



US Army Corps  
of Engineers®  
San Francisco District

SAN FRANCISCO DISTRICT

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

# PUBLIC NOTICE

PROJECT: Reissuance of Regional General Permit 12 - Fisheries Restoration Grant Program

PUBLIC NOTICE NUMBER: SPN-2003-279220S

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COMMENTS DUE DATE: February 20, 2022

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1. **INTRODUCTION:** California Department of Fish and Wildlife (CDFW) (POC: Timothy Chorey, [timothy.chorey@wildlife.ca.gov](mailto:timothy.chorey@wildlife.ca.gov)), P.O. Box 944209, Sacramento, CA 94244-2090, has applied to the U.S. Army Corps of Engineers (USACE), San Francisco District, to reissue and revise Regional General Permit (RGP) 12 to continue authorizing salmonid habitat enhancement projects conducted in accordance with the CDFW Fisheries Restoration Grant Program (FRGP) and North Coast Coho Recovery (NCCR) proposal. 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:** RGP 12 would be used within the USACE San Francisco District in central and northern coastal California to authorize salmonid habitat restoration projects in the Counties of Del Norte, Siskiyou, Humboldt, Trinity, Mendocino, Sonoma, Napa, Marin, San Francisco, San Mateo, Santa Cruz, Santa Clara, Monterey, and San Benito; the western portions of Solano, Contra Costa, and Alameda Counties; and the inland (Salinas River watershed) portion of San Luis Obispo County (figure 1).

**Project Site Description:** Stream habitat restoration projects would occur in watersheds that are accessible to anadromous salmonids but have typically been subjected to high levels of logging, road building, urbanization, mining, grazing, and other activities that have reduced the quality and quantity of stream habitat available for native anadromous fish species (chinook salmon, coho salmon, steelhead trout, and coastal cutthroat trout).

**Project Description:** RGP 12 would be used to authorize projects funded and/or approved under CDFW's FRGP (<https://wildlife.ca.gov/Grants/FRGP>) and NCCR (<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=194972&inline>) programs, which use grant funds approved by the California Legislature for activities that are designed to restore, enhance, or protect anadromous salmonid habitat in the coastal watersheds of California. The proposed activities are designed to restore stream habitat with the goal of increasing populations of wild anadromous fish in coastal streams and watersheds. Habitat restoration activities and practices include fish passage projects, bank stabilization treatments, upslope road decommissioning or repair, and replacement or modification of culverts that are barriers to fish passage (attachment A). All approved projects would be consistent with methods and procedures found in the latest approved version of CDFW's *California Salmonid Stream Habitat Restoration Manual* (2010; <https://wildlife.ca.gov/Grants/FRGP/guidance>) or other restoration manuals approved by CDFW. Instream restoration activities would be implemented annually during the summer/fall low-flow period, typically between June 15 and November 1. This reissuance of RGP 12 would also include two new project types not previously covered: (1) beaver dam analogs; and (2) restoration projects in tidal reaches of coastal streams and associated tidal marsh areas outside of the San Francisco Bay. RGP 12 would not cover tidally influenced areas within the San Francisco Bay.

**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 stream habitat restoration.

**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 streamline the permitting process for CDFW-funded projects to restore anadromous fisheries habitat in tidal and non-tidal reaches of rivers and streams, improve watershed conditions impacting salmonid streams, and improve the survival, growth, migration, and reproduction of anadromous fish.

**Project Impacts:** RGP 12 authorized projects typically involve minor fill placement within stream channels (e.g. logs, root wads, rock/boulders, earth backfill, and minor grading) associated with (1) installation of large woody debris, log structures, boulder structures, and other structures associated with in-stream habitat improvements; (2) restoration of side-channel/off-channel habitat (3) removal of fish passage barriers; (4) removal of road crossings/culverts, and/or replacement with new non-barrier stream crossings; and (5) bank stabilization. The number of authorized projects and associated impact amounts vary year to year. Permanent impacts under RGP 12 would be limited to beneficial effects and would not result in loss of stream function or area.

**Proposed Mitigation:** FRGP and NCCR projects are intended to enhance aquatic habitat and would be limited to those with demonstrable net gain in stream area and/or function. Therefore, they are considered self-mitigating, and no compensatory mitigation is proposed. Extensive measures to minimize incidental impacts to streams and other aquatic resources are incorporated into the program, including limiting contiguous disturbance/dewatering to less than 1,000 contiguous feet, and limiting construction activities to the summer/fall dry season.

### 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 applicant is coordinating with the State Water Resources Control Board (SWRCB) to obtain a new programmatic Section 401 water quality certification for

RGP 12. No projects would be authorized under RGP 12 until the applicant obtains the required certification, or a waiver of certification. A waiver can be explicit, or it may be presumed if the SWRCB fails or refuses to act on a complete application for water quality certification within 60 days of receipt, unless the District Engineer determines a shorter or longer period is a reasonable time for the RWQCB to act.

Water quality issues should be directed to the Division of Water Quality, 15<sup>th</sup> floor, State Water Resources Control Board, 1001 I Street, Sacramento, California 95814 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. Since the program area would overlap the coastal zone outside of the San Francisco Bay and funded projects may affect coastal zone resources, the applicant is coordinating with the California Coastal Commission to discuss the option of programmatic Coastal Development Permit (CDP) to comply with this requirement. If a programmatic CDP is not issued, then individual CDP's would be required for any projects affecting coastal zone resources.

Coastal zone management issues should be directed to the District Manager, California Coastal Commission, District Supervisor, California Coastal Commission, North Central Coast District Office, 45 Fremont Street, Suite 2000, San Francisco, California 94105-4508, by the close of the comment period.

**Other Local Approvals:** The applicant has applied for the following additional governmental authorizations for the project: California Endangered Species Act take coverage and a Routine Maintenance Agreement from 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, and prior consultations for previous issuances of RGP 12, USACE has made a determination that the following Federally-listed species and designated critical habitat may be present in the vicinity of projects authorized under RGP 12, and may be affected by project implementation:

- California red-legged frog (*Rana draytonii*)
- California freshwater shrimp (*Syncaris pacifica*)

- Tidewater goby (*Eucyclogobius newberryi*)
- California tiger salamander (*Ambystoma californiense*)
- Arroyo toad (*Anaxyrus californicus*)
- San Francisco garter snake (*Thamnophis sirtalis tetrataenia*)
- Least Bell's vireo (*Vireo bellii pusillus*)
- Marbled murrelet (*Brachyramphus marmoratus*)
- Northern spotted owl, (*Strix occidentalis caurina*)
- Southwestern willow flycatcher (*Empidonax traillii extimus*)
- Western snowy plover (*Charadrius nivosus nivosus*)
- Yellow-billed cuckoo (*Coccyzus americanus*)
- Point Arena mountain beaver (*Aplodontia rufa nigra*)
- Coho salmon (*Oncorhynchus kisutch*), Southern Oregon/Northern California Coast (SONCC) and Central California Coast (CCC) Evolutionarily Significant Units (ESUs)
- Chinook salmon (*O. tshawytscha*), California Coastal ESU
- Steelhead (*O. mykiss*), Northern California (NC), Central California Coast (CCC), and South-Central California Coast (S-CCC) distinct population segments (DPSs)
- Pacific Eulachon (*Thaleichthys pacificus*), Southern DPS
- North American Green Sturgeon (*Acipenser medirostris*), Southern DPS

To address project related impacts to these species and designated critical habitat, USACE has initiated formal consultation with USFWS and NMFS, pursuant to Section 7(a) of the ESA. Any required consultation must be concluded prior to the reissuance of RGP 12.

**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 or in its vicinity and that the critical elements of EFH may be adversely affected by project implementation. The program area contains EFH for species managed under the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. To address project related impacts to EFH, USACE has initiated consultation with NMFS, pursuant to Section 305(5)(b)(2) of the MSFCMA. Any required consultation must be concluded prior to the prior to the reissuance of RGP 12.

**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 any required certification or permit. Since the program area would overlap Sanctuary waters in some areas, projects covered under RGP 12 may affect Sanctuary resources. Review and approval by Sanctuary officials would be required for any projects in or affecting Sanctuary waters.

**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 (SHPO) 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 NHPA 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 would initiate consultation with the SHPO for any project proposed under RGP 12 with the potential to affect historic properties, pursuant to Section 106 of the NHPA. Any required consultation must be

concluded before an activity is authorized under RGP 12. 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 SHPO 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. USACE will ensure there is sufficient consideration of project alternatives.

**6. PUBLIC INTEREST EVALUATION:** 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 in the project.

8. **SUBMITTING COMMENTS:** During the specified comment period, interested parties may submit written comments to Greg Brown, San Francisco District, Regulatory Division, 450 Golden Gate Avenue, 4<sup>th</sup> 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>.