

PUBLIC NOTICE
ANNOUNCING THE APPROVED 2021 NATIONWIDE PERMIT REGIONAL
CONDITIONS FOR SOUTH CAROLINA, WATER QUALITY CERTIFICATIONS AND
THE COASTAL ZONE CONSISTENCY DETERMINATIONS

Part I: Nationwide Permits and Regional Conditions

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on March 15, 2021, and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The Corps has also issued final decision documents for the new and reissued NWP. These final decision documents are available at www.regulations.gov at docket number COE-2020-0002. Furthermore, the national NWP decision documents will be supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWP.

The 12 existing NWP published in the January 13, 2021 final rule replace the 2017 versions of these NWP. The 2017 versions of NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52 expire on March 15, 2021.¹

¹ The Charleston District's Public Notice for the Federal Register Notice Announcing the Reissuance of the Nationwide Permits, dated January 13, 2021, initially referenced "March 14, 2021" as the expiration date for the 2017 versions of NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, and 52. However, the Corps' January 13, 2021 publication of the final rule in the Federal Register, entitled "Reissuance and Modification of Nationwide Permits" stated that "[t]he 2017 versions of the 12 NWP [i.e., NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52] reissued in this final rule expire on **March 15, 2021**." 86 FR 2744, at 2747 (Jan. 13, 2021) (emphasis added).

The January 13, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>.

As an alternative, interested parties can access the January 13, 2021, final rule and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular regional or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP's are minimal, both individually and cumulatively. The Charleston District's proposal to add regional conditions was noticed on September 29, 2020. Enclosed with today's public notice are regional conditions, "FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)", which were approved by the South Atlantic Division Commander on February 16, 2021. These regional conditions become effective on March 15, 2021, and are applicable for the **16 NWP's** listed above **only**.

The 2021 NWP Regional Conditions can also be found on the Charleston District's website at <https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>.

Part II: 401 Water Quality Certification (WQC)

The South Carolina Department of Health and Environmental Control (SCDHEC) issued a Notice of Department Decision dated November 25, 2020, followed by 401 WQC decisions and the Coastal Zone Management Consistency (CZC) decisions in a letter dated December 14, 2020. Specifically, SCDHEC denied the 401 WQCs for NWP's 21 and 50, granted the 401 WQCs without conditions for NWP's 40, 42 and 48, and granted the 401 WQCs with conditions for NWP's 12, 29, 39, 43, 44, 51, 52, 57 and 58. No 401 WQCs are required for NWP's 55 and 56.

Enclosed with today's public notice is a WQC and CZC table to assist with determining the WQC and/or CZC determinations for each of the 16 NWP's.

A. 401 WQC Denial

In accordance with the U.S. Environmental Protection Agency's (EPA's) current water quality certification regulations at 40 CFR Part 121, the Charleston District has reviewed SCDHEC's denial of the 401 WQCs for NWP's 21 and 50 and has determined that the denials satisfy the requirements set forth in 40 CFR § 121.7(e)(2). Furthermore, in accordance with the Corps' regulations at 33 CFR § 330.4(c), and as a result of the SCDHEC's denial of the 401 WQC for certain activities authorized by NWP's 21 and 50 in State of South Carolina, the Corps has denied authorization for those activities without prejudice until the certifying authority issues an individual 401 WQC or waives

the right to do so. Anyone wanting to perform activities under NWP 21 and 50 must first obtain an individual 401 WQC or waiver.

Please see the enclosed public notice that was issued on February 3, 2021, by the Charleston District announcing the Clean Water Act Section 401 Certification Rule. This public notice may also be found on the Charleston District's website at <https://www.sac.usace.army.mil/Missions/Regulatory/Public-Notices/Article-View/Article/2491488/special-public-notice-clean-water-act-section-401-certification-rule/>.

B. 401 WQCs Issued With Conditions

The Charleston District has reviewed SCDHEC's issuance of the 401 WQCs with conditions for NWP 12, 29, 39, 43, 44, 51, 52, 57 and 58 and has determined that the 401 WQCs satisfy the requirements set forth in 40 CFR § 121.7(d)(2). Furthermore, the Charleston District has determined that the following SCDHEC 401 WQC conditions for NWP 43, 51 and 52 are acceptable in accordance with 33 CFR § 330.4(c), comply with the provisions of 33 CFR § 325.4, and will be included as Regional Conditions.

For NWP 43:

"Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures."

For NWP 51 and 52:

"This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

Therefore, the Corps will rely on the general 401 WQCs for NWP 43, 51 and 52, and issue authorizations for the discharges into waters of the United States for NWP 43, 51 and 52.

The above conditions can be found on Section F of the enclosed "FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)."

With regard to NWP 12, 29, 39, 44, 57 and 58, SCDHEC included the following 401 WQC condition:

“This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.”

The Corps has determined that the “adjacent” waters 401 WQC condition is unacceptable in accordance with 33 CFR § 330.4(c)(2) and (3) and does not comply with the provisions of 33 CFR § 325.4. This condition would require the Corps to search the SCDHEC website or other available information provided and/or managed by SCDHEC to determine which waters in the State of South Carolina are considered ONRWs, ORWs or Trout Waters. Additionally, this condition requires either the Corps to make an “adjacency” determination on behalf of SCDHEC or requires SCDHEC to make the “adjacency” determination during the Corps’ review of PCNs. The Corps views this condition as problematic because the Corps may have a different definition of “adjacency” than SCDHEC, and because making an adjacency determination for SCDHEC is not within the regulatory authority of the Corps. Furthermore, if SCDHEC is to make the “adjacency” determination during the PCN review, then this condition would grant SCDHEC an opportunity for a second certification review of projects under NWPs 12, 29, 39, 44, 57 and 58, which is not permissible according to 40 CFR § 121.6(e); 85 Fed. Reg. 42210, at 42280 (July 13, 2020) (“The final rule does not include an explicit prohibition on reopener clauses because the EPA has concluded that such conditions are already proscribed by section 121.6(e) of the final rule. By including a reopener condition in a certification, the certifying authority intends to take an action to reconsider or otherwise modify a previously issued certification at some unknown point in the future.”). For the reasons described herein, this 401 WQC condition will not be included as a RC and consequently, this results in a denial without prejudice of activities under NWPs 12, 29, 39, 44, 57 and 58.

While the remaining 401 WQC conditions for NWPs 12, 29, 39, 44, 57 and 58 were otherwise acceptable in accordance with 33 CFR § 330.4(c) and comply with the provisions of 33 CFR § 325.4, these conditions will also not be added as regional conditions because the 401 WQCs with conditions for NWPs 12, 29, 39, 44, 57 and 58 are administratively denied as a result of the Corps’ position that the “adjacent” waters 401 WQC condition discussed above acceptable. This administrative denial determination for the 401 WQC with conditions for NWPs 12, 29, 39, 44, 57 and 58 is consistent with the following statement in SCDHEC’s December 14, 2020, WQC/CZC letter:

“The Department expects the conditions requested below to be included in the final regional conditions of the Nationwide Permits. If not included, the Department does not have reasonable assurance that the work authorized by the Nationwide Permits will be conducted in a manner consistent with the certification requirements of Section 401 of the CWA, as amended, or the Coastal Tidelands and Wetlands Act (S.C. Code of Laws §48-39-10 et.seq.) and SC Coastal Zone Management Program and the certifications are denied for these Nationwide Permits.”

Therefore, anyone wanting to perform activities under NWP 12, 29, 39, 44, 57 and 58 must first obtain an individual 401 WQC or waiver.

Please see the enclosed public notice that was issued on February 3, 2021, by the Charleston District announcing the Clean Water Act Section 401 Certification Rule. This public notice may also be found on the Charleston District's website at <https://www.sac.usace.army.mil/Missions/Regulatory/Public-Notices/Article-View/Article/2491488/special-public-notice-clean-water-act-section-401-certification-rule/>.

C. 401 WQC Issued Without Conditions

As stated above, SCDHEC granted the 401 WQCs without conditions for NWP 40, 42 and 48. Therefore, the Corps will rely on the general 401 WQCs for NWP 40, 42 and 48, and issue authorizations for the discharges into waters of the United States for NWP 40, 42 and 48.

Part III: Coastal Zone Consistency (CZC)

The South Carolina Department of Health and Environmental Control (SCDHEC) issued a Notice of Department Decision dated November 25, 2020, followed by 401 WQC decisions and the Coastal Zone Management Consistency (CZC) decisions in a letter dated December 14, 2020. Specifically, SCDHEC: (1) disagreed with the Corps' CZC determinations, resulting in a denial of CZC for NWP 21, 50, 55 and 56; (2) concurred with the Corps' CZC determinations without conditions for NWP 40 and 48; and (3) concurred with the Corps' CZC determinations with conditions for NWP 12, 29, 39, 42, 43, 44, 51, 52, 57 and 58.

A. CZC Denial

In accordance with the Corps' regulations at 33 CFR § 330.4(d), and as a result of the SCDHEC's disagreement with Corps' CZC determinations for certain activities authorized by NWP 21, 50, 55 and 56 in State of South Carolina, the Corps has denied authorization for those activities without prejudice until the certifying authority issues an individual CZC concurrence or concurrence can be presumed. Anyone wanting to perform activities under NWP 21, 50, 55 and 56 must first obtain an individual CZC concurrence or demonstrate that concurrence should be presumed.

B. CZC Concurrence With Conditions

1. NWP 43 and 52

The Charleston District has reviewed SCDHEC's CZC concurrence with conditions for NWP 12, 29, 39, 42, 43, 44, 51, 52, 57 and 58 and has determined that the following

CZC conditions for NWP 43 and 52 are acceptable in accordance with 33 CFR § 330.4(d), comply with the provisions of 33 CFR § 325.4, and will be included as Regional Conditions:

For NWP 43:

“Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures.”

For NWP 52:

“This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.”

Therefore, the Corps will rely on the general CZC concurrence for NWP 43 and 52 and issue authorizations for the activities in waters of the United States for NWP 43 and 52.

The above conditions can be found on Section F of the enclosed “FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC).”

2. “Adjacent” Waters CZC Condition

With regard to NWP 12, 29, 39, 44, 57 and 58, SCDHEC included the following CZC condition:

“This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.”

The Corps has determined that the “adjacent” waters CZC condition is unacceptable in accordance with 33 CFR § 330.4(d)(2) and (3) and does not comply with the provisions of 33 CFR § 325.4. This condition would require the Corps to search the SCDHEC website or other available information provided and/or managed by SCDHEC to determine which waters in the State of South Carolina are considered ONRWs, ORWs or Trout Waters. Additionally, this condition requires either the Corps to make an “adjacency” determination on behalf of SCDHEC or requires SCDHEC to make the “adjacency” determination during the Corps’ review of PCNs. The Corps views this condition as problematic because the Corps may have a different definition of “adjacency” than SCDHEC, and because making an adjacency determination for SCDHEC is not within the regulatory authority of the Corps. Furthermore, if SCDHEC is

to make the “adjacency” determination during the PCN review, then this condition would grant SCDHEC an opportunity for a second CZC consistency review of projects under NWPs 12, 29, 39, 44, 57 and 58. For the reasons described herein, this CZC condition will not be included as a RC and consequently, this results in a denial without prejudice of activities under NWPs 12, 29, 39, 44, 57 and 58.

3. “Wetland Preservation” CZC Condition

With regard to NWPs 29, 39, 42 and 51, SCDHEC included the following CZC condition:

“For all projects, the applicant must provide a Wetland Master Plan consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants. The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.”

The Corps has determined that this “wetland preservation” CZC condition is unacceptable in accordance with 33 CFR § 330.4(d)(2) and (3) and does not comply with the provisions of 33 § CFR 325.4. This condition requires the prospective permittee to preserve all wetlands not impacted through approved restrictive covenants. The Corps views this condition as problematic for several reasons. The first reason is that a Wetland Master Plan be provided that is consistent with Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program, which is a State program not administered by the Corps. Additionally, the Corps would not otherwise require that a prospective permittee preserve the remaining wetlands. Therefore, this CZC condition was determined to be unacceptable on that basis alone. Second, the Corps cannot legally require a prospective permittee to preserve all remaining wetlands onsite. The condition indicates that the preservation would be required regardless of whether compensatory mitigation for the authorized impacts is required. Third, if authorized impacts require compensatory mitigation, a compensatory mitigation plan must comply with the 2008 Mitigation Rule (2008 Mitigation Rule) and the Charleston District’s Guidelines for Preparing a Compensatory Mitigation Plan (Charleston District Guidelines). The 2008 Mitigation Rule (33 CFR Part 332) specifically identifies an order by which mitigation should follow with the purchase of mitigation bank credits being the preferred option, followed by in-lieu fee program credits, permittee-responsible mitigation under a watershed approach, permittee-responsible mitigation through on-site and in-kind mitigation, and then permittee-responsible mitigation through off-site and/or out-of-kind mitigation. With regard to preservation, 33 CFR § 332.3(h) states as follows:

“preservation may be used to provide compensatory mitigation for activities authorized by DA permits when all the following criteria are met:
(1) Preservation may be used to provide compensatory mitigation for activities authorized by DA permits when all the following criteria are met:
(i) The resources to be preserved provide important physical, chemical, or

biological functions for the watershed; (ii) The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological sustainability of the watershed, the district engineer must use appropriate quantitative assessment tools, where available; (iii) Preservation is determined by the district engineer to be appropriate and practicable; (iv) The resources are under threat of destruction or adverse modifications; and (v) The preserved site will be permanently protected through an appropriate real estate or other legal instrument (e.g., easement, title transfer to state resource agency or land trust). (2) Where preservation is used to provide compensatory mitigation, to the extent appropriate and practicable the preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. This requirement may be waived by the district engineer where preservation has been identified as a high priority using a watershed approach described in paragraph (c) of this section, but compensation ratios shall be higher.”

Additionally, Charleston District Guidelines provide an option for prospective permittees and applicants to receive a 25% reduction in the amount of required mitigation credits, if the wetlands to be preserved meet certain criteria described in the Guidelines. If the prospective permittee or applicant choose not to preserve the remaining wetlands or the remaining wetlands do not qualify for the 25% reduction in the amount of required credits, the prospective permittee or applicant may purchase the full amount of required credits from a mitigation bank or propose alternative mitigation. Therefore, this CZC condition was also determined to be inconsistent with the 2008 Mitigation Rule (33 CFR Part 332). Lastly, the CZC condition requires that the remaining wetlands be preserved through “approved restrictive covenants” and that the Wetland Master Plan “include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.” The Corps would not otherwise require this information; therefore, this CZC condition was determined to be unacceptable on this basis. Additionally, the condition requires that the Corps review this information on behalf of SCDHEC OCRM or requires that SCDHEC OCRM review the Wetland Master Plan during the Corps’ review of PCNs. The Corps would not otherwise require this information. For the reasons described herein, this CZC condition will not be included as a regional condition and consequently, this results in a denial without prejudice of NWP 29, 39, 42 and 51 activities and an individual CZC concurrence is required. However, in accordance with 33 CFR § 330.4(d)(6), “upon receipt of an individual consistency concurrence or upon presumed consistency, the proposed work is authorized if it complies with all terms and conditions of the NWP.”

4. NWPs 29 and 39

While the remaining CZC conditions for NWPs 29 and 39 were otherwise acceptable in accordance with 33 CFR § 330.4(d) and comply with the provisions of 33 CFR § 325.4, these conditions will also not be added as regional conditions because the CZC with

conditions for NWP 29 and 39 are administratively denied as a result of the Corps' position that the "adjacent" waters CZC condition and "wetland preservation" CZC condition discussed above are both unacceptable.

5. NWP 12, 44, 57 and 58

While the remaining CZC conditions for NWP 12, 44, 57 and 58 were otherwise acceptable in accordance with 33 CFR § 330.4(d) and comply with the provisions of 33 CFR § 325.4, these conditions will also not be added as regional conditions because the CZC with conditions for NWP 12, 44, 57 and 58 are administratively denied as a result of the Corps' position that the "adjacent" waters CZC condition discussed above is unacceptable.

6. NWP 42 and 51

While the remaining CZC conditions for NWP 42 and 51 were otherwise acceptable in accordance with 33 CFR § 330.4(d) and comply with the provisions of 33 CFR § 325.4, these conditions will also not be added as regional conditions because the CZC with conditions for NWP 42 and 51 are administratively denied as a result of the Corps' position that the "wetland preservation" CZC condition discussed above is unacceptable.

The above administrative denial determinations for the CZC with conditions for NWP 12, 29, 39, 42, 44, 51, 57 and 58 are consistent with the following statement in SCDHEC's December 14, 2020, WQC / CZC letter:

"The Department expects the conditions requested below to be included in the final regional conditions of the Nationwide Permits. If not included, the Department does not have reasonable assurance that the work authorized by the Nationwide Permits will be conducted in a manner consistent with the certification requirements of Section 401 of the CWA, as amended, or the Coastal Tidelands and Wetlands Act (S.C. Code of Laws §48-39-10 et.seq.) and SC Coastal Zone Management Program and the certifications are denied for these Nationwide Permits."

Therefore, anyone wanting to perform activities under NWP 12, 29, 39, 42, 44, 51, 57 and 58 must first obtain an individual CZC concurrence or demonstrate that concurrence should be presumed.

C. CZC Issued Without Conditions

As stated above, SCDHEC concurred with the Corps' CZC determinations without conditions for NWP 40 and 48. Therefore, the Corps will rely on the general CZC concurrence for NWP 40 and 48, and issue authorizations for the activities in waters of the United States for NWP 40 and 48.

D. CZC General Condition

SCDHEC's December 14, 2020, WQC / CZC letter provides the following CZC General Condition:

“Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM [South Carolina Department of Health and Environmental Control – Office of Ocean and Coastal Resource Management]. SCDHEC OCRM's action on direct critical area permits will serve as the consistency determination for the critical area activity.”

The Charleston District has determined that the CZC General Condition is acceptable in accordance with 33 CFR § 330.4(d), complies with the provisions of 33 CFR § 325.4, and will be included as Regional Condition.

This condition can be found on Section F of the enclosed “FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC).”

Part IV: Remaining Forty (40) 2017 Nationwide Permits.

There are 40 existing NWP's that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWP's were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and those NWP's remain in effect until the Corps issues a final rule reissuing those NWP's or March 18, 2022, whichever comes first. The 40 2017 NWP's that remain in effect are:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges

- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

Additionally, the regional conditions for these 40 NWPs that were approved by division engineers in 2017 remain in effect while these 2017 NWPs remain in effect. The 2017 Regional Conditions can be found on the Charleston District's website at <https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>.

Part V: Public Notice Enclosures

FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)

WQC and CZC table

Clean Water Act Section 401 Certification Rule Public Notice

Enclosures



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

FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)

Effective Date: March 15, 2021
Expiration Date: March 14, 2026

A. BACKGROUND/APPLICABILITY

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Charleston District for the Nationwide Permits (NWP) published in the January 13, 2021, Federal Register (86 FR 2744) announcing the reissuance of 12 existing (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on March 15, 2021, and will expire on March 14, 2026:
 - NWP 12 – Oil or Natural Gas Pipeline Activities
 - NWP 21 – Surface Coal Mining Activities
 - NWP 29 – Residential Developments
 - NWP 39 – Commercial and Institutional Developments
 - NWP 40 – Agricultural Activities
 - NWP 42 – Recreational Facilities
 - NWP 43 – Stormwater Management Facilities
 - NWP 44 – Mining Activities
 - NWP 48 – Commercial Shellfish Mariculture Activities
 - NWP 50 – Underground Coal Mining Activities
 - NWP 51 – Land-Based Renewable Energy Generation Facilities
 - NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
 - NWP 55 – Seaweed Mariculture Activities
 - NWP 56 – Finfish Mariculture Activities
 - NWP 57 – Electric Utility Line and Telecommunications Activities
 - NWP 58 – Utility Line Activities for Water and Other Substances
2. These regional conditions will provide additional protection for the aquatic environment and will help ensure that the NWP authorize only those activities with no more than minimal adverse environmental effects.
3. These regional conditions are not applicable to the remaining 40 existing NWP (NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 (at this time

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NWPs 26 and 47 are reserved)) that were not reissued or modified by the January 13, 2021 final rule. Any proposed regional conditions that would have applied to these 40 NWPs are indicated as “Reserved” below and will be included in a revised regional condition document when reissued. These 40 NWPs were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and these NWPs remain in effect until the Corps issues a final rule reissuing those NWPs or March 18, 2022, whichever comes first. The regional conditions for these 40 NWPs that were approved by Division Engineer in 2017 remain in effect while these 2017 NWPs remain in effect.

4. As specified, under NWP General Condition 27, Regional and Case-By-Case Conditions: The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
5. Note: The acronym “PCN” used throughout this document refers to *Pre-Construction Notification* as further defined in NWP General Condition 32.

B. EXCLUDED WATERS AND/OR AREAS

Not applicable.

C. REGIONAL CONDITIONS APPLICABLE TO ALL 16 NWPs

1. Use of nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations.
2. NWP activities are not authorized in areas known or suspected to have sediment contamination.
3. For all proposed activities that would be located within a FEMA designated floodway, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.
4. For all NWPs, the prospective permittee must submit a PCN to the District Engineer in accordance with General Conditions 31 and 32, for any activity that would be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects. The USACE Civil Works projects include Buck Creek, North Carolina and South Carolina, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County. Federal Navigation projects include Adams Creek, Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Brookgreen Garden Canal,

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Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard Creek, Town Creek McClellanville (i.e., Five Fathoms Creek, AWW to Bulls Bay), and Village Creek.

5. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4, the project drawings must include the following information: (1) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the Federal channel; (2) the distance from watermost edge of the proposed structure or fill to the nearest edge of the Federal channel; and (3) Mean Low Water line and the Mean High Water line.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs

1. Reserved.
2. Reserved.
3. For NWPs 12, 57 and 58, temporary structures, fills, and/or work, including the use of temporary mats, are authorized for the minimum amount of time necessary to accomplish the work, which shall not exceed a period of 180 days without additional Corps approval. The temporary structures, fills, and/or work, including the use of temporary mats, shall be removed as soon as the work is complete and the disturbed areas be restored to pre-construction contours and conditions. The temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats. The discharge of material resulting from trench excavation that is temporarily sidecast into waters of the United States that is authorized by NWPs 12, 57 or 58 is excluded from this Regional Condition.
4. For NWPs 12, 57 and 58 that require PCNs and that involve temporary structures, fills, and/or work, including the use of temporary mats, the PCN should include the following information: (1) a written description and/or drawings of the proposed temporary activities that will be used during project construction; (2) the timeframe that the proposed temporary activities will be in place; and (3) specifications of how pre-construction contours will be re-established and verified after construction. Temporary mats include timber mats, metal, synthetic and/or artificial mats.
5. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58 in accordance with General Condition 22(a), the ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters. Activities described in the NWPs listed

2021 (16) NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

herein are subject to the limitations and/or PCN requirements listed in General Condition 22(a).

6. For NWP 58, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms, and the inflow velocity of the associated intake structures cannot exceed 0.5 feet/second.
7. For NWPs 12, 57 and 58 activities that involve horizontal directional drilling beneath navigable waters of the United States (i.e., section 10 waters), the PCN should include a proposed remediation plan (i.e., frac-out plan).
8. For NWPs 12, 29, 39, 51, 52, 57 and 58 that involve crossings, all culverts must be adequately sized to maintain flow. For these activities that require submittal of a PCN, the PCN should include the minimum size of and number of culvert/pipes that are proposed.
9. For NWPs 12, 43, 51, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32, for activities that involve the loss of greater than 0.005 acre of intermittent and/or perennial stream bed.
10. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58 that involve the loss of greater than 0.005 acre of intermittent and/or perennial stream bed, compensatory mitigation will be required and the PCN should include compensatory mitigation plan.
11. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58, the discharge cannot cause the loss of greater than 0.05 acre of intermittent and/or perennial stream bed.
12. For NWPs 29 and 39, the discharges of dredged or fill material for the construction of stormwater management facilities in perennial streams are not authorized.
13. Reserved.
14. For existing NWP 48 activities that involve changing from bottom culture to floating or suspended culture OR new NWP 48 activities that involve floating or suspended culture, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.
15. For new NWP 48 activities involving floating or suspended culture and/or NWPs 55 and 56 activities that will occur adjacent to property that is not owned by the prospective permittee, the PCN should include the following information:

2021 (16) NWP REGIONAL CONDITIONS FOR CHARLESTON DISTRICT (SAC)

- a. A map or depiction that shows the adjacent property(ies) and adjacent property owners' contact information. Note: This information may be obtained online from the applicable county's tax information pages.
- b. A signed letter(s) of "no objection" to the proposed mariculture activity from each of the adjacent property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner. Or, if the prospective permittee is unable to obtain a letter(s) of "no objection", the Corps will notify the adjacent property owner(s) of the proposed project by letter wherein the adjacent property owner will be given 15 days to provide comments.

16. Reserved.

17. The prospective permittee is advised of the following for activities under any NWP for which (1) the 401 Water Quality Certifications (WQC) were denied (see F.1.a), and/or (2) activities under the NWP were found to be inconsistent with the S.C. Coastal Zone Management Program and, therefore, concurrence with the Coastal Zone Consistency determination was denied (see F.2.a), and/or (3) the proposed activity is located in one of the "Critical Areas" of the Coastal Zone (see F.3):

- a. For NWPs 12, 21, 29, 39, 44, 50, 57 and 58 where WQC was denied, the prospective permittee should:
 - 1) Request a pre-filing meeting with the South Carolina Department of Health and Environmental Control (SCDHEC);
 - 2) Submit their requests for WQC to SCDHEC and to the Corps concurrently; and
 - 3) Provide to the Corps a copy of the Individual WQC or evidence demonstrating a waiver was granted.
- b. For NWPs 12, 21, 29, 39, 42, 44, 50, 51, 55, 56, 57 and 58 where concurrence with the Coastal Zone Consistency was denied, the prospective permittee should provide to the Corps a copy of the Individual CZC Concurrence or presumed concurrence for the proposed activity.
- c. For all NWPs in any of the "Critical Areas" of the Coastal Zone, an Individual Critical Area permit is required (see F.3). Therefore, the prospective permittee should provide a copy of the Individual Critical Area permit to the Corps for the proposed activity.

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

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS

Not applicable.

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

1. Water Quality Certification (WQC)

a. WQC Denied

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

NWPs 12, 21, 29, 39, 44, 50, 57 and 58.

b. WQC Granted With Conditions

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

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

c. WQC Granted Without Conditions

The WQCs for NWPs 40, 42 and 48 were granted without conditions.

d. No WQC Required

NWPs 55 and 56 do not require WQCs.

2. Coastal Zone Consistency (CZC)

a. CZC Concurrence Denied

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

NWPs 12, 21, 29, 39, 42, 44, 50, 51, 55, 56, 57 and 58.

b. CZC Concurrence Granted With Conditions

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

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

c. CZC Concurrence Granted Without Conditions

The CZCs for NWPs 40 and 48 were granted without conditions.

d. No CZC required

Not applicable.

3. Coastal Zone Consistency (CZC) General Condition

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

For all 16 NWPs, "Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM. SCDHEC OCRM's action on direct critical areas permits will serve as the consistency determination for the critical area activity."

G. DISTRICT POINT OF CONTACT

Tracy D. Sanders
USACE- Charleston District
69A Hagood Avenue
Charleston, South Carolina 29403
843-329-8044

Tracy.d.sanders@usace.army.mil
SAC.RD.Charleston@usace.army.mil

**2021 Nationwide Permits, Water Quality Certifications,
Coastal Zone Consistency Determinations and Direct Critical Area Permits
Table and Guide**

The below table has been developed by the Charleston District to assist prospective permittees with determining which state permits may be required, as well as the Water Quality Certifications and/or Coastal Zone Consistency conditions that would apply to a specific NWP in the State of South Carolina. The prospective permittee should also review the Charleston District's "FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)" to determine additional NWP specific limits and/or requirements, which can be found at <https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>.

Acronyms:

NWP: Nationwide Permit

WQC: Water Quality Certification

CZC: Coastal Zone Consistency

CAP: Critical Area Permit

SCDHEC: South Carolina Department of Health and Environmental Control

OCRM: Office of Ocean and Coastal Resource Management

Table

NWP	WQC	CZC	CAP
12	Denied*	Denied**	See condition 3
21	Denied*	Denied**	See condition 3
29	Denied*	Denied**	See condition 3
39	Denied*	Denied**	See condition 3
40	Issued, no conditions	Issued, no conditions	See condition 3
42	Issued, no conditions	Denied**	See condition 3
43	See condition 1	See condition 1	See condition 3
44	Denied*	Denied**	See condition 3
48	Issued, no conditions	Issued, no conditions	See condition 3
50	Denied*	Denied**	See condition 3
51	See condition 2	Denied**	See condition 3
52	See condition 2	See condition 2	See condition 3
55	Not applicable	Denied**	See condition 3
56	Not applicable	Denied**	See condition 3
57	Denied*	Denied**	See condition 3
58	Denied*	Denied**	See condition 3

* Denied WQC: The prospective permittee must obtain an Individual 401 WQC from SCDHEC or waiver prior to verification of the NWP by the Corps.

Please see the public notice that was issued on February 3, 2021, by the Charleston District announcing the Clean Water Act Section 401 Certification Rule. This public notice may also be found on the Charleston District's website at

<https://www.sac.usace.army.mil/Missions/Regulatory/Public-Notices/Article-View/Article/2491488/special-public-notice-clean-water-act-section-401-certification-rule/>

**Denied CZC: The prospective permittee must obtain an Individual CZC concurrence or demonstrate that concurrence is presumed prior to verification of the NWP by the Corps.

Condition 1 (WQC/CZC):

“Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures.”

Condition 2 (WQC/CZC):

“This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.”

Condition 3 (CA):

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

The prospective permittee must obtain the CA Permit, which also serves as the CZC from OCRM prior to verification of the NWP by the Corps.

PUBLIC NOTICE

**CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403**

REGULATORY DIVISION

Refer to: 401 Water Quality Certification

FEBRUARY 3, 2021

NOTICE ANNOUNCING THE CLEAN WATER ACT SECTION 401 CERTIFICATION RULE

Effective September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” (85 Fed. Reg. 42,210 (July 13, 2020)) was implemented nationwide. The Rule (codified at 40 C.F.R. Part 121) establishes procedures that promote consistent implementation of CWA Section 401 and regulatory certainty in the federal permitting process. Section 401 of the CWA provides states and authorized tribes with an important tool to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. Section 401 of the CWA requires that, for any federally licensed or permitted project that may result in a discharge into waters of the United States, a water quality certification be issued to ensure that the discharge complies with applicable water quality requirements. The Rule addresses some key areas of the CWA Section 401 certification process, including timelines for review and action, the scope of certification review, and early engagement (pre-filing meetings). More information on the Rule is available at the following website: <https://www.epa.gov/CWA-401>

Important Considerations for Project Proponents:

STEP 1: Pre-Filing Meeting Request: (Required for Standard Permits (IP) or General Permits (Nationwide Permits/Regional General Permits) where a General Water Quality Certification has been denied).

In accordance with the Rule, prior to submitting a request for an individual 401 water quality certification (WQC) to the certifying authority South Carolina Department of Health and Environmental Control, Bureau of Water (SCDHEC-BOW), a project proponent (applicant) MUST request a pre-filing meeting with the certifying authority at least 30 days prior to submitting the WQC request (application). The certifying authority will determine if the meeting will be held, but submittal of the request for a meeting is required. Pre-filing meeting requests should be submitted to the following address: WQCWetlands@dhec.sc.gov.

SCDHEC- BOW is the appropriate entity to determine the type of WQC required for a specific project. Information regarding the WQC process and requirements for South Carolina can be found at the following website: <https://scdhec.gov/bureau-water/water-quality-certification-program-section-401-overview>

Projects qualifying for a general WQC are not required to request a pre-filing meeting.

NOTE: Marinas and expansion of existing marinas in shellfish harvesting waters shall require a 401 Water Quality Certification. This also includes docking structures, including community and commercial docks, that meet the definition of a marina. A marina is defined as:

- 1) locked harbor facility;
- 2) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);
- 3) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;
- 4) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or
- 5) a dry stack facility.

Step 2: WQC Certification Request

- A. Applicants must submit their requests for WQC to the certifying authority (SCDHEC-BOW) and to the Charleston District, Regulatory Division (RD) concurrently. Applicants must copy RD on WQC requests submitted to SCDHEC-BOW for a project within RD's area of responsibility via email in accordance with the process outlined in Step 3 below.
- B. The Federal Regulation defines what a "request for 401 certification" entails. It specifies that a request must contain the following information:
 - 1) The project proponent(s) and a point of contact;
 - 2) the proposed project;
 - 3) the applicable federal license or permit;
 - 4) the location and nature of any potential discharge that may result from the proposed project and the location of receiving waters;
 - 5) a description of any methods and means proposed to monitor the discharge and the equipment or measures planned to treat, control, or manage the discharge;
 - 6) a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed project, including all approvals or denials already received;
 - 7) documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request;
 - 8) a certification statement as follows: "The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief"; and
 - 9) a statement as follows: "The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time".

C. In addition to Federal regulatory requirements listed in (B) above, SCDHEC Regulation 61-101, *Water Quality Certification* and Regulation 61-30, *Environmental Protection Fees* have requirements that must be met before WQC requests can be accepted as complete including the following:

- 1) The name, address, phone numbers, principal place of business of the applicant and, if applicable, the name and address of the agent for the applicant.
- 2) A complete description of the proposed permitted activity, including the location, affected waterbody(s), purpose, and intent of the project; maps, drawings, and plans sufficient for review purposes (detailed engineering plans are not required).
- 3) A description of all proposed activities reasonably associated with the proposed permitted project either directly or indirectly, including planned or proposed future development that relate to water quality considerations.
- 4) A description of the composition, source, and quantity of any material to be dredged or used as fill and a description of the area to be impacted, including the area of fill in acres.
- 5) The method of dredging or filling and specific plans for disposal and control of dredge spoils.
- 6) The names and addresses of adjacent property owners.
- 7) An application fee. Note that in accordance with DHEC regulations, application fees are due when the application is submitted and processing will not occurred until the fee is received.
- 8) Water quality monitoring data, water quality modeling results, or other environmental assessment may be required in accordance with Regulation 61-101, C.3. prior to accepting or processing the certification.

Step 3. RD Application/ SCDHEC-BOW WQC Submittal Procedures:

(Applications can be submitted no sooner than 30 days after the pre-filing meeting request.)

The Charleston District Regulatory Division has developed the following procedure for the public to submit Department of the Army (DA) Permit Applications. To submit DA Permit Application requests electronically, all documents should be saved as a PDF document, and then submitted as an attachment in an email to the corresponding email address of the Corps Regulatory Field Office in your area. A list of Field Offices and e-mail addresses can be found at: <https://www.sac.usace.army.mil/Media/Images/igphoto/2002482125/>

More information about the Corps' Regulatory Program, including a fillable copy of the DA Permit Application Form, is available at the following website:

<https://www.sac.usace.army.mil/Missions/Regulatory/Permitting-Process/>

WQC requests should be submitted to the following address: WQCWetlands@dhec.sc.gov

Information about the WQC process and requirements for South Carolina can be found at the following website: <https://scdhec.gov/bureau-water/water-quality-certification-program-section-401-overview>

Step 4. WQC Request Timeframes:

- A. The Rule requires that action on a WQC request must be taken by the certifying authority (state) within a reasonable period of time, but in no case later than one year after receipt of a certification request. The Charleston District Regulatory Division (RD) will establish the reasonable period of time on either a categorical or case-by-case basis, according to criteria prescribed by the Rule. The criteria used to establish the reasonable period of time are: (1) the complexity of the proposed project; (2) the nature of any potential discharge; and (3) the potential need for additional study or evaluation of water quality effects from the discharge. RD will work with the state in our area of responsibility to establish a reasonable period of time on a categorical basis for projects that do not require complex evaluations or additional study/evaluation.
- B. Once a complete WQC request is received, RD will provide the following information to the certifying authority within 15 days: (1) the date of receipt; (2) the applicable reasonable period of time to act on the certification request; and (3) the date upon which a waiver will occur if the certifying authority fails or refuses to act on the certification request. Once the certifying authority has received RD's notice of the reasonable period of time, it may make a written request for extension, if necessary. If RD agrees to extend the reasonable period of time, the certifying authority and project proponent shall be notified in writing. However, the reasonable period of time may not exceed one year.

The procedures outlined in this public notice are for the Charleston District Regulatory Division only. If submitting paperwork for another District's Regulatory Division, please contact them first to determine their requirements. This procedure is effective immediately. If you have any questions, please contact your local Regulatory Field Office.

Coastal Zone Process

Projects located within the coastal zone¹ of South Carolina requiring authorization from Department of the Army will also require a Coastal Zone Consistency (CZC) certification review conducted by the South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management (OCRM). Additionally, a direct Critical Area Permit (CAP) will be required by OCRM for any project that would have direct critical area² impacts.

¹ The coastal zone for South Carolina is comprised of eight counties. Horry, Georgetown, Charleston, Berkeley, Dorchester, Colleton, Beaufort, and Jasper.

² Critical areas, as defined 48-39-10, R.30-1(D) and R.30-10, are coastal waters, tidelands, beach/dune systems, and beaches.

The associated 401 and CZC will be incorporated into the direct critical area permit³ (e.g. Individual permits or General permits).

OCRM Application Request:

The CZC submission provided to OCRM for review should be made concurrently with applications to the Charleston District per [15 CFR §930.58](#) and should include the following information:

- (1) A copy of the Joint Federal and State Application form
 - a. Including all material relevant to a State's management program provided to the Federal agency in support of the application; and
 - b. To the extent not included in paragraphs above, a detailed description of the proposed activity, its associated facilities, the coastal effects, and any other information relied upon by the applicant to make its certification. Maps, diagrams, and technical data shall be submitted when a written description alone will not adequately describe the proposal;
- (2) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the South Carolina Coastal Zone Management Program (CZMP). Applicants must demonstrate that the activity will be consistent with the enforceable policies of the CZMP. Applicants must demonstrate adequate consideration of policies which are in the nature of recommendations.
- (3) Additional necessary data and information from the CZMP includes completed State or local government permit applications which are required for the proposed activity but does not include the issued State or local permits.
- (4) Requests that triggers an Individual Critical Area Permit by OCRM, in addition to the above information, must also include the following:
 - a. Affidavit of Ownership or Control form (page 9 of OCRM Critical Area Permitting Application) completed, signed and notarized, including the following:
 - i. Certified plat of the property
 - ii. A certified copy of the deed, lease, easement, or other instrument under which the applicant claims title, or permission from the owner of the property to carry out the proposed activity.

*Please note that professional dock drawings do not satisfy the proof of ownership requirement.
 - b. Professionally signed and sealed computer-generated drawings of the proposed project. All drawings submitted, as required with any application/amendment request for CAP review, must be produced, stamped and signed by one of the following professional groups: registered land surveyors, registered professional

³ Critical Area Permitting Regulations, as amended, R.30-2(H) states that the Department will not issue a separate 401 water quality certification and that the Critical Area Permit shall serve as the 401 water quality certification for an associated Federal permit.

engineers, registered landscape architects. These individuals must be licensed in the state of South Carolina. OCRM will not accept hand drawings or other drawings not meeting these criteria. Applications with drawings judged to be inexact and unprofessional will not be placed on public notice and will be returned to the applicant.

- c. A certified critical area line must be shown on all drawings for applications involving erosion control structures or a docking structure whose total channelward extension exceeds 900'. Additional information (newspaper ad public notice, revised project information, etc.) may be deemed necessary following the submission of the project request to OCRM.

NOTE: Marinas and expansion of existing marinas in shellfish harvesting waters within the Coastal Zone shall require a 401 Water Quality Certification. The definition of a marina has been previously defined in this document. The 401-water quality certification will be incorporated into the Critical Area Permit and associated Coastal Zone Consistency Certification.

OCRM CAP & CZC Request Submittal Process:

DHEC OCRM preference for submission of applications via DHEC's ePermitting system
<https://epermweb.dhec.sc.gov/ncore/external/home>

System guidance information can be found at:
<https://scdhec.gov/ePermitting/training>

More information about the OCRM Critical Area Permitting process, including a fillable copy of the Critical Area Permit application is available at the following website:
<https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/coastal-permits/critical-1>

More information about the OCRM Coastal Zone Consistency process can be found at the following website:
<https://scdhec.gov/environment/your-water-coast/ocean-coastal-management/beach-management/coastal-permits/coastal-zone>