DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
333 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94105-2197

DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 5 FOR REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS

SPONSOR AND ISSUING OFFICE: U.S. Army Corps of Engineers, San Francisco District

PERMIT NUMBER: Regional General Permit (RGP) No. 5 (Corps File No. 28218S)

PERMITTEES: Public agencies, businesses, and private parties (i.e., the public in general)

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the San Francisco District of the Corps of Engineers, which has jurisdiction over the permitted activity, or the appropriate official of this office acting under the authority of the commanding officer.

After you receive written approval that your project complies with the terms and conditions of this RGP from this office, you are authorized to perform work in accordance with the General Conditions specified below.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).

PROJECT LOCATION: Within those parts of the State of California subject to regulatory review by this office. (See Figure 1.)

GENERAL CONDITIONS OF THIS RGP:

1. Time Period Covered: The time limit for completing work authorized by this RGP ends on August 31, 2013. Time extensions of this permit will likely be more favorably considered as compliance with the reporting requirements (See General Condition 26 below.) on the part of the permittees increases. (i.e., in order for this RGP to be available in the future, you **MUST** provide the information requested regarding the project currently being authorized in a timely manner.)

2. Notification/Communication:

a. Timing: The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any project-specific special conditions imposed by the District or Division Engineer. This office recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If one proceeds without such notice from the DE, one must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.

b. Contents of Notification: The notification should be in writing and include the following information:

(1) The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;

(2) The location of the proposed project in detail, including the identification of any water body affected and its type (ocean, bay, estuary, lake, reservoir, pond, river, stream, riparian area, wetland), (This should include a copy of a United States Geologic Survey [USGS] topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks. [The map should have enough detail to clearly indicate the location and extent of the project, as well as detailed directions to the site.]);

(3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;

(4) A brief description of methods anticipated to be used to rectify the situation ("Field Engineering" is not an adequate description. It is presumed if one mobilizes material and a particular piece of equipment to a site, then one probably has a fairly well defined intention for that material and equipment. Plans, drawings or sketches showing the area to be impacted; cross sections showing details of construction; and a short narrative describing how the work is to be completed should be provided as a minimum.); and

(5) A brief description of the existing conditions and anticipated impacts resulting from the proposed work (amount of dredged or fill material, removal of significant vegetation, loss of habitat, etc.).

c. Form of Notification: The standard Application for Department of the Army Permit (Form ENG 4345) available from the District's Website (www.spn.usace.army.mil/regulatory/) may be used as the notification and must include all the information required in General Condition 2.b. Items (1)-(5) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Again those messages should include the information identified in General Condition 2.b. Items (1)-(5) above. Formal written notification should be sent to this office as soon as practicable.

d. Agency Coordination: Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the National Marine Sanctuary, the California Department of Fish and Game (F&G), the California State Water Resources Control Board (SWRCB), the Regional Water Quality Control Board (RWQCB), the California Coastal Commission (CCC), the Bay Conservation and Development Commission (BCDC), and the State Historic Preservation Office (SHPO), as appropriate. These agencies will be requested to telephone or facsimile transmit to the DE (c/o the Regulatory Branch Project Manager), as expeditiously as possible, a notice indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency, the DE will allow them to provide their comments in a short timeframe determined by this office on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.

The DE will fully consider any comments from Federal or State agencies, received within the specified timeframe, concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification, but will not provide a formal response to the agency comments.

e. Mitigation: Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the acceptability of appropriate and practicable mitigation will include, but are not limited to:

(1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;

(2) The permanence of the project's impacts on the resource; and

(3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants can consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in-lieu" fees to organizations such as The Nature Conservancy, or State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

f. District Engineer's Decision: In reviewing the notification for the proposed activity, the DE will determine whether the activity authorized by this RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any project-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the proposal for the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

(1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit or

(2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. <u>Authorized Work</u>: Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. For example, it may be determined that reconstruction of a

bridge crossing or a roadway damaged by flood flows, high wind or wave action is a more appropriate course of action than temporarily shoring up the facility to allow an immediate return of its use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration for authorization under this RGP, The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very unusual and limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

4. **Start Work Date:** Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe would generally not meet the definition of an "emergency". If the project start time can be delayed for more than a week, the imminent threat of impending loss is likely to have diminished in magnitude as well as immediacy. On the other hand, the RGP could be used to authorize projects as they become discovered, such as with the receding flows of a river some time after a flood event occurred but which likely was the immediate cause of the damage. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the storm season will not obligate the Corps or other agencies to authorize work because of an "emergency" situation unless we agree that the situation qualifies as an emergency as defined on Page 1.

5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.

6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. **Water Quality Certification:** A conditioned water quality certification was issued for this RGP by the SWRCB on **?? ??? LATER ????.** You must comply with the conditions specified in that certification as special conditions of this RGP. For your convenience, a copy of the certification is attached while the seven conditions are summarized below:

a. Certification is limited to emergency actions which meet the CEQA definition of "emergency".

b. A list of emergency projects exempt from CEQA review is provided.

c. Permitted activities shall not violate any applicable water quality standards.

d. Final reports must be submitted. (See General Condition #26.)

e. No taking of State endangered, threatened or candidate species or habitat is authorized.

f. Certification can be modified or revoked upon proper review.

g. Certification does not apply to any discharge from any activity involving a hydroelectric facility.

8. **Coastal Zone Management:** For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from either the CCC or the BCDC that the project is consistent with the State's certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the commission, the permittee should contact the Commission office to request an emergency permit, and no additional Federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government agency. Since a coastal permit issued by a local agency does not satisfy the

Federal consistency requirements of the CZMA, the permittee should also contact the CCC or the BCDC to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a Federal agency, the permittee should also contact the CCC or the BCDC to determine the appropriate emergency procedures.

Due to the time constraints associated with emergency actions, the Corps will not require the permittee to provide proof of review by the Commission, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

9. Endangered Species: No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat, as identified under the Federal Endangered Species Act (ESA).

a. Authorization of an activity by this RGP does NOT authorize the "take" of a listed threatened or endangered species, as defined under the Federal ESA. Applicants shall notify the DE if any listed or proposed species or designated or proposed critical habitat might be affected by or is in the vicinity of the project. The applicant shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. In all circumstances, the applicant should, if aware of the potential presence of listed or proposed species or designated or proposed critical habitat, make considerable efforts to contact this office and/or personnel at FWS and/or NMFS. In some cases the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

b. Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NMFS or from their Websites at:

FWS - http://www.endangered.fws.gov/

NMFS - http://www.nmfs.noaa.gov/prot_res/overview/es.html

To the extent possible, this office will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent to these documents will become conditions on a particular applicant's utilization of this RGP.

In many cases information on the presence of listed or proposed species at a specific project site may not be available. In such cases the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

10. National Marine Sanctuaries: This RGP does not authorize the discharge or deposit of materials or other matter within a National Marine Sanctuary; nor does it authorize discharge or deposit of materials or other matter outside a National Marine Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource. The permittee shall notify the DE and seek approval from the Sanctuary Manager/Superintendent if such a discharge will take place. The permittee shall not begin work until either such approval is obtained or the Sanctuary Manager/Superintendent notifies the permittee and the DE that no such approval is required.

11. Wild and Scenic Rivers: 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 that river is in an official study status; unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect 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 in the area (e.g., FWS, National Park Service, USDA Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the San Francisco District are the Eel (including the Van Duzen), the Klamath (including the Salmon and the Scott), the Smith, and the Trinity (including the New).

12. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted as a result of actions authorized under this RGP, you shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

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.

13. **Equipment:** When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures, such as use of wide-tread tires or floatation devices on equipment, must be taken to minimize soil disturbance.

14. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act (CWA).)

15. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw (or hay) bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

16. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.

17. **Shellfish Production:** No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.

18. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

19. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

20. Navigation: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. 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 the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.

21. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

22. Obstruction of High Flows: To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).

23. Adverse Effects from Impoundments: If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

24. Proper Maintenance: Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with you and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).

25. Regional and Project-Specific Conditions: The activity must comply with any regional conditions added by the Division Engineer (See CFR Part 330.4(e).) and with any project-specific conditions added by this office.

26. Reports: You shall provide a written report to this office as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP. **PROVIDING THIS REPORT IS MANDATORY!** This office has additional responsibilities pursuant to consultation with the FWS and NMFS under Section 7 of the ESA. Further, these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergency situations is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)). **Failure to provide these post-activity reports will jeopardize the possibility of extending this permit when it expires.**

At a minimum this post project report shall include the following:

a. The name, address and telephone number of the applicant and the applicant's agent, if appropriate.

b. A full description of the activity including:

(1) a description of the emergency and the potential for loss of life or property
(2) the purpose of the activity and the final goal of the entire activity
(3) the location of the activity (e.g., area maps, latitude/longitude, township/range)
(4) the size and description of the project area including maps and drawings showing the areal and linear extent of the project
(5) the quantities of materials used

(6) information on receiving water body(ies) impacted including:

(a) name(s) of water body(ies)

(b) type(s) of water body(ies) (e.g., ocean, bay, estuary, lake, reservoir, pond, river, stream, riparian area, wetland)

(c) temporary and permanent adverse impacts in acres, cubic yards and/or linear feet

(d) compensatory mitigation provided in acres, cubic yards and/or linear feet

(e) other steps taken to avoid, minimize and/or compensate for impacts

(7) information on Federally listed or proposed endangered species or designated or proposed critical habitat including:

(a) temporary and permanent adverse impacts

(b) compensatory mitigation provided

(c) other steps taken to avoid, minimize and/or compensate for impacts

(8) pre- and post- construction photographs

If there are a substantial number of projects and this requirement would consume large quantities of your staff resources, you may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. The report shall include a description of the emergency and the potential for loss of life or property, maps to the project location, maps or drawings showing the areal and lineal extent of the project, quantities of material used, and pre- and post-construction photographs. If the project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, you must include a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the FWS and/or the NMFS, as appropriate. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

27. Removal of Temporary Fills: Temporary fills shall be removed in their entirety and the affected areas returned to their pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, you will not be required to do so.

FURTHER INFORMATION:

1. Congressional Authorities: Activities are authorized by this RGP pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

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 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.

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

DRAFT	LATER
LTC MICHAEL McCORMICK, District Engineer	Date

California Map of U.S. Army Corps of Engineers Regulatory Boundaries

Prepared by the San Francisco District, 10/2000