in the nourished area.
7. Sand scraping/excavation is only authorized for the purpose of obtaining material to be placed along the shoreline for erosion relief. The excavation of material for placement behind bulkheads, seawalls, or other man-made structures is not authorized.
8. Emergency beach nourishment activities occurring waterward of the HTL must commence, or be under contract to commence, within 180 days of the date of the destruction or damage from a discrete event. In cases of catastrophic events such as hurricanes or tornados, this 180 day limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or similar delays.
9. Emergency beach nourishment activities occurring waterward of the HTL on individual parcels must be completed within 2 weeks of commencement of the work. This 2-week limitation may be waived by the Corps upon request for a coordinated effort addressing multiple parcels in sequential fashion.
10. This General Permit does not authorize the placement of sand bags waterward of

the HTL. In the event that sandbags are placed above the HTL in association with these beach nourishment activities, only large sandbags are authorized. Large sandbags are defined as UV resistant bags one (1) cubic yard in size commercially manufactured to hold sand. In the event of continual erosion that shifts sandbags below the HTL, it is the permittee's responsibility to immediately remove such sandbags. Any sandbags remaining in the project area must be removed prior to beach nourishment activities and may not be buried by emergency beach nourishment activities.

11. For protection against further erosion, fill and/or excavated material may be deposited along the eroded shoreline for restoration of the beach and sand dunes above the HTL. Vegetation and sand fencing may be used to stabilize deposited material. Vegetation must be native species typical of natural beach and dune ecosystems. A list of species proposed for stabilization must be submitted to this office for approval prior to planting. Sand fencing must be biodegradable and installed in a manner so as not to impede turtle nesting. Should the fences be found to impact nesting activities or have the potential to impact nesting activities, sand fencing must be moved or removed entirely. Fencing must have openings between sections that are at least 5 feet wide and sections must be removed if they do not function to trap sand and establish sand dunes. The fencing must be installed in a manner that will not impede public access and damaged fence material must be removed from the beach by the property owner.

12. In an effort to minimize disturbance to sea turtles, migrating shorebirds (particularly the piping plover and the red knot), and nesting birds, emergency beach nourishment activities are authorized between November 1 and February 28. For activities proposed outside this window, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) and/or The National Marine Fisheries Service (NMFS). After appropriate coordination with USFWS and NMFS, the Corps must be able to make a case-specific determination that the work is not likely to adversely affect threatened or endangered species or their critical habitat before verification of the proposed work can be issued. The Corps may require the permittee to comply with specific conditions to ensure that authorized work does not adversely affect threatened or endangered species or their critical habitat.

13. If work is authorized between May 1 and October 31, the permittee is required to coordinate with the DNR Marine Turtle Conservation Program (MTCP) and Nest Protection Project Leaders (NPPL) for the length of the project. NPPL should be consulted each morning prior to any work being performed on the beach. In the event a nest is disturbed during construction and/or an adult turtle is encountered, all work should cease and the MTCP should be contacted immediately. The MTCP contact is Michelle Pate who can be reached at 843-953-9052 (office) or 843-384-0605 (cell). For activities proposed within this window, the Corps will also consult with the S.C. Department of Natural Resources (SCDNR). The Corps may require the permittee to comply with specific conditions to ensure that authorized work does not adversely affect nesting sea turtles.

14. A Pre-Construction Notice (PCN) must be submitted prior to commencement of any emergency beach nourishment project/event. Work shall not commence until a written verification of authorization is received from this office. The PCN can be submitted electronically or hard copy and must include the following information:

- (i) Completed "Joint Federal And State Application Form For Activities Affecting

Waters of the United States Or Critical Areas of the State of South Carolina"

- (ii) Plans for the proposed work. Plans should include a location map, a plan view, and a cross section. The plan view should show the areas where sand scraping/excavation will occur and the areas where the sand will be deposited. The cross sectional diagrams should indicate the depth to which sand will be scraped and the depth to which sand will be deposited. The HTL and MLW elevations must be depicted on the plans. Please note: If submitted hard copy, plans should be in black and white and printed on 8.5" x 11" paper.
- (iii) Identification of the discrete event causing the damage/destruction and justification that an emergency situation exists (i.e. a statement that there is an imminent threat to public health and safety or the environment, an unacceptable hazard to life, or potential for significant loss of property.)
- (iv) Statement that the work will be conducted in compliance with the terms and conditions of this General Permit.

II. GENERAL CONDITIONS:

A. This General Permit authorizes only those activities specifically addressed herein. 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 and/or Section 404 of the Clean Water 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.

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 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 owner or person responsible for the work 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 restore the site to pre-construction contours.

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. 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 unless project-specific consultation with USFWS and/or NMFS has occurred, it is determined that the activity is not likely to adversely affect species or their critical habitat, and the specific project has been authorized by the Corps. Otherwise, these activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

J. Historic Properties.

1. Non-federal prospective 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.

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. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. For activities involving federal permittees 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.
4. 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, the State Historic Preservation Office (SHPO), 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 General Permit, you must immediately notify 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 District Engineer and the South Carolina Institute of Archaeology and Anthropology (SCIAA) 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. Archaeological 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. SCIAA Maritime Research Division (MRD) can be reached at 803-576-6565.

M. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to restore the site completely to pre-construction conditions, without expense to the United States. No claim shall be made against the United States on account of any such work.

N. The Charleston District Engineer, at their 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.

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

P. Any improvement, construction or excavation within the footprint of a Federal CSRM project that will be constructed over, under, or through beach fill or another protective project feature may in addition to authorization under this General Permit require prior approval of the District Commander under 33 USC 408. Such approval may be included in any written verification of authorization in response to a PCN.

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. 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. The permittee must comply with the conditions of the state Section 401 Water Quality Certification.

V. PENALTIES FOR VIOLATIONS:

Authorization obtained under this General Permit limits the number of times this authorization can be used per site and places limits on the work authorized herein. 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. At the end of the first year and every succeeding year, the Corps 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.

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

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Rachel A. Hondered, PMP
Lieutenant Colonel, U.S. Army
Commander and District Engineer

or her Designee

Travis Hughes
Chief, Regulatory Division

Date