



Public Notice

**U.S. Army Corps
Of Engineers**

Galveston District

Permit Application No: SWG-2002-02904

Date Issued: 15 September 2020

Comments

Due: 16 October 2020

U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT

PURPOSE OF PUBLIC NOTICE: To inform you that the Galveston District is seeking to reissue a Regional and Programmatic General Permit for work affecting navigable waters for the construction of piers. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest based on the reissuance of the general permit.

GENERAL PERMIT REGULATORY STATUTES: Work and/or the placement of structures in/or affecting navigable waters of the U.S. authorized under this general permit is subject to jurisdiction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; Section 10).

APPLICANT: U.S. Army Corps of Engineers
Galveston District – Regulatory Division
P.O. Box 1229
Galveston, Texas 77553

GENERAL PERMIT GEOGRAPHIC LOCATION: Within navigable waters of the US within the SWG area of responsibility boundaries, excluding waters located in Louisiana.

GENERAL PERMIT REGULATED ACTIVITIES DESCRIPTION: This general permit authorizes work in navigable waters of the US for the construction, repair, rehabilitation, maintenance, modification, and replacement, of residential or commercial pile-supported piers for single or multifamily residences for single littoral parcels including lodging facilities

GENERAL PERMIT RESTRICTIONS: This general permit **does not** authorize:

- The placement of dredged and/or fill material into jurisdictional waters of the US, including special aquatic sites;
- Permanent losses of waters of the US, including special aquatic sites;
- “Prop-Washing”;
- Dredging;
- The placement of enclosed buildings, living quarters, toilets, fuel-dispensing or sanitary pump-out facilities;

- Covered or enclosed second story;
- Floating piers or terminal structures;
- High-pressure jetting of pilings.

BACKGROUND: The Corps initially issued RGP SWG-2002-02904, formerly GP 14392, for piers on 16 June 1981. The RGP authorized the construction of private, single family use, non-commercial piers, including normal appurtenances such as boat shelters, hoists, stairways, and walkways provided the structures not exceed a combined maximum surface area of 1,000 square feet as projected onto the navigable water surface. Permit conditions were incorporated to ensure that structures did not encroach on Federal navigation channels, did not cover oyster reefs, and only minimally impacted coastal marshes. The RGP was reissued 21 February 1985 as RGP No. 14392(01) without modifications to the original GP. The RGP was reissued on 18 December 1990 as RGP No. 14392(02) and included permit conditions to avoid and minimize existing submerged and emergent marsh habitat. In addition, no piers would be constructed over the critical habitat of endangered species. The RGP was reissued on 3 June 1994 as RGP No. (03) and included the addition of restrictions on the size of terminal structures and boat shelters in vegetated areas, the size of structures in unvegetated areas, and restrictions on the size of structures placed parallel and adjacent to existing shorelines. The RGP was reissued on 22 August 1996 as RGP No. 14392(04) and included conditions that prohibited the placement of sidewalls on boat shelters in waters greater than -4.5 feet MHW. The RGP was reissued on 18 December 2002 as RGP No. 14392(05) and included permit conditions that boat shelters over vegetated areas were no longer authorized by this GP, decks constructed parallel and directly adjacent to existing shorelines and/or bulkheads were considered terminal structures and were limited to 10 feet in width, and terminal structures and associated appurtenances such as step-downs or platforms were limited to a combined maximum of 300 square feet, excluding boat shelters. The RGP was reissued on 23 June 2006 as RGP No. 14392(06) and includes permit conditions that restrict the size of terminal structures over unvegetated bay bottom and limits depths in which terminal structures may be located.

On 21 September 2008, the Texas General Land Office entered in to a Cooperative Agreement with the Corps to administer the RGP as a Programmatic General Permit through their Asset Inspections program in the Professional Services Division for projects that meet the permit conditions and are on state-owned submerged land. Applications that meet the permit conditions that are not located on state-owned submerged lands are evaluated as a Regional General Permit by the Corps.

The GP was reissued as SWG-2002-02904 on 13 December 2011 and included recommendations from the Texas General Land Office to include: limits on widths of all walkways to 4 feet; limiting terminal structures to 160 square feet and terminal appurtenances to 50 square feet; authorizing the removal of unserviceable structure when authorizing a new structure; authorizing modifications of existing structures when the final structure will still meet the permit conditions; further conditioning the permit to notify the permittee of their liability when the structure is constructed along a federal channel; and clarifying how to identify an oyster reef.

The GP was last reissued in October 2015, which expires this December 2020. Changes included in that reissuance resulted in general conditions changed and added to avoid impacts to special aquatic sites as well as Federally listed threatened and endangered (T&E) species. Major changes, other than PCN requirements, to the GP included adding the conditions and or restrictions to the following: for a height minimum over seagrasses of 5 feet above the MHW (GC18.c.i); restrict pilings installation to avoid “donuts or halos” in and around special aquatic sites as well as placement of pilings in said areas (GC 18.c.vi); terminal structures not allowed to be constructed over mangroves (GC 18.c.ii); greater spacing requirements of decking boards over special aquatic sites (GC 18.c.viii); authorizing temporary work areas in special aquatic sites with restrictions as not disturb the soil (GC 18.c.ix); prohibiting structures authorized under this GP within 150 feet from Federally designated critical habitat (GC 12); and conservation measures and requirements from applicants prior to submitting applications under this GP if the proposed work would trigger consultation under GC 13 of the GP.

Proposed changes to the GP for this reissuance includes the following:

- 1) Extend time period for GP use starting on 1 January 2021 through 31 December 2025;
- 2) Changes in format of the GP for clarification;
- 3) Revised and added conditions to the GP pertaining to navigation for clarification; and
- 4) Minimized restrictions in submerged areas and included additional clarification on roofs and appurtenances.

A preliminary review of this application indicates that an Environmental Impact Statement (EIS) is not required. Since permit assessment is a continuing process, this preliminary determination of EIS requirement will be changed if data or information brought forth in the coordination process is of a significant nature.

OTHER AGENCY AUTHORIZATIONS:

Consistency with the State of Texas Coastal Management Plan is required. The general permit is designed to comply with Texas’ approved Coastal Management Program goals and policies and will be conducted in a manner consistent with said program.

NATIONAL REGISTER OF HISTORIC PLACES: The staff archaeologist will review the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information for each permit application submitted under this general permit on a case-by-case basis. The staff archeologist will determine, in accordance with the April 25, 2005, memorandum titled *Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR Part 800*, if the project may proceed without further archeological review or when appropriate, request additional information and coordinate those activities with the Texas State Historic Preservation Officer (SHPO).

THREATENED AND ENDANGERED SPECIES: General conditions have been added to the general permit over the several reissuances pertaining to Federally listed T&E species. These conditions have been established for this general permit to have “no effect” on those Federally listed T&E species and/or their critical habitat within the scope of those specific conditions.

For permit applications outside the scope of those general conditions, the Corps will review each application submitted under this general permit on a case-by-case basis to determine if work proposed meets the terms and conditions of this general permit. The Corps will also make the determination if work proposed under this general permit will have a “no effect” to Federally Listed T&E species and/or their critical habitat; or if such a time when project specifics require, the Corps will consult with the agencies if a “no effect” determination cannot be determined.

ESSENTIAL FISH HABITAT: This notice initiates the Essential Fish Habitat consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our determination is that the reissuance of the general permit would not have a substantial adverse impact on Essential Fish Habitat or federally managed fisheries in the Gulf of Mexico.

PUBLIC INTEREST REVIEW FACTORS: This general permit reissuance will be reviewed in accordance with 33 CFR 320-332, the Regulatory Programs of the Corps of Engineers, and other pertinent laws, regulations and executive orders. The decision whether to reissue this general permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal, will be considered: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, 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 and, in general, the needs and welfare of the people.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this general permit reissuance. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Impact Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

This public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the Corps of Engineers may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: The purpose of a public hearing is to solicit additional information to assist in the evaluation of the final agency decision. Prior to the close of the comment period, any person may make a written request for a public hearing, setting forth the particular reasons for the request. The District Engineer will determine if the reasons identified for holding a public hearing are sufficient to warrant that a public hearing be held. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before **16 October 2020**. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. **If no comments are received by that date, it will be considered that there are no objections.** Comments and requests for additional information should reference our file number, **SWG-2002-02904** and should be submitted to:

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U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229
409-766-3869 Phone
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DISTRICT ENGINEER
GALVESTON DISTRICT
CORPS OF ENGINEERS