



Regional General Permit 16

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

Anadromous Salmonid Fisheries Restoration

EFFECTIVE: July 11, 2019

EXPIRES: (5 years from effective)

The U.S. Army Corps of Engineers, Sacramento District (District), hereby issues Regional General Permit 16 for Anadromous Salmonid Fisheries Restoration projects that would be conducted within the California Central Valley and Delta, including Suisun Bay.

ISSUING OFFICE: U.S. Army Corps of Engineers, Sacramento District

ACTION ID: SPK-2014-00534

AUTHORITIES: Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States and Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: This Regional General Permit (RGP) covers the range of salmon and steelhead habitat in the Central Valley, Sacramento-San Joaquin Delta (Delta), and Suisun Bay within the boundaries of the Sacramento and San Francisco Districts, as identified in Figure 1. The permit area includes portions of the following 27 counties: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kings, Madera, Mariposa, Merced, Nevada, Placer, Sacramento, San Benito, San Joaquin, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba Counties.

ACTIVITIES COVERED: This RGP authorizes work within navigable waters of the U.S. or the permanent or temporary discharge of fill material into waters of the U.S. associated with salmonid habitat restoration activities funded by the California Department of Fish and Wildlife (CDFW) Fisheries Restoration Grant Program (FRGP) or similar activities, regardless of funding source, that meet the terms and conditions of this RGP. Maintenance of the restoration work is also authorized under this RGP when such maintenance requires a DA permit. Compensatory mitigation is not required for activities authorized under this RGP since these activities must be restoration or enhancement in nature, resulting in an overall net increase in aquatic resource functions and services. The conversion of waters from one type to another is authorized as long as there is an overall net increase in aquatic resource functions and services. Impacts to waters of the U.S. related to the following activities may be authorized under this RGP:

- 1. Fish Passage Improvements at Stream Crossings:** This activity type is specifically focused on improving salmonid access to spawning and rearing areas by removing or improving man-made barriers at stream crossings. Man-made crossings over or through a stream channel include, but are not limited to, paved or unpaved roads, railroads, trails and paths, Arizona crossings, bridges,

and box, pipe, or concrete culverts and baffles. Improved crossings must be a minimum of the full width of the active channel and designed to pass the 100-year storm flow.

2. **Instream Barrier Modification for Fish Passage:** This activity type would modify or remove barriers to salmonid fish passage such as, grade control structures (weirs), flashboard dams, dams, debris basins, water diversion structures, pilings, and log debris accumulations. Natural features such as logjams, beaver dams, landslides, and waterfalls are also included when they impede fish passage to previously accessible habitat and the removal of such would provide a clear benefit to salmonids.

3. **Instream Habitat Restoration:** This activity type includes habitat restoration work in stream channels and floodplains. Restoration activities include installation of large wood, root wads, boulder features and weirs, gravel augmentation, side channel construction, and floodplain connectivity projects such as off-channel features and floodplain grading projects. Projects should be designed with physical and biological processes in mind and structures should mimic natural self-sustaining examples to the extent possible. Ecological reference sites, or a review by a qualified professional, must be provided for all created instream structures.

4. **Riparian Restoration:** This activity type would restore riparian and salmonid habitat through increased stream shading, future vegetation recruitment, bank stability, and increased invertebrate production. This activity type also includes the eradication of non-native, invasive vegetation and revegetation with native endemic riparian species. The riparian area is defined as the area between a stream and the adjacent upland, including wetlands and those portions of floodplains and valley bottoms that support riparian vegetation.

5. **Instream Bank Stabilization:** This activity type would reduce sediment from bank erosion by stabilizing stream banks with appropriate site-specific techniques. Possible bank stabilization techniques include boulder stabilization structures, log stabilization structures, tree revetment, native plant material revetment, willow wall revetment, willow siltation baffles, brush mattresses, check dams, brush check dams, water bars, and exclusionary fencing. Eligible bank stabilization projects include stabilization of eroding, collapsing, or otherwise destabilized banks, and also includes stabilization to sustain instream habitat restoration projects and/or protect nearby structures that may be impacted by the restoration project.

6. **Fish Screening of Diversions:** This activity type would install, upgrade, or modify fish screens, and associated fill material, that physically prevent entrainment, injury, or death of targeted aquatic species. Fish screens may be installed at either a pump or gravity-fed water diversion and are designed to minimize stress and injury that occur when fish impact the screen or are subjected to changes in water velocity and direction caused by the diversion. All screens must meet the current National Marine Fisheries Service (NMFS) fish screening criteria, as required by the August 31, 2018, NMFS Biological Opinion (Number WCR-2017-8532). Approved fish screens include both self-cleaning and non-self-cleaning screens.

7. **Water Conservation Measures:** This activity type would conserve water and increase instream flow and/or improve instream water quality that benefit aquatic species. Potential activities include modifications of water diversions, moving points of diversion, and piping when the water savings are quantified and dedicated for instream beneficial flows.

In accordance with 33 CFR 322.2(f)(1), this RGP authorizes activities that are substantially similar in nature that would result in minimal individual and cumulative impacts on the aquatic environment, when conducted under the terms and conditions of this RGP.

PERMIT DURATION: This RGP expires 5 years from the date of issuance. The Corps may re-evaluate the terms and conditions of this RGP at any time deemed necessary to protect the public interest. Activities verified by the Corps are valid until the date the RGP expires, is modified, reissued, or revoked. For activities which have commenced or are under contract to commence before the date the RGP expires, is modified, reissued, or revoked, you will have 12 months from the date of the modification, reissuance or revocation to complete the activity under the present terms and conditions.

TERMS:

a. **Avoidance of Waters of the United States:** Temporary construction related impacts, such as access roads, staging areas, etc., must be sited to avoid and minimize impacts to seasonal wetlands and other aquatic resources.

b. **Avoidance of Vernal Pools:** This RGP does not authorize direct or indirect impacts to habitat for federally-listed vernal pool species.

c. **Beneficial effects:** All activities authorized under this RGP must be restoration or enhancement in nature, resulting in an overall increase of aquatic functions and services. Activities resulting in a loss of aquatic functions and services, or requiring compensatory mitigation, are not authorized under this RGP. The permittee must justify that the proposed long-term benefits would outweigh any short term adverse effects.

GENERAL CONDITIONS:

1. **Notification:** (a) The CDFW shall submit an annual notification, per the Preconstruction Notification Procedures identified below, which includes all activities to be funded under the FRGP for the calendar year and shall not begin the activities until after receiving a written Notice to Proceed (NTP), or until 45 days have passed since receipt by the Corps of complete project information.

(b) For all activities not receiving funding under the FRGP, a Pre-Construction Notification (PCN) must be submitted to the Corps, per the Preconstruction Notification Procedures identified below, in order to verify compliance with the terms and conditions of the RGP and to complete all required consultations. Activities may not proceed under this RGP until written authorization has been received or until 45 days have passed since receipt by the Corps of a complete PCN if no

additional consultation is required under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, or the National Historic Preservation Act, and all other terms and conditions are met.

2. **Activities Affecting Structures or Works Built by the United States:** An activity that requires section 408 permission is not authorized by this RGP until the Corps issues the section 408 permission to alter, occupy, or use the USACE project.
3. **Threatened and Endangered Species:** This Corps permit does not authorize you to take an endangered species, in particular Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened California Central Valley steelhead (*O. mykiss*), threatened Southern Distinct Population Segment (sDPS) of North American green sturgeon (*Acipenser medirostris*), and their designated critical habitats. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed NMFS BO (Number WCR-2017-8532, dated August 31, 2018), contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The NMFS is the appropriate authority to determine compliance with the terms and conditions of its BO, and with the ESA.

To ensure your project complies with the Magnuson-Stevens Act, you must implement all of the relevant mitigating measures identified in the above NMFS document, including those ascribed to the Corps therein.

4. **Threatened and Endangered Species:** To ensure your project complies with the Federal Endangered Species Act, you must implement all of the mitigating measures proposed as part of your project description, which are identified in the enclosed U.S. Fish and Wildlife Service (USFWS) letter of concurrence (Number 08ESMF00-2017-I-0291-1, dated November 13, 2018). If you are unable to implement any of the proposed measures, you must immediately notify this office and the U.S. Fish and Wildlife Office so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.
5. **Construction Schedule:** All work shall be conducted in accordance with the work windows identified in the NMFS BO and the USFWS letter of concurrence. In general, in-water work should be conducted when the work area is naturally dry or during low-flow conditions.
6. **Avoidance:** Impacts to riparian and wetland vegetation shall be avoided to the maximum extent possible, and shall be restored and enhanced with native vegetation when adverse impacts are unavoidable. A restoration/revegetation plan shall be submitted with the project notification.

7. **Avoidance:** The permittee shall ensure that project contractors and workers are made familiar with the project's purpose and intent, including the need to avoid and minimize adverse impacts to aquatic resources.
8. **Water Quality Certification:** If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this RGP.
9. **Cultural Resources:** No activity is authorized that may affect cultural resources listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
10. **Post-Review Discovery:** If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify this office of what you have found. We will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
11. **Revegetation:** The permittee shall ensure that revegetation is accomplished using only native species that would be expected to occur within the subject watershed. A restoration/revegetation plan shall be submitted with the project notification.
12. **Best Management Practices:** Prior to initiation of any construction activities in waters of the U.S. authorized by this RGP, you shall install and maintain construction best management practices (BMPs) on site to prevent degradation to on-site and off-site avoided waters of the U.S. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S., as well as erosion control measures along the perimeter of all work areas within 30 feet of on-site and off-site avoided waters of the U.S. to prevent the displacement of fill material. All BMPs shall be in place prior to initiation of (each phase of) construction activities in waters of the U.S. authorized by this RGP. You shall ensure the BMPs are inspected bi-weekly, and maintained in good condition while ground disturbing activities are occurring, until construction activities in waters of the U.S. authorized by this RGP are complete. All BMPs shall remain until construction activities within 30 feet of waters of the U.S. are completed and all disturbed soils are stabilized.
13. **Suitable Material:** Fill material must be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.
14. **Inspection:** The permittee must allow representatives from the Corps to inspect the authorized activity at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the RGP.
15. **Compliance:** An annual report shall be submitted by January 31, describing the status and condition of each authorized activity, including site photos. A post-construction report shall be

submitted within 30 days of completion of the authorized activity, including post-construction photos. The CDFW shall submit a single annual report, including the post construction report, for all activities funded under the FRGP.

16. Navigable Waterways: For activities authorized through this RGP under Section 10 of the Rivers and Harbors Act of 1899, the permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

PRECONSTRUCTION NOTIFICATION PROCEDURES:

1. In accordance with General Condition 1, the contents of your written request for verification under this RGP must include the following:
 - a. The name, address and telephone number of the project point of contact;
 - b. A description of the location of the proposed project and vicinity maps, including the identification of all waterbodies, staging area, and access routes;
 - c. Color photographs of the site;
 - d. A description of the current site conditions and existing habitat, including factors in the watershed that may be contributing to the degradation problem and existing conditions;
 - e. A description of the proposed activity, including methods and materials of construction and a brief discussion regarding how the proposed work would restore or enhance the habitat and increase the functions and services of the aquatic resource(s);
 - f. A brief discussion of restoration/revegetation of temporary impacts;
 - g. Project plans or drawings showing all aspects of the proposed activity and the location of avoided and impacted waters of the U.S. Plan-view and cross-section plans shall be included. Both temporary (e.g., access, staging) and permanent impacts to waters of the U.S. shall be identified;
 - h. If a water diversion is proposed, the notification must include a dewatering plan; and
 - i. If a temporary access route is proposed, the submitted project plans must illustrate the location and dimensions of the route.
2. The Corps will review the notification package and request additional information within 30 days. Once this office determines the activity complies with the terms and conditions of the RGP, you will receive a letter of verification from this office that you can proceed with your authorized activity.
3. If the proposed project is in compliance with all terms and conditions of this RGP and the Corps has not issued a written verification within **45 days** of receipt of a complete project notification package or notified the prospective permittee that the activity is not authorized or additional information/consultations are needed, the permittee may presume authorization under this RGP is granted.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and/or Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law.
 - b. This RGP does not grant any property rights or exclusive privileges.
 - c. This RGP does not authorize any injury to the property or rights of others.
 - d. This RGP does not authorize interference with any existing or proposed federal projects.
3. Limits of Federal Liability. In issuing this RGP, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RGP.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this RGP.
4. Reliance on Applicant's Data. The determination of this office that issuance of this RGP is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of RGP Decision. This office may reevaluate its decision on this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this RGP.
 - b. The information provided by you in support of your RGP application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your RGP and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. The RGP duration, as described above, establishes a time limit for the completion of the activity authorized by this RGP. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Activities not meeting the terms and conditions of this RGP may be authorized through another type of permit from the Corps, such as a Nationwide Permit or Letter of Permission. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to a verification under this RGP to ensure the activity has minimal impact.

CONTACTS AND ADDITIONAL INFORMATION:

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Phone: 916-557-5250

ATTACHMENTS: Figure 1-RGP Permit Area, USFWS Letter of Concurrence, and NMFS Biological Opinion

This RGP becomes effective when the federal official, designated to act for the Secretary of the Army has signed below.



Michael G. Nepstad
Chief, Regulatory Division
Sacramento District

11 July 2019

Date