

FACT SHEET: FRESHWATER WETLANDS MANAGEMENT

subset of State Certification and Federal Consistency

Purpose:

Management of impacts to freshwater wetlands

Authority:

- SC Code Ann. Section 48-39-30(B)(1)
- SC Coastal Management Program (SCCMP), February 14, 1979, and Program Refinements, August 2, 1993.
 - Specific policies that apply to wetland master planning, mitigation and impacts to wetlands are found in Chapter III under the individual resource policies such as those applying to residential & commercial development.
 - Additionally, see Chapter III, Sections XII(E), Wetlands (Outside the Critical Areas), and XIV, Mitigation Guidelines.

Geographic jurisdiction:

The lands and waters of the South Carolina coastal zone, exclusive of the critical areas.

Regulated activities and impacted public:

Activities regulated include impacts to freshwater wetlands on projects that require another State or federal permit, and those direct federal actions that impact freshwater wetlands. Those impacted include property owners, developers, the federal government and the general public.

Description:

- In 2002, 975 stormwater and 690 consistency actions were conducted. A significant subset of these required evaluation of wetland impacts.
- A coastal zone certification or consistency decision, which requires consideration of impacts to freshwater wetlands, is required for:
 - direct federal actions
 - federal activities and licenses
 - state activities, which includes Stormwater permits
- USACOE permits are required under Section 404 of the Clean Water Act for fill of wetlands. Both coastal zone consistency from DHEC-OCRM and 401 water quality consistency from DHEC-EQC are required for these federal permits, except for those activities permitted via nationwide permits.
- Applications for USACOE nationwide permits for wetland fill within the coastal zone are reviewed solely by DHEC-OCRM.
- Permit applications are reviewed for consistency with the SCCMP, which includes policies for managing freshwater wetlands without distinction between isolated & contiguous wetlands.
- The USACOE, or an approved delineator, delineates wetlands. The USACOE currently still delineates those wetlands that are within federal jurisdiction and those which are not.
- Public notice is required.
 - The USACOE publishes the public notice if a USACOE individual permit is needed. Applicants also place a one-day notice in a local paper.
 - If the wetland is not federally jurisdictional, a 10-day public notice is posted by DHEC-OCRM in the agency's weekly public notices.
- Wetland Master Planning policies of the SCCMP require impacts to be reviewed in a comprehensive manner, limit the size of impacts, and require mitigation. Impacts to wetlands under 1 acre are allowed, and larger wetlands must be preserved and buffered.
- Timeframes for review:
 - 45 days for direct federal activities
 - 180 days for federal actions and licenses
 - 10 or 20 days for certification of Stormwater permits

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- Generally 30 days for certification of other State permits
- Staff site visits are made, decision documents prepared for the file, and applications are determined consistent or not consistent.
- The certification or consistency decision is made part of the initiating permit, which is generally the USACOE 404 permit or the State permit.

Appeal Process:

- 4 actions, 0.7%, were appealed in 2002.
- State certification & federal consistency decisions must be appealed in 15 days.
- The Administrative Law Judge (ALJ) Division hears appeals. They are typically heard within 4-6 months, depending on complexity.
- If the appeal is of the certification/consistency decision, the ALJ decision is appealed to Coastal Zone Management Appellate Panel (CZMAP). Additionally, consistency issues only of Navigable Waters permits are heard by the CZMAP. If the state permit is appealed, the Board of Health and Environmental Control hears the appeal. They are typically heard within 3-4 months.
- CZMAP/Board decision must be appealed within 30 days.
- Circuit Court review typically takes 12 months or more.

Coordination:

- The following agencies routinely provide comments on applications for wetland fill: SC Department of Natural Resources, SC State Ports Authority, SC Department of Archives and History, US Fish and Wildlife Service, National Marine Fisheries Service, and US Environmental Protection Agency. These agencies provide comments that are considered in determining the final DHEC-OCRM consistency decision.
- USACOE individual permits require both a coastal zone consistency and a 401-water quality certification. A final single certification letter containing the results of both reviews is submitted by DHEC to the USACOE.

Strengths:

- Comprehensive review of projects is generally achieved.
- Moderate impacts to wetlands are allowed.
- Mitigation is required for all but minor impacts.
- Program has the flexibility to allow impacts to wetlands over 1 acre and to consider a variety of mitigation options.
- Land trusts and mitigation banks may be utilized to promote conservation of important habitat areas as mitigation for wetland impacts.

Shortcomings:

- The wetland management program is indirect and dependent, via consistency determination, upon other state and federal permitting programs. Continual changes to these programs make management of wetland issues difficult.
- Some projects do not require federal or State permits. Wetlands can be filled without any review.
- Comprehensive review of wetland impacts is not guaranteed because of the indirect mechanism of wetland review as a consistency determination of state & federal permits.
- Disagreement exists among the regulated community, public & elected officials regarding DHEC-OCRM's authority to regulate isolated freshwater wetlands.
- Confusion exists regarding what mitigation standards must be met in part because SCCMP, Chapter III, Section XIV, Mitigation Guidelines, applies to "federally defined jurisdictional freshwater wetlands".