



Regional General Permit 16

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

AQUATIC HABITAT RESTORATION AND ENHANCEMENT ACTIVITIES

EFFECTIVE: TBD

EXPIRES: (5 years from effective)

The U.S. Army Corps of Engineers (Corps), Sacramento District, hereby issues Regional General Permit (RGP) 16 authorizing activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, and/or structures or work in or affecting navigable waters of the United States for aquatic habitat restoration and enhancement activities.

Note: The term "you" and its derivatives, as used in this RGP, means the permittee or any future transferee. The term "this office" refers to the appropriate U.S. Army Corps of Engineers, Sacramento District office identified in the Contacts and Additional Information section below. After you receive verification for your project under this RGP from this office, you are authorized to perform that work in accordance with the terms and conditions specified below, and any project specific special conditions included in the written verification.

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

ACTION ID: SPK-2014-00534

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

LOCATION: This RGP covers aquatic habitat restoration and enhancement activities in waters of the United States, subject to the authorities of the U.S. Army Corps of Engineers, Regulatory Program within the Sacramento District boundaries of California, Nevada, and Utah (see attached District map).

ACTIVITIES COVERED: This RGP authorizes work within navigable waters of the U.S. or the permanent or temporary discharge of dredged or fill material into waters of the U.S. associated with aquatic habitat restoration and enhancement activities. Typical activities authorized under this RGP include, but are not limited to, fish passage and screening improvements; bioengineered bank stabilization; engineering/designing with nature; nature-based solutions; water conservation; aquatic habitat restoration and enhancement of tidal and non-tidal streams, wetlands, and other waters; and removal of pilings, small dams, tide gates, flood gates, and other in-water structures. Maintenance of the authorized structures or work is also authorized under this RGP when such maintenance requires a DA permit. The conversion of

waters from one type to another is authorized as long as there is an overall no net loss of aquatic resource functions and services.

In accordance with 33 CFR 322.2(f)(1) and 33 CFR 323.2(h)(1), this RGP authorizes activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts, when conducted under the terms and conditions of this RGP.

TERMS:

1. Temporary construction related impacts, such as access roads, staging areas, etc., must be sited to avoid and minimize impacts to wetlands and other aquatic resources.
2. All activities authorized under this RGP must be restoration or enhancement in nature, resulting in no net loss of aquatic resource functions and services. Activities resulting in a loss of aquatic resource functions and services, or requiring compensatory mitigation, are not authorized under this RGP. The permittee must demonstrate that the proposed long-term benefits would outweigh any short-term adverse effects.

GENERAL CONDITIONS:

1. A Pre-Construction Notification (PCN) must be submitted to the Corps, per the *Preconstruction Notification Procedures* below. Electronic submittals must be sent to: SPKRegulatoryMailbox@usace.army.mil. You shall not begin any work in waters of the U.S. until notified by this office that the activity is authorized under this RGP, subject to the terms, General Conditions, and any added Special Conditions.
2. Activities that require permission from, or review by, the Corps pursuant to 33 U.S.C. 408, are not authorized by this RGP until the Corps issues the section 408 permission to alter, occupy, or use the Corps project.
3. To ensure California Department of Fish and Wildlife (CDFW) Central Valley Fisheries Restoration Grant Program (FRGP) projects comply with the Federal Endangered Species Act, you must implement all of the mitigating measures proposed as part of your FRGP project description, which are identified in the attached U.S. Fish and Wildlife Service (USFWS) letter of concurrence (LOC), dated November 13, 2018 (Number 08ESMF00-2017-I-0291-1) (Attachment 2). 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.
4. This Corps permit does not authorize you to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns,

U.S. Army Corps of Engineers, Sacramento District
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including breeding, feeding or sheltering. 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 attached NMFS BO (Number WCR-2017-8532) dated August 31, 2018 (Attachment 3), and the USFWS BO (Number 2022-0005149-S7), dated August 31, 2022 (Attachment 4) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with all the mandatory terms and conditions associated with "incidental take" of the attached BOs, 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 BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. NMFS and USFWS are the appropriate authorities to determine compliance with the terms and conditions of their BOs, 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.

5. All work shall be conducted in accordance with the work windows identified in the USFWS LOC (Attachment 2), NMFS BO (Attachment 3), and USFWS BO (Attachment 4). In general, in-water work should be conducted when the work area is naturally dry or during low-flow conditions. Adverse effects to the aquatic ecosystem resulting from temporary impoundments of water, accelerated passage of water, or restricted passage of flow must be minimized to the maximum extent practicable.
6. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable. The permittee is responsible for ensuring that the action authorized by this permit complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
7. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
8. Temporary construction related impacts, such as access roads, staging areas, etc., must be sited to avoid and minimize impacts to wetlands and other aquatic resources. Temporary discharges of dredged and/or fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills and/or structures must be removed in their entirety and the affected areas returned to pre-construction contour and elevation. The areas affected by temporary fills must be revegetated, as appropriate.

9. You must allow representatives from this office 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 permit authorization.
10. You are responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. You shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all activities are completed.
11. Where the certifying authority has not previously certified compliance of this RGP with CWA Section 401, individual water quality certification for the proposed discharge must be obtained or waived. If the certifying authority issues an individual water quality certification for the proposed discharge, you must submit a copy of the certification to this office. The discharge is not authorized until this office has notified you that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
12. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States, unless otherwise specifically approved by this office under separate authorization. Proper sediment controls must be used (see 401 water quality certification).
13. No activity is authorized which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
14. If you discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by this RGP, you must immediately notify this office of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. We will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
15. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. You are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.
16. Unless determined to be not appropriate or practicable by this office, for all temporary staging, access, dewatering, and construction activities resulting in temporary fill within waters of the U.S., you shall: Install a horizontal marker (e.g., fabric, certified weed free straw, waddles etc.) to delineate the existing bottom elevation of the waters of the U.S. prior to the placement of temporary fill in waters of the U.S.; and remove all temporary structures, work and fills, including cofferdams and temporary emergency management measures, in their

entirety within 30 days following completion of construction activities in waters of the U.S. authorized by this RGP. You shall return any area affected by temporary construction, dewatering, and access work, including staging areas, to their pre-existing contours and conditions, and re-vegetate with appropriate native vegetation common to the area, within 45 days following completion of construction activities in waters of the U.S. authorized by this RGP. Proposed plans for de-watering structures and/or diversions must be approved, in writing, by this office.

17. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

18. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. You are not authorized to initiate any activities in waters of the U.S. that have the potential to impair tribal rights under this RGP until this office has completed necessary tribal coordination/consultation or has determined the proposed action does not impair tribal rights, unless tribal coordination/consultation is addressed programmatically (e.g., by a Programmatic Agreement).

19. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

20. No activity may cause more than a minimal adverse effect on the course, condition, or capacity of a navigable water. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S. You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on your authorized facilities. You understand and agree 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, you will be required, upon due notice from this office, to remove, relocate, or alter the structural work or obstructions caused hereby, 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 PCN shall include a letter or a completed *Department of the Army Permit Application Form* (ENG 4345), requesting authorization under this RGP, and shall contain the following information to be considered complete:
 - a. Name, address, and telephone number of the project proponent or their designated point of contact.
 - b. Location of the proposed project, including a vicinity map and a map identifying the location of all waterbodies, staging area(s), and access route(s).
 - c. Color photographs of the site.
 - d. Description of existing site conditions and habitat, including factors in the watershed that may be contributing to the site's degradation or problematic conditions.
 - e. 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/or functions and services of the aquatic resource(s).
 - f. 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.
 - g. Delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland and Ordinary High Water Mark delineations must be prepared in accordance with the current method required by the Corps.
 - h. If dewatering is required, include the proposed dewatering/diversion plan.
 - i. If temporary access or staging is required, include the proposed location(s) and dimension(s) of the access route or staging area.
 - j. If temporary fills are required, include a brief description of proposed restoration activities and, if necessary, revegetation of affected aquatic resources.
2. The PCN shall include a brief narrative describing how the proposed activity would comply with all Terms and General Conditions of this RGP or a statement identifying why the General Condition does not apply or a description of why compliance with the General Condition is not practicable. Failure to comply with a Term or General Condition may result in this office

determining the proposed activity does not qualify for authorization under this RGP and will be evaluated under an alternative process.

3. For an activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a USACE project, the PCN must include a statement confirming that you have submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
4. For non-Federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For activities that require a PCN, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act.
5. For non-Federal permittees, if the activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For activities that require a PCN, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act.
6. For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river.”
7. This office will determine if the PCN is complete within 30 calendar days of the date of receipt. If the PCN is determined to be incomplete, we will notify you within 30 days to request the additional information necessary to make the PCN complete. Generally, we will request additional information necessary to make the PCN complete only once. However, if you do not provide all the requested information, then we will notify you that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received.
8. Activities may not proceed under the authority of this RGP until you have been notified, in writing, by this office that the activity is authorized.

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. **Discretionary Authority:** This office has the discretion to suspend, modify, or revoke authorizations under this permit. This discretionary authority may be used by us to further condition or restrict the applicability of this permit for cases in which we have concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should we determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the United States or otherwise be contrary to the public interest, we will modify the authorization to reduce or eliminate those adverse effects or notify you that the proposed activity is not authorized by this permit and provide instructions on how to apply for authorization under another type of DA permit.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from us, such as a Nationwide Permit, Regional General Permit, Letter of Permission, or Standard Permit. We 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. We may include additional special conditions to a verification under this permit to ensure the activity has minimal impact. We may also restore authorization under this RGP at any time we determine the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. We may also use our discretionary authority to modify, suspend, or revoke this permit at any time.

PERMIT DURATION: This RGP is valid for 5 years from the date of issuance and will expire on [DATE-same as above]. 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. If we have not reissued the RGP by the expiration date, the RGP will no longer be valid. Activities requiring PCN under this RGP must be verified in writing by this office.

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CONTACTS AND ADDITIONAL INFORMATION:

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Phone: 916-557-5250

ATTACHMENTS:

1. Sacramento District Regulatory Division Map
2. USFWS Letter of Concurrence
3. NMFS Biological Opinion
4. USFWS Biological Opinion

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

Michael S. Jewell
Chief, Regulatory Division
Sacramento District

Date