



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

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<http://sero.nmfs.noaa.gov>

January 15, 2015

F/SER47:KH/pw

(Sent via Electronic Mail)

Lt. Col. John Litz, Commander
Charleston District, Corps of Engineers
69A Hagood Avenue
Charleston, South Carolina 29403-5107

Attention: Elizabeth Williams

Dear Lt. Colonel Litz:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAC-2010-01346 MODIFICATION, dated December 18, 2014. The Charleston District is proposing to modify Section III. SPECIAL CONDITIONS: c. and d. of General Permit #SAC 2010-01346 issued to the South Carolina Department of Transportation (SCDOT). This General Permit was issued on August 1, 2011, and authorizes permanent and/or temporary impacts by SCDOT for a single and complete project not to exceed 3.0 acres of freshwater impacts; 0.50 acres of tidal water impacts; and/or 300 linear feet of jurisdictional waters of the United States. The modifications to the General Permit would only alter the notification requirements for impacts resulting from maintenance activities in non-tidal, freshwater, waters of the United States. The modifications do not change the eligible activities, impact threshold(s), or any other terms or conditions associated with the General Permit. The Charleston District's initial determination is modifying the General Permit would not result in substantial individual or cumulative adverse impact on Essential Fish Habitat (EFH) or fisheries managed by the South Atlantic Fishery Management Council and NMFS. As the nation's federal trustee for the conservation and management of marine, estuarine, and anadromous fishery resources, the following comments and recommendations are provided pursuant to authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The public notice states the modifications would change SCDOT's notification requirements for maintenance projects occurring in non-tidal, freshwater, waters of the United States. Specifically:

- The maximum distance a transportation project can affect streams without submitting a pre-construction notification (PCN) would increase from 100 linear feet to 300 linear feet (Special Condition III.c.). Because a project cannot be authorized under the General Permit if stream impacts exceed 300 linear feet, SCDOT would not have to submit a PCN for any project impacting streams unless it also includes impacts to greater than 0.5 acres of wetlands. SCDOT projects typically impact both wetlands and streams. NMFS offers no objection to this change.
- Special Condition III.c. would be amended to remove the requirement that SCDOT provide evidence of coordination with NMFS. NMFS assumes this requirement has been removed because Special Condition III.c. pertains to non-tidal wetlands and streams, which are not EFH. However, EFH regulations at 50 CFR 600.810(a) define adverse effects as including direct or indirect physical, chemical, or biological alterations of the water or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide

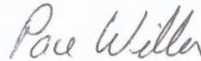


impacts, including individual, cumulative, or synergistic consequences of actions. Therefore, a project may adversely affect EFH even if the project is not occurring within EFH. If the federal action agency determines an adverse effect, consultation with NMFS is required. Many SCDOT projects are located adjacent to or where waters discharge near tidal habitats. NMFS recommends Special Condition III.c. retain the requirement that SCDOT provide the Charleston District with evidence of coordination with NMFS with the amendment “as appropriate, when there are impacts to EFH.”

- The proposed modification to Section III.d. would require SCDOT to submit a PCN for any project occurring in tidal waters instead of one that impacts more than 0.5 acres. The modification also removes language regarding freshwater waters of the United States entirely. NMFS supports this modification.

NMFS appreciates the opportunity to provide these comments. Please direct related correspondence to the attention of Mr. Keith Hanson at our Charleston Area Office. He may be reached at (843) 762-8622 or by e-mail at Keith.Hanson@noaa.gov.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

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