



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3404

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Regional General Permit 5 (RGP 5)
For Emergency Repairs

PUBLIC NOTICE NUMBER: SPN-2003-282180S

PUBLIC NOTICE DATE: June 26, 2024

COMMENTS DUE DATE: July 26, 2024

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1. INTRODUCTION:

The San Francisco District of the U.S. Army Corps of Engineers (USACE) (POC: Kendra Spicher, 415-503-6832), 450 Golden Gate Avenue, 4th Floor, San Francisco, California, 94102-3406, is proposing to re-issue its Regional General Permit (RGP) 5, which would allow expedited authorization for discharges or work in waters of the United States within the District for repair or protection activities in emergency situations. This proposal 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.*).

The current RGP 5 for emergency repairs was issued on October 9, 2019, and expires on October 15, 2024. During this time period over 300 projects have been authorized to date using RGP 5, including projects by state, county, or local agencies to protect public infrastructure, and projects by property owners to protect residences and other privately owned structures, and projects to protect or restore natural resources. Please see our webpage for further information regarding the current RGP 5:

<https://www.spn.usace.army.mil/Missions/Regulatory/Permitting/Emergency/>

2. PROPOSED PROJECT:

Project Site Location: The reissued RGP 5 would continue to cover the entire San Francisco District, which is shown on the attached map.

Project Description: USACE proposes to re-issue RGP 5 through September 30, 2029 (i.e., through five winter seasons). The process for emergency projects seeking authorization under RGP 5 would remain similar to the current process: project applicants must seek formal approval from USACE **before** taking action under the authority of RGP 5, and a post-construction report is required **after** the work is completed. As defined by 33 CFR 325.2 (e) (4), "An 'emergency' is a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship..."

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 expedited permitting for emergency repair projects with minimal impacts to the aquatic environment.

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 provide expedited permitting for emergency repair projects with minimal impacts to the aquatic environment.

Project Impacts: Project authorized under this RGP would be designed to have the minimum impacts necessary to stabilize the emergency situation. In most cases, the projects authorized would restore the original pre-emergency condition of the site.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: Under Section 401 of the CWA (33 U.S.C. § 1341), USACE must obtain a water quality certification before the RGP may be issued. USACE is requesting renewal of the water quality certification for RGP 5 from the State Water Resources Control Board (SWRCB – for emergency projects on non-tribal land) and the Environmental Protection Agency (EPA – for emergency projects on tribal lands). Comments regarding water quality issues associated with RGP 5 should be sent by the close of the comment period of this Public Notice to the SWRCB (Program Manager, CWA Section 401 WQC Program, Division of Water Quality, California State Water Resources Control Board, P.O. Box 100, Sacramento, California 95812-0100) or the EPA (Chief, Wetland Regulatory Office, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105).

Coastal Zone Management: USACE is requesting concurrence from the San Francisco Bay Conservation and Development Commission (BCDC) and the California Coastal Commission (CCC) that reissuance of RGP 5 is consistent with the federal Coastal Zone Management Act (CZMA) of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*). For emergency projects in or affecting the coastal zone, it is expected that applicants would obtain emergency permits directly from the CCC or BCDC. Comments regarding CZMA issues associated with RGP 5 should be sent by the close of the comment period to BCDC (Executive Director, San Francisco Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, California 94111) or CCC (California Coastal Commission, Headquarters and North Central Coast District Office, 45 Fremont Street, Suite 2000, San Francisco, California 94105-2219).

Other Local Approvals: Projects authorized under this RGP may require additional governmental authorizations, and the applicants would be

responsible for obtaining all permit authorizations required.

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 proposed action 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 proposed action 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. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will 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 re-issuing RGP 5. 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. Section 7 also contains provisions for consultation in the event of emergencies that threaten human welfare or property. USACE will coordinate with USFWS and/or NMFS under these emergency consultation provisions for projects seeking authorization under RGP 5 that may impact ESA listed species or critical habitat.

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*. USACE will request expedited EFH consultation with NMFS for projects seeking authorization under RGP 5 that may impact EFH.

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. USACE will notify and seek comments from appropriate NMS staff for projects seeking authorization under RGP 5 that may impact a NMS.

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 Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer (THPO) 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 made a *preliminary* determination that historic or archaeological resources are not likely to be adversely affected by RGP 5, given that most emergency projects occur in areas subject to erosion, flooding, or other disturbance that would affect the integrity of any resources present, and any authorized repair work would not cause impacts beyond those which led to the emergency situation. In the rare cases where emergency projects would have the potential to affect historic properties, USACE would coordinate with the SHPO/THPO and/or ACHP under the provisions of 33 C.F.R. § 325, Appendix C.14 and/or 36 C.F.R. § 800.12(b)(2). By copy of this public notice, USACE requests comments from the SHPO and will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided.

5. 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.

6. 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.

7. SUBMITTING COMMENTS:

During the specified comment period, interested parties may submit written comments to:

Kendra Spicher
San Francisco District, Regulatory Division,
450 Golden Gate Avenue, 4th Floor, San Francisco,
California 94102-3404
Kendra.a.spicher@usace.army.mil

Comment letters should cite the project name (Regional General Permit 5 For Emergency Repairs), the applicant (USACE), 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>