



REPLY TO
ATTENTION OF:

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

AUG 11 2010

Regulatory Division

SUBJECT: File Number 2003-279220N

Mr. Neil Manji
Chief, Fisheries Branch
California Department of Fish and Game
ATTN: Patty Forbes
830 S Street
Sacramento, California 95814

Dear Mr. Manji:

Enclosed is your revised Department of the Army Regional General Permit Number 12 to place fill materials into waters of the U.S. in order to implement salmonid habitat enhancement projects within the jurisdictional boundaries of our San Francisco District Regulatory Division. These projects are funded and/or authorized under the California Department of Fish and Game's Fisheries Restoration Grant Program. A revision was made to the table on page 5 for the "Limit on number of projects per HUC 10 Watershed" as depicted in the final version of the NMFS Biological Opinion, dated June 9, 2010. This revision supersedes the previous RGP 12 sent on July 1, 2010.

Should you have any questions regarding this matter, please call Justin Yee of our Regulatory Division at (415) 503-6788, or email Justin.J.Yee@usace.army.mil. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter.

Sincerely,

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OT Torrey A. DiCiro
Lieutenant Colonel, U.S. Army
Commanding

Enclosures

RECEIVED

AUG 11 2010

Regulatory Division
U.S. Army Corps of Engineers



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SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
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SAN FRANCISCO, CALIFORNIA 94103-1398

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
FOR THE CALIFORNIA DEPARTMENT OF FISH AND GAME'S
FISHERIES RESTORATION GRANT PROGRAM**

PERMITTEE: California Department of Fish and Game

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

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 authorizes minor fill discharges of clean earth, gravel, rock, and wood associated with anadromous salmonid habitat restoration projects implemented under the **California Department of Fish and Game's Fisheries Restoration Grant Program** strictly for the purpose of restoring salmonid fisheries habitat in non-tidal reaches of rivers and streams, improving watershed conditions impacting salmonid streams, and improving the survival, growth, migration, and reproduction of native salmonids. All authorized salmonid habitat restoration projects must conform to State law and be implemented consistent with the *California Salmonid Stream Habitat Restoration Manual*, (Flosi et al., 1998 and revisions). **(Note: This Regional General Permit applies only to salmonid habitat restoration projects that are specifically funded and/or authorized under the California Department of Fish and Game's Fisheries Restoration Grant Program.)** The following is a descriptive list of the activities authorized under this Regional General Permit.

a. Instream habitat improvements: These may include cover structures (divide logs; digger logs; spider logs; and log, root wad and boulder combinations), boulder structures (boulder weirs; vortex boulder weirs; boulder clusters; and single and opposing boulder wing-deflectors), and log structures (log weirs; upsurge weirs; single and opposing log wing-deflectors; and Hewitt ramps). Techniques and practices are identified in Part VII of the *California Salmonid*

¹ Gary Flosi, Scott Downie, James Hopelain, Michael Bird, Robert Coey, Barry Collins, California Salmonid Stream Habitat Restoration Manual, Third Edition, Volume I, January 1998, and Volume II, February 2002 (State of California Resources Agency, Department of Fish and Game, Inland Fisheries Division). Latest revisions are available online: <http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>

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. Root wads would 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 of the manual 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 and XII 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 (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. Log jam barriers are typically less than 10 cubic yards. Guidelines for fish passage improvements are covered in Part VII and XII 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 sidecast 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, checkdams, brush checkdams, waterbars, exclusionary fencing. Guidelines for watershed and streambank stability are covered in Part VII of the *California Salmonid Stream Habitat Restoration Manual*.

h. Riparian habitat restoration: These activities would increase the biological integrity of native plant communities in riparian zones along rivers and streams. These activities would include natural regeneration or riparian vegetation, livestock exclusionary fencing, bioengineering, and active riparian revegetation projects carried out in accordance with the guidelines described in Part XI of the *California Salmonid Stream Habitat Restoration Manual*.

All authorized habitat improvement projects shall be carried out in accordance with techniques in the *California Salmonid Stream Habitat Restoration Manual* as depicted in the enclosed Attachment C project drawings, labeled Figure VII-17 through Figure X-21, found in the corresponding sections of the manual's Third Edition, dated January 1998.

PROJECT LOCATION: This Regional General Permit applies to Fisheries Restoration Grant Program sponsored and approved salmonid habitat enhancement projects in various streams and rivers, including all designated National Wild and Scenic Rivers and their tributaries, in the following coastal California Counties which are within the Regulatory jurisdictional boundaries of the San Francisco District Office: Alameda, Contra Costa, Del Norte, Humboldt, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Siskiyou, Solano, Sonoma, and Trinity.

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on **December 1, 2015**.
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. Should you wish to cease to maintain the authorized activity or should you desire to abandon it, 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. For your convenience, a copy of the certification is attached. The August 5, 2009, Clean Water Act Section 401 Water Quality Certification for specific projects includes several which will conduct work in 2010. Additional projects will require a new Water Quality Certification in order for this permit to be valid.
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. This Corps permit does not authorize you to take an endangered species. In order to legally take a listed species, you must have a 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 U.S. Fish and Wildlife Service (FWS) BOs/concurrences dated May 18, September 3, 2009, and May 25, 2010, and National Marine Fisheries Service (NMFS) BO dated June 9, 2010, contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take," also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take authorized by the attached BOs, whose 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 this Corps permit. The FWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of their BOs and with the ESA.
 - a. The Sacramento FWS Office states that California freshwater shrimp (*Syncaris pacifica*) and red-legged frog (*Rana aurora draytonii*) are not covered by the September 3, 2009, concurrence letter but instead references the existing, August 17, 2004, Programmatic BO (Service File Number 1-1-03-F-273).
 - b. The Arcata FWS Office BO states that any projects within the area of likely frog presence (according to the AFWO 2009 Range Definition map) **must be**

consulted on individually prior to the completion of the CDFG Negative Declaration for that year. Similarly, projects located within the area with likely tidewater goby (*Eucyclogobius newberryi*) presence must be consulted on individually.

- c. Dam removal projects (excluding flashboard dams), fish ladder projects, fish hatchery/stocking projects, watershed stewardship training, salmon in the classroom, 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. To avoid impacts to aquatic habitat the activities undertaken in the restoration program shall typically occur during the summer dry season. This is between June 15 and November 1.
 3. Additional mitigation/minimization measures agreed upon through interagency meetings, referred to as sideboards, shall be followed in addition to those in the NMFS BO (pp. 9-19), monitored and reported in the FRGP Annual Reports by the CDFG:
 - a. **Distance between projects implemented in the same year:** Instream projects implemented in the same year will be at least 1,500 linear feet apart if carried out in a fish-bearing stream. If carried out in a non-fish-bearing stream, the projects must be at least 500 linear feet apart. The required distance can be modified upon the recommendation of a NMFS/CDFG hydrologist.
 - b. **Removal of sediment associated with projects:** If instream work will liberate a sediment wedge, 80% of the wedge must be removed before the sediment is liberated. The required amount can be modified upon the recommendation of a NMFS/CDFG hydrologist.
 - c. **Limit on number of projects per HUC 10 Watershed:** Under this Program, there will be an annual limit on the number of projects that may occur in each HUC 10, as shown in the Table below.

Square Mile of HUC 10 watershed	Maximum number of instream and upslope projects per year
<50	2
51-100	3
101-150	4
151-250	5
251-350	6
351-500	9
>500	12

4. If it is necessary to divert flow around the work site, either by pumping or by gravity flow, the suction end of the intake pipe shall be fitted with fish screens meeting Department of Fish and Game and National Marine Fisheries Service criteria to prevent entrainment or impingement of small fish. The following Fish Screen Operation and Maintenance Best Management Practices shall be applied:
 - a) Fish screens shall be operated and maintained in compliance with current law, including Fish and Game Code, and Department of Fish and Game (DFG) fish screening criteria. DFG screening criteria may be referenced on the internet at: http://www.dfg.ca.gov/fish/Resources/Projects/Engin/Engin_ScreenCriteria.asp
 - b) Notwithstanding Fish and Game Code section 6027, fish screens and bypass pipes or channels shall be in-place and maintained in working order at all times water is being diverted.
 - c) If a screen site is dewatered for repairs or maintenance when targeted fish species are likely to be present, measures will be taken to minimize harm and mortality to targeted species resulting from fish relocation and dewatering activities. The responsible party shall notify DFG before the project site is de-watered and the stream flow diverted. The notification will provide a reasonable time for DFG personnel to supervise the implementation of a water diversion plan and oversee the safe removal and relocation of salmonids and other fish life from the project area. If the project requires dewatering of the site, and the relocation of salmonids, the responsible party will implement the following measures to minimize harm and mortality to listed salmonids:
 - i. All electrofishing shall be performed by a qualified fisheries biologist and conducted according to the National Marine Fisheries Service (NMFS), Guidelines for Electrofishing Waters Containing Salmonids Listed under the Endangered Species Act, June 2000.
 - ii. The responsible party will provide fish relocation data to DFG on a form provided by the DFG, unless the relocation work is performed by DFG personnel.
 - iii. Additional measures to minimize injury and mortality of salmonids during fish relocation and dewatering activities shall be implemented as described in Part IX, pages 52 and 53 of the *California Salmonid Stream Habitat Restoration Manual*.

- d) If a fish screen is removed for cleaning or repair, a replacement screen shall be installed immediately or the diversion shut down until a screen is in place.
- e) Fish screens shall be inspected and maintained regularly (not less than two times per week) to ensure that they are functioning as designed and meeting DFG fish screening criteria.
- f) Existing roads shall be used to access screen sites with vehicles and/or equipment whenever possible. If it is necessary to create access to a screen site for repairs or maintenance, access points should be identified at stable stream bank locations which minimize riparian disturbance.
- g) Sediment and debris removal at a screen site shall take place as often as needed to ensure that screening criteria are met. Sediment and debris will be removed and disposed of where they will not re-enter the water course.
- h) Stationary equipment used in performing screen maintenance and repairs, such as motors, pumps, generators, and welders, located within or adjacent to a stream shall be positioned over drip pans.
- i) Equipment which is used to maintain and/or repair fish screens shall be in good condition and checked and maintained on a daily basis to prevent leaks of materials that could be deleterious to aquatic life, wildlife, or riparian habitat.
- j) All activities performed in or near a stream will have absorbent materials designed for spill containment and cleanup at the activity site for use in case of an accidental spill. Clean-up of spills shall begin immediately after any spill occurs. The State Office of Emergency Services (1-800-852-7550) and DFG shall be notified immediately after any spill occurs.
- k) To the extent possible, repairs to a fish screen or screen site shall be made during a period of time when the target species of fish are not likely to be present (for example, in a seasonal creek, repair work should be performed when the stream is dry).
- l) Equipment used to maintain and/or repair fish screens shall not operate in a live stream except as may be necessary to construct coffer dams to divert stream flow and isolate the work site.
- m) Turbid water which is generated by screen maintenance or repair activities shall be discharged to an area where it will not re-enter the stream. If the DFG determines that turbidity/siltation levels resulting from screen maintenance or repair activities constitute a threat to aquatic life, all activities associated with the turbidity/siltation shall cease until effective DFG-approved sediment control devices are installed

and/or abatement procedures are implemented.

- n) No debris, soil, silt, sand, bark, slash, spoils, sawdust, rubbish, cement, or concrete or washings thereof; asphalt, paint, or other coating material; oil or petroleum products; or other organic or earthen material from any fish screen operation/maintenance/repair or associated activity of whatever nature shall be allowed to enter into, or placed where it may be washed by rainfall or runoff into a stream channel. When operations are completed, any excess materials or debris shall be removed from the work area and disposed of in a lawful manner.
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. For minor actions, where the disturbance to construct coffer dams to isolate the work site would be greater than to complete the action (for example, placement of a single boulder cluster), then measures will be put in place immediately downstream of the work site to capture suspended sediment.
8. The spread or introduction of invasive exotic plants will be avoided to the maximum extent possible.
9. Wildlife encountered during the course of construction, will be allowed to leave the construction area unharmed.
10. Work sites containing western pond turtles, foothill yellow-legged frogs or tailed frogs will use exclusion measures to prevent take or injury to any individual pond turtles or frogs that occur on the site. Any red tree vole nests encountered at a work site will be flagged and avoided during construction.
11. 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.
12. For salmonid 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).

13. The permittee shall submit to the District Engineer an annual report of the permitted salmonid restoration projects described above 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. In addition, 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). 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 404 of the Clean Water Act (33 U.S.C. § 1344).
 - Section 10 of the Rivers and Harbors Act (33 U.S.C. § 403)
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.
 - d. 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 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 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
 7. **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 permit shall be issued for a period of more than five years. RGP12 renewal may be processed pending inter-agency coordination.

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

Torrey A. DiCiro

8/11/10

Torrey A. DiCiro
Lieutenant Colonel, U.S. Army, District Engineer

(DATE)