



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Patty Forbes, California Department of Fish and Wildlife

REGIONAL GENERAL PERMIT NO. 12 (RGP 12): File No. 2003-279220

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: This Regional General Permit (RGP) authorizes minor fill discharges of earth, rock, and wood associated with salmonid habitat restoration activities. These activities conform to state law and are implemented consistent with the *California Salmonid Stream Habitat Restoration Manual* (Flosi et al., 1998). The most current version of the manual is available at: <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>. General information on the FRGP is available at: <https://www.wildlife.ca.gov/Grants/FRGP>. The following paragraphs are a descriptive list of the proposed activities as depicted in the project drawings (Figures C-1 to C-39):

- a. In-stream habitat improvements: Improvements may include cover structures (divide logs; digger logs; spider logs; and log, root wad and boulder combinations), boulder structures (engineered log jams, boulder weirs; vortex boulder weirs; boulder clusters; and single and opposing boulder wing-deflectors), log structures (log weirs; upsurge weirs; single and opposing log wing-deflectors; and Hewitt ramps), and off-channel or side channel habitat construction. Techniques and practices are identified in Part VII of the *California Salmonid Stream Habitat Restoration Manual*. Techniques for placement of imported spawning gravel are identified on page VII-46 of the *California Salmonid Stream Habitat Restoration Manual*.
- b. Unanchored large woody debris: Woody debris may be used to enhance pool formation and improve stream reaches. First through third order streams are generally best suited. Logs selected for placement should have a minimum diameter of 12 inches and a minimum length 1.5 times the mean bankfull width of the stream channel type reach and the deployment site. A root wad should be selected with care and have a minimum root bole diameter of five feet and a minimum length of fifteen feet and at least half the channel type bankfull width. More information can be found on page VII-23 of the *California Salmonid Stream Habitat Restoration Manual*.
- c. Fish screens: Screens would be used to prevent entrainment of juvenile salmonids in water diverted for agriculture, power generation, or domestic use, and are needed on both gravity flow and pump diversion systems. Guidelines for functional designs of downstream migrant fish passage facilities at water withdrawal projects are found in Appendix S of the *California Salmonid Stream Habitat Restoration Manual*. The appendix covers structure placement, approach velocity, sweeping velocity, screen openings, and screen construction.
- d. Fish passage at stream crossings: Stream crossing projects include activities that provide fish friendly crossings where the crossing width is at least as wide as the active channel, culvert passes are designed to withstand a 100-year storm flow, and crossing bottoms are buried below the streambed. Examples include replacement of barrier stream crossings with bridges, bottomless arch culverts, embedded culverts, or fords. Guidelines for fish passage practices are covered in Part IX of the *California Salmonid Stream Habitat Restoration Manual*. Baffled culvert (Washington baffles and steel ramp baffles), fishways (step and pool, Denil fishway, Alaskan steep pass and back-flooding weirs), and fish ladders are described in Part VII.
- e. Fish Passage Improvements: These activities would include removal of obstructions (i.e. small dams, log jams, beaver dams, waterfalls and chutes and landslides). Suitable large woody debris removed from fish passage barriers

that are not used by the project for habitat enhancement shall be left within the riparian zone so as to provide a source for future recruitment of wood into the stream. Logjam barriers are typically less than 10 cubic yards. Guidelines for fish passage improvements are covered in Part VII of the *California Salmonid Stream Habitat Restoration Manual*.

- f. Upslope restoration: These activities reduce sediment delivery to anadromous streams including road decommissioning, road upgrading, and storm proofing roads (replacing high risk culverts with bridges, installing culverts to withstand the 100 year flood flow, installing critical dips, installing armored crossings, and removing unstable side-cast and fill materials from steep slopes). Guidelines for upslope restoration practices are covered in Part X of the *California Salmonid Stream Habitat Restoration Manual*.
- g. Watershed and stream bank stability activities: These activities would reduce sediment from watershed and stream bank erosion. Examples include slide stabilization, stream bank stabilization, boulder stream bank stabilization structures, log stream bank stabilization structures, tree revetment, native material revetment, mulching, revegetation, willow wall revetment, brush mattress, check-dams, brush check-dams, waterbars, exclusionary fencing. Guidelines for watershed and streambank stability are covered in Part VII of the *California Salmonid Stream Habitat Restoration Manual*.

All habitat improvements shall be carried out in accordance with techniques in the *California Salmonid Stream Habitat Restoration Manual*. Such work is depicted in the general plans and drawings titled "USACE File #2003-279220, RGP12 Fisheries Restoration Grant Program, July 2016, Pages C1-C39," provided as Enclosure 1.

PROJECT LOCATION: The proposed salmonid habitat enhancement projects would be conducted in various streams and rivers throughout the following coastal California Counties: Alameda, Contra Costa, Del Norte, Glenn, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Luis Obispo (northeast, non-coastal), San Mateo, Santa Clara, Santa Cruz, Siskiyou, Solano, Sonoma, and Trinity. This Regional General Permit (RGP) 12 would apply only to counties that are within the jurisdictional boundaries of the Corps' San Francisco District Regulatory Division.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on December 1, 2020.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, 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.
4. 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 permit.
5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
6. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, 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 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.

SPECIAL CONDITIONS:

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed species shall be fully implemented as stipulated in the Biological Opinions titled, "Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Issuance of a Regional General Permit to the California Department of Fish and Wildlife for Implementation of Anadromous Fish Habitat Restoration Projects under the Fisheries Restoration Grants Program (Corps File No. 2003-279220)," (pages 78-82) dated May 26, 2016, "Programmatic Formal Endangered Species Consultation on the Regional General Permit for California Department of Fish and Wildlife Anadromous Fisheries Restoration Grant Program (Corps Regional General Permit 12; File no. 2003-279220)," (pages 8-18, and 33) dated July 7, 2016, and "Biological Opinion for the California Department of Fish and Wildlife Fisheries Restoration Grant Program Regional General Permit 12 Renewal in San Luis Obispo, Monterey, Santa Cruz, and San Benito Counties, California," (pages 29-30) dated July 28, 2016 (each RGP 12 ESA letter is available at the RGP website: <http://www.spn.usace.army.mil/Missions/Regulatory/Regulatory-Overview/Regional-General-Permits/>). Project authorization under the RGP is conditional upon compliance with the mandatory terms and conditions associated with incidental take. Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the RGP. The USFWS and NMFS are, however, the authoritative federal agencies for determining compliance with the incidental take statements and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.
 - a. Dam removal projects (excluding permanent, flashboard, and seasonal dams that are not considered high risk), fish ladder projects, fish hatchery/stocking projects, salmon in the classroom, fish screen installation or monitoring projects, obstruction blasting with explosives or pile driving, and projects that would dewater or disturb more than 500 feet of contiguous stream reach were not analyzed in the NMFS BO and will require separate Section 7 consultations to determine impacts to listed salmonids.
2. The USFWS, Arcata Fish and Wildlife Office (AFWO), concurred with the determination that the project was not likely to adversely affect Northern spotted owl (*Strix occidentalis caurina*) and designated critical habitat for this species. This concurrence was premised, in part, on project work restrictions outlined in their December 21, 2015 concurrence letter (available at the RGP website cited above). These work restrictions are incorporated as special conditions to RGP 12 authorization to ensure unauthorized incidental take of species and loss of critical habitat does not occur. Any projects within the Mendocino County Range Definition for California red-legged frog (AFWO 2009 Range Definition map) must be consulted on individually prior to the completion of the CDFW Negative Declaration for that year. Similarly, projects located within suitable habitat or critical habitat for yellow-billed cuckoo (*Coccyzus americanus*) must be consulted on individually.
3. The Corps initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to Essential Fish Habitat. The conservation recommendations outlined on pages 82-83 of the NMFS BO cited above, shall be fully implemented as stipulated.
4. Projects activities shall be implemented during the summer dry season beginning June 15 and ending on November 1.
5. Location of staging/storage areas for equipment, materials, fuels, lubricants, and solvents, will be located outside of the stream's high water channel and associated riparian area. The number of access routes, number and size of staging areas, and the total area of the work site activity shall be limited to the minimum necessary to complete the restoration action. To avoid contamination of habitat during restoration activities, trash will be contained, removed, and disposed of throughout the project.
6. Any equipment work within the stream channel shall be performed in isolation from the flowing stream. If there

is any flow when the work is done, the contractor shall construct cofferdams upstream and downstream of the excavation site and divert all flow from upstream of the upstream dam to downstream of the downstream dam.

7. The spread or introduction of invasive exotic plants will be avoided to the maximum extent possible.
8. Wildlife encountered during the course of construction, will be allowed to leave the construction area unharmed.
9. 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.
10. For any salmonid habitat restoration projects that would be constructed within the coastal zone, the permittee shall obtain a concurrence from the California Coastal Commission that the project is consistent with the State's certified Coastal Zone Management Program. The permittee shall contact the appropriate California Coastal Commission office to determine the need for a coastal zone permit prior to conducting any work in the coastal zone. Projects occurring in the coastal zone in the San Francisco Bay region must be permitted by the San Francisco Bay Conservation and Development Commission (BCDC).
11. The permittee shall submit to the District Engineer an annual report of the proposed salmonid restoration projects at least 90 days prior to the commencement of work each calendar year. The submitted report shall include the types of activities planned, anticipated dates of commencement and completion, location, and a brief description of the proposed projects. The Corps will have 30 days to verify if the proposed projects are authorized by this RGP. If any of the proposed projects cannot be authorized under the RGP, the Corps will notify the CDFW as soon as the determination is made.
12. An Annual Report on the prior year's projects shall be submitted. This report shall include project locations and implementation status, such as that included in the California Habitat Restoration Project Database (CHRPD).
13. Copies of the annual reports shall be provided to the U. S. Fish and Wildlife Service, and the U. S. National Marine Fisheries Service in accordance with the BO requirements.

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. Section 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, 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 permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit 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 permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 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 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit 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 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Pursuant to 33 CFR 325.2(e)(2), no regional general permit may be issued for a period of more than five years. RGP 12 renewal may be processed pending inter-agency coordination.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Patty Forkey
(PERMITTEE)

8-1-2016
(DATE)

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

John C. Morrow
John C. Morrow
Lieutenant Colonel, U.S. Army
District Commander

1 Aug 2016
(DATE)