



US Army Corps
of Engineers®
San Francisco District

SAN FRANCISCO DISTRICT

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

PUBLIC NOTICE

PROJECT: Regional General Permit 4 (RGP 4) for Mosquito Abatement Activities

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COMMENTS DUE DATE: June 25, 2022

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1. INTRODUCTION: The U.S. Army Corps of Engineers, San Francisco District, is proposing to reauthorize, for a period of five years, Department of Army Regional General Permit No. 4 for the maintenance of existing water circulation ditches and channels for the purpose of mosquito abatement in tidal marshes. California Department of Health, Center for Infectious Diseases, Vector-Borne Disease Section (POC: Ms. Tina Feiszli, (510) 412-6253), 850 Marina Bay Parkway, Richmond, California 94804, is acting as a sponsor for the permit for the County Mosquito and Vector Control Agencies of Alameda, Marin, Sonoma, Napa, and San Mateo Counties. This Department of the Army permit application is being processed pursuant to the provisions of Section 404 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. § 403 *et seq.*).

2. PROPOSED PROJECT:

Project Site Location: The areas proposed for mosquito source reduction work include a range of tidal marsh habitats that occur within the Mosquito Abatement Districts (MAD) for Alameda, Napa, Marin, San Mateo and Sonoma Counties (see Figure 1).

Project Site Description: Each of the county MADs have specific project sites for work activities throughout the San Francisco Bay Area, and are generally located in tidal marsh habitats dominated by pickleweed along the shoreline below the high tide line. There are also some interspersed areas within the tidal marshes and along their fringing uplands where shrubby plants, such as coyote brush, dominate. All proposed work will take place in previously authorized areas for water circulation ditch maintenance.

Project Description: Mosquito and Vector Control Agencies are seeking authorization to conduct maintenance activities of previously excavated MAD ditches in tidal marsh areas in an effort to reduce breeding habitat for mosquitoes. The Reissuance of RGP 4 will allow the MADs to maintain existing ditches, which were designed increase tidal circulation through shallow connectors between natural tidal channels and ponds where mosquito breeding occurs, reducing the prevalence of mosquito larvae in areas that may otherwise pond. This method protects public health and safety, while minimizing intrusion and the need for pesticide applications in biologically sensitive areas. The maintenance would be carried out only in localized areas in which mosquito breeding has been documented. The following activities would be authorized under the permit:

1. Maintenance of existing, currently serviceable water circulation ditches. Maintenance does not include any modification that changes the character, scope, or size of the original ditch design;
2. Sidecasting of fill incidental to the removal of debris, weeds, and emergent vegetation in the natural channels where normal water circulation is impeded such that mosquito breeding can occur. sidecasting would occur outside of the ditches but potentially within tidal marsh habitat; and
3. Filling of existing, nonfunctional water circulation ditches to the extent necessary to improve tidal influence in the marsh and improve water circulation dynamics in the remaining ditches.

The following conditions would apply to the permit:

General Conditions:

1. No activity is authorized under this regional general permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer (DE) if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. Authorization of any activity by this regional permit does not authorize the take of threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and nonlethal take of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service;
2. Equipment. Staging areas shall be on upland sites if available. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance (e.g., use of low ground pressure vehicles);
3. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. In waterbodies which support anadromous fish, work shall be carried out during the period of 1 July through 30 September;
4. Suitable material. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash) and material discharged must be free from

toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act);

5. Discharges of dredged or fill material into the Waters of the United States must be minimized or avoided to the maximum extent possible at the project site;
6. Work authorized under this regional permit shall be conducted, whenever possible, during the period of 1 August through 31 January;
7. If any previously unknown historic or archeological remains are discovered during work authorized by this permit, you must immediately notify this office. The Corps will initiate the federal and state coordination necessary to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places;
8. 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;
9. 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 the permit.

Special Conditions:

1. No work shall be performed in tidal marshes of San Francisco Bay, San Pablo Bay, and western Suisun Bay (west of Grizzly Bay) between 1 February and 1 September, the breeding season of the Ridgway's rail. Specific areas of tidal marsh which have been determined in writing by the USFWS to provide no suitable habitat for the Ridgway's rail may be conditionally excluded from this prohibition;
2. No spoils sidecast adjacent to circulation ditches shall exceed 8 inches in relief above the marsh plain after dewatering. Sidecast spoil lines exceeding 4 inches in height above the marsh plain shall extend no more than 6 feet from the nearest ditch margin. Any spoils in excess of these dimensions shall be either hydraulically re-dispersed on site, or removed to designated upland

disposal locations, out of Corps jurisdiction. Sidecast spoil lines shall be breached at appropriate intervals to prevent local impediments to water circulation;

3. A work plan for each year's proposed maintenance activities shall be submitted to the Corps, USFWS, and CDFW no later than 1 June of each year. The Corps will provide notification within 30 days if any of the proposed work is determined to have more than minimal adverse impacts, after consideration of any proposed mitigation, and is therefore not authorized by this permit. The work plan shall include a delineation of all proposed ditching overlain on topographic maps at a minimum 1" = 1000' scale, with accompanying vicinity maps and site location coordinates. The plan shall also indicate the dominant vegetation of the site, based on subjective estimates; the length and width of the ditches to be maintained, cleared, or filled; and the estimated date the work will be carried out. A report of the actual work done in the previous year shall be included with the work plan;
4. If the review of the proposed work plan by the Corps, USFWS or CDFW determines the proposed maintenance is likely to destroy or damage substantial amounts of shrubby or sub-shrubby vegetation (e.g., coyote brush, gumplant) on old sidecast spoils, the permittee will be notified to provide a quantitative estimate of the extent and quality of the vegetation, and a revegetation plan for the impacted species prepared by a biologist/botanist with expertise in marsh vegetation. The Corps approved revegetation plan shall be implemented prior to April 1 of the year following the impacts;
5. In marshes which contain populations of invasive nonnative vegetation such as *Lepidium latifolium* or introduced species of *Spartina*, sidecast spoils shall be surveyed for the frequency of establishment of these species during the first growing season following the deposition of the spoils. The results of the surveys shall be reported to the Corps, USFWS and CDFW. If it is determined the sidecasting of spoils have resulted in substantial increase in the distribution or abundance of the nonnative vegetation which is detrimental to the marsh, the permittee shall

implement appropriate abatement measures after consultation with the Corps, USFWS, and CDFW.

Basic Project Purpose: The basic project purpose comprises the fundamental, essential, or irreducible purpose of the project, and is used by USACE to determine whether the project is water dependent. The basic project purpose is to provide an efficient permitting pathway for routine maintenance activities that reduce the public health risk associated with mosquitoes and mosquito-borne diseases.

Overall Project Purpose: The overall project purpose serves as the basis for the Section 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project while allowing a reasonable range of alternatives to be analyzed. The overall project purpose is to reduce public health risk associated with mosquitoes and mosquito-borne diseases by providing an efficient permitting pathway for routine maintenance activities that reduce breeding habitat for mosquitoes in tidal wetlands in the San Francisco Bay Area.

Project Impacts: Project impacts would be limited to work occurring in localized areas where existing circulation ditches occur in tidal marsh areas. The maintenance activities could result in localized sediment release and increased turbidity, wetland vegetation removal, and altered drainage/hydrology. Site access to conduct work could also result in temporary disturbance to marsh vegetation. Sidecast spoils from clearing of existing circulation ditches would result in minor, direct impacts to areas immediately abutting or adjacent to the circulation ditches. Temporary impacts to marsh habitat from vehicle access would be limited and most driving would be restricted to existing access roads. Volumes of sidecast spoils discharged into jurisdictional marsh areas would be no greater than incidental to removal efforts needed to maintain water circulation in the existing ditches. Some of the maintenance activities would require work in Section 10 tidelands, below mean high water, as the circulation ditches occur in marsh areas subject to tidal influence.

Summary of work conducted under the previous 5 year authorization period for RGP 4:

Alameda County Mosquito Abatement District maintained approximately 58,875 linear feet of ditches.

Marin/Sonoma Mosquito and Vector Control District conducted no work under this RGP.

Napa County Mosquito Abatement District conducted no work under this RGP.

San Mateo County Mosquito and Vector Control District conducted no work under this RGP.

Proposed Mitigation: The proposed activity would not result in the permanent loss of wetlands or other waters of the U.S. All proposed work will be limited to existing circulation ditches. No mitigation is proposed at this time.

Project Alternatives: The maintenance activities are site-specific. The use of biological controls is not reasonable due to high cost and low efficiency. Chemical controls have the same problems and present additional human health and environmental risks from the chemicals themselves. The proposed maintenance has minimal impacts on the aquatic and human environment. The Corps has not endorsed the submitted alternatives analysis at this time.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: State water quality certification or a waiver thereof is a prerequisite for the issuance of a Department of the Army Permit to conduct any activity which may result in a fill or pollutant discharge into waters of the United States, pursuant to Section 401 of the Clean Water Act of 1972, as amended (33 U.S.C. § 1341 *et seq.*). The San Francisco Bay Regional Water Quality Control Board order number R2-2000-050 serves as the water quality certification for this Regional General Permit.

Water quality issues should be directed to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612, by the close of the comment period.

Coastal Zone Management: Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*), requires a non-Federal applicant seeking a federal license or permit to conduct any activity occurring in or affecting the coastal zone to obtain a Consistency Certification that indicates the activity conforms with the state's coastal zone management program. Generally, no federal license or permit will be

granted until the appropriate state agency has issued a Consistency Certification or has waived its right to do so.

Coastal zone management issues should be directed to the Executive Director, San Francisco Bay Conservation and Development Commission, 375 Beale St., Suite 510, San Francisco, CA 94105

Other Local Approvals: The applicant will be applying for the following additional governmental authorizations for the project: a Lake and Streambed Alteration Agreement to be issued by the California Department of Fish and Wildlife.

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): Upon review of the Department of the Army permit application and other supporting documentation, USACE has made a *preliminary* determination that the project neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the project in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's regulations at 40 C.F.R. § 1500-1508, and USACE regulations at 33 C.F.R. § 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for issuing or denying a Department of the Army Permit for the project. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. As the Federal lead agency for this project, USACE has conducted a

review of the California Natural Diversity Data Base, digital maps prepared by USFWS and NMFS depicting critical habitat, and other information provided by the applicant, to determine the presence or absence of such species and critical habitat in the project area. Based on this review, USACE has made a preliminary determination that the following Federally-listed species and/or designated critical habitat are present at the project locations or in their vicinity, and may be affected by project implementation: threatened Central California Coast steelhead (*Oncorhynchus mykiss*) and designated critical habitat; California Central Valley steelhead (*O. mykiss*) and designated critical habitat; endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*); threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*); threatened delta smelt (*Hypomesus transpacificus*); threatened green sturgeon (*Acipenser medirostris*) and designated critical habitat; endangered Ridgway's rail (*Rallus obsoletus*); threatened western snowy plover (*Charadrius alexandrinus nivosus*); endangered California least tern (*Sterna antillarum browni*); endangered salt marsh harvest mouse (*Reithrodontomys raviventris*); endangered California seablite (*Suaeda californica*); endangered Suisun thistle (*Cirsium hydrophilum* var. *hydrophilum*); and endangered soft bird's beak (*Chloropyron molle* ssp. *molle*). The proposed action could result in localized sediment release and increased turbidity, wetland vegetation removal, and altered drainage/hydrology. Site access to conduct work could also result in temporary disturbance to marsh vegetation and potential direct impacts to listed species by crushing nests/burrows and increased noise. The County MADs will implement avoidance and minimization measures, including, but not limited to, work timing restrictions, training from USFWS/NMFS, presence of biological monitors, limited travel on non-established roads/paths, and general Best Management Practices (BMPs), to reduce project related impacts. To address project related impacts to these species and designated critical habitat, USACE will initiate formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the Act. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and

substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, or the *Pacific Coast Salmon FMP*. As the Federal lead agency for this project, USACE has conducted a review of digital maps prepared by NMFS depicting EFH to determine the presence or absence of EFH in the project area. Based on this review, USACE has made a *preliminary* determination that EFH is present at the project location and its vicinity, but that consultation will not be required. The proposed action is located in the area managed under the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. It is presumed that fish species utilizing the project area would be using it for feeding during a period of growth. When maintenance of existing circulation ditches occurs, the fish should be able to find ample and suitable foraging areas in adjacent aquatic habitat. As the infaunal community recovers in the maintenance area, fish species will return to feed. The “*Baywide Eelgrass Inventory of San Francisco Bay*,” prepared by Merkel and Associates, dated October 2004, does not show the existing circulation ditches to be maintained as having any eelgrass beds. Eelgrass is not expected to be established in the circulation ditches or within close proximity, therefore, adverse effects, both direct and indirect, are not expected to occur. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by NMFS. Any required consultation must be concluded prior to the issuance of a Department of the Army Permit for the project.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as National Marine Sanctuaries for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. The project does not occur in sanctuary waters, and a *preliminary* review by USACE indicates the project would not likely affect sanctuary resources. This presumption of

effect, however, remains subject to a final determination by the Secretary of Commerce, or his designee.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has conducted a review of latest published version of the *National Register of Historic Places*, survey information on file with various city and county municipalities, and other information provided by the applicant, to determine the presence or absence of historic and archaeological resources within the permit area. Based on this review, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be present in the permit area, and that the project either has no potential to cause effects to these resources or has no effect to these resources. USACE will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided by the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, and Native American Nations or other tribal governments. If unrecorded archaeological resources are discovered during project implementation, those operations affecting such resources will be temporarily suspended until USACE concludes Section 106 consultation with the State Historic Preservation Officer or the Tribal Historic Preservation Officer to take into account any project related impacts to those resources.

5. COMPLIANCE WITH THE SECTION 404(b)(1) GUIDELINES: Projects resulting in discharges of dredged or fill material into waters of the United States must comply with the Guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b) of the Clean Water Act (33 U.S.C. § 1344(b)). An evaluation pursuant to the Guidelines indicates the project is dependent on location in or proximity to waters of the United States to achieve the basic project purpose. This conclusion raises the

(rebuttable) presumption of the availability of a practicable alternative to the project that would result in less adverse impact to the aquatic ecosystem, while not causing other major adverse environmental consequences. The applicant has submitted an analysis of project alternatives which is being reviewed by USACE.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a Department of the Army Permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the project and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the project must be balanced against any reasonably foreseeable detriments of project implementation. The decision on permit issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the project. All comments received by USACE will be considered in the decision on whether to issue, modify, condition, or deny a Department of the Army Permit for the project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the project.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Sarah Firestone, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4th Floor, San Francisco, California 94102-3404; comment letters should cite the project name, applicant name, and public notice number to facilitate review by the Regulatory

Permit Manager. Comments may include a request for a public hearing on the project prior to a determination on the Department of the Army permit application; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be forwarded to the applicant for resolution or rebuttal. Additional project information or details on any subsequent project modifications of a minor nature may be obtained from the applicant and/or agent or by contacting the Regulatory Permit Manager by telephone or e-mail (cited in the public notice letterhead). An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website: <https://www.spn.usace.army.mil/Missions/Regulatory>.