

MEMORANDUM

To: Mr. John Coleman, Bay Planning Coalition

From: Dr. Joshua Burnam, MPH, D.Env., Anchor QEA, LLC

Date: September 9, 2016

Re: Summary of a Potential Regional General Permit (RGP) for San Francisco Bay Dredging and Facility Maintenance Activities

A memorandum was presented to the Bay Planning Coalition (BPC) on August 18, 2015, to address the applicability of general permits (GPs) to maintenance dredging in the San Francisco Bay Area. Initial discussions with the Long Term Management Strategy (LTMS) agencies indicate that there is general support for applying this concept to certain types of projects. This memorandum is an updated discussion on GPs, and is intended to support a formal meeting with the LTMS agencies to determine potential GP guidelines, categorical application, and implementation steps. This memorandum addresses the potential for a GP to address maintenance dredging as well as facility maintenance activities such as like-for-like pile replacements, seawall repairs, or other routine maintenance activities.

GENERAL PERMITS FOR MAINTENANCE DREDGING AND OTHER ACTIVITIES

GPs are issued on a nationwide or regional basis for a category or categories of activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. They are commonly used for streamlining the regulatory process for routine facility maintenance projects, such as dredging, pile replacement, or low impact structural repairs.

As stated in the initial memorandum, the concept of applying GPs to maintenance dredging is based on the presumption that the U.S. Army Corps of Engineers (USACE), acting as the lead agency for the Dredged Material Management Office (DMMO), would initiate the process and coordinate with the necessary state and federal authorities. Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act gives the USACE the authority to issue GPs, which can operate in conjunction with a state regulatory program.

Table 1 provides examples of some successfully implemented current and previous GPs.

Table 1 Successfully Implemented General Permits

Region	USACE District	Permit Name/Type	Activities Covered
Southern California	Los Angeles	RGP 30 – City of Long Beach	Maintenance Dredging
Southern California	Los Angeles	RGP 54 – City of Newport Beach	Maintenance Dredging; in-kind dock and bulkhead repair and replacement; eelgrass impacts within certain limits
Southern California	Los Angeles	RGP 24 – Ventura Port District	Maintenance Dredging
Southern California	Los Angeles	RGP 28 – Port of Long Beach	Maintenance Dredging
Maryland	Baltimore	Maryland State PGP 4	Maintenance Dredging; numerous other activities
Oregon	Portland	RGP-9 – South Coast Maintenance Activities (proposed)	Maintenance dredging; other routine maintenance activities
New York and New Jersey	New York	NYDGP 15 – Storm damage remediation; Joint New Jersey State PGPs 17 and 19	Installation of structures; dredging
North Carolina	Wilmington	Numerous RGPs for various areas/activity types	Dredging, beach replenishment, and structures
Texas	Galveston	SWG-1999-0126; SWG 2002-02405	Maintenance Dredging

WHY A GP FOR SAN FRANCISCO BAY?

A GP could be an extremely useful tool to reduce agency and applicant workload, costs, and delays for dredging and other maintenance projects within the San Francisco Bay. The existing LTMS, along with the DMMO and associated programmatic consultations, provides a solid foundation to support the initiation and subsequent implementation of a GP for dredging. The GP can be structured with inherent conditions such that when initially proposed by the USACE, review and approval by the other agencies is provided through the existing interagency collaboration of the DMMO process for dredging requests specifically, and maintenance projects are initially vetted for conformance with the GP by USACE as well. Once the GP is in place, qualifying individual projects would obtain notice to proceed through the GP, in essence rendering separate, agency-specific permits unnecessary. GPs are valid for five years and may be reauthorized by USACE.

REGIONAL GENERAL PERMIT OR PROGRAMMATIC GENERAL PERMIT

The USACE can issue GPs in the form of a Nationwide Permit (NWP), a Regional General Permit (RGP), or a Programmatic General Permit (PGP). All GPs are designed to reduce duplication of effort by federal, state, and local programs, where the consequences of covered actions are determined to be minimal. RGPs are issued on a regional basis and may require case-by-case reporting. PGPs are founded on an existing state, local, or other federal program, and are designed to avoid duplication of that program.

Discussions with regulators and research into existing and previous GPs suggest that an RGP may be best suited for the San Francisco Bay Area because it more easily leverages the existing DMMO program, and can be written to include other activities, such as simple pile replacement and repair of structures. Further discussion with the agencies would be required, however, before making this determination.

ENVIRONMENTAL CONSIDERATIONS AND HOW AN INITIAL RGP MIGHT BE STRUCTURED

All GPs rely on the notion that impacts are “similar in nature and result in no more than minimal

individual or cumulative adverse effects on the aquatic environment.” Therefore, an RGP issued by DMMO and/or the local agencies would need to clearly define the covered activities and implement conditions and thresholds for the activities to meet this criteria. Activities causing substantial controversy would also be excluded and require project-specific permits. Existing windows, programmatic consultations, and other routine best management practices can be included in the RGP.

Under the proposed framework, “qualifying dredging activities” would only require DMMO review and approval of the Sampling and Analysis Plan (SAP) and Sampling and Analysis Report (SAR) before applicants would submit a Dredging Operations Plan and request for Notice to Proceed. Other activities covered by the RGP may require further confirmation by the agencies that the request meets the terms of the RGP, following initial vetting by the USACE. Typically this takes the form of a notification from USACE to the other responsible agencies.

Some specific examples of GP conditions for maintenance dredging and routine facility repairs are as follows:

- Dredging would occur within specified windows as applicable
- Dredging per episode may be limited by volume, and would be restricted to maintenance only
- The applicant would comply with any or all other required protections for sensitive resources
- Simple like-for-like pile-replacement and like-for-like repairs of existing structures could be included

OTHER REGULATORY REQUIREMENTS

RGPs may only be issued following the publishing of a public notice and preparation of a decision document to ensure that the authorized activities cause only minimal individual and cumulative environmental impacts. In the majority of cases, RGPs and PGP contain conditions to further ensure that environmental impacts are minimal, including conditions for the submittal of a permit application prior to activities occurring within waters of the U.S. Development of a California Environmental Quality Act document may be needed (although the LTMS Environmental Impact Report may suffice), and other resource agency requirements may also need to be considered, such as action by the California Department of Fish and Wildlife.

The following agency-specific actions would be required for a proposed GP:

- Consultations under Section 7 of the Endangered Species Act and the Magnusson- Steven Act, initiated by USACE
- ACWA Section 401 Water Quality Certification and Waste Discharge Requirements from the San Francisco Regional Water Quality Control Board
- A permit from the Bay Conservation and Development Commission Routine dredging fees could still be collected by applicable agencies.

CONCLUSION AND RECOMMENDATION

The BPC recommends that the LTMS Program support a RGP that allows for particular dredging activities (e.g., as suggested above) to be programmatically permitted, with the DMMO able to verify conformance with the RGP during review of the SAP and SAR. We also recommend other like for-like routine maintenance activities, such as pile replacement, be included, with initial vetting by USACE to determine conformance with the RGP. Issuance of such an RGP would reduce regulatory workload on DMMO staff, and would reduce time and cost expenditure for applicants and regulators.