



DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT:  
SWG-2013-00422



**PERMIT:** Mechanical Dredging within Lake Livingston, Texas

**ISSUING OFFICE:** U.S. Army Corps of Engineers, Southwest Division, Galveston District Regulatory Division (Corps)

**EFFECTIVE DATE:** January 1, 2019

**A. AUTHORIZATION:**

**Permittee:** General Public

**Geographic Location:** Within navigable waters of the US in Lake Livingston, an impoundment of the Trinity River, in Polk, San Jacinto, Walker, and Trinity Counties, Texas.

**General Permit Expiration:** This permit will expire on **December 31, 2024**. If the work authorized by a specific site approval is not started, or if it is not completed within 2 years from its approval date, the authorization, if not previously revoked or specifically extended, shall automatically expire.

**B. REGIONAL GENERAL PERMIT (RGP) APPLICABILITY:**

This RGP applies to certain activities in waters of the United States (US):

1. **RGP Regulatory Statute:** Work authorized in navigable waters of the US under this RGP are pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403; Section 10).
2. **Authorized Activity(s) Description:** This RGP authorizes the mechanical dredging of no more than 500 cubic yards of material from below the plane of the Ordinary High Water Mark (OHWM) or pool elevation within Lake Livingston to provide littoral parcel owners boating access. Dredged material shall be deposited in an area that has no waters of the US.
3. **RGP Restrictions:** This RGP **does not** authorize:
  - a. The discharge and/or placement of dredged and/or fill material into waters of the US, including wetlands;
  - b. Hydraulic Dredging;
  - c. Direct and/or indirect impacts resulting in temporary or permanent losses to mussel beds, wetlands, or streams;
  - d. Dredging above pool elevation in streams or tributaries to Lake Livingston;
  - e. Prop Washing.
4. **Single and Complete Project:** The authorized work must be part of a single and complete dredging project.

5. **Regulatory Discretion:** If the determination is made that the adverse effects of the proposed work are more than minimal, then the applicant will be notified that either:
  - a. That the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; or,
  - b. That the project is authorized under the RGP subject to the applicant's submission of an approved mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or,
  - c. That the project is authorized under the RGP with specific modifications or conditions.

<b>C. PRECONSTRUCTION NOTIFICATION (PCN):</b>
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1. All applicants shall submit a PCN to the Corps prior to initiation of work in navigable waters of the US.
2. If the application is determined to be incomplete, the applicant will be notified requesting specific information surrounding the activity. The applicant will have a 30 day period to gather and submit the requested information back to the Corps. If the requested information is not submitted in full after that 30 day period, the Corps will withdraw the permit application without prejudice for the applicant's right to reapply at a later date. However, once the application has been withdrawn, the Corps will only accept a resubmitted application if the applicant can provide all of the information previously requested.
3. The PCN shall include:
  - a. A completed and signed Department of the Army application (Form ENG 4345), or other suitable means of submittal (i.e. letter, report, etc.) that has the following information detailed:
    - i. Name (Point of Contact), Address, Telephone, email (if applicable) of the applicant and consultant (if applicable);
    - ii. Signed statement acknowledging the use of a consultant (if applicable);
    - iii. Longitude and Latitude of the proposed activity in decimal degrees;
    - iv. Description of the proposed activity, detailed description of construction methods in the order of commencement, and the purpose and need; and,
    - v. A copy of all DA authorizations previously issued for the work area.
  - b. A vicinity map, plan view, and typical cross section drawings detailing the proposed method of construction showing all impacts to waters of the US. Engineered and/or colored drawings will be accepted on a case by case basis; however, general and typical drawings will be suitable if found legible. Drawings shall include:
    - i. A vicinity map with the precise location of the activity and the upland dredged material disposal area so that its geographic coordinates (decimal degrees) can be determined;
    - ii. A top plan view of the drawing showing the property, its owner(s), length and width dimensions of all dredge areas, and their relationship to the adjacent property lines and existing structures, and the distance from the

- end of the dredge area to the centerline of a road or other fixed reference point;
- iii. Top view and cross section drawings depicting the proposed distances and depths the dredging area will extend into the water body as measured from the pool elevation line, current depth of water as measured from pool elevation, proposed depth of water as measured from pool elevation, presence or absence of vegetation on bottom, and height and length of all adjacent structures;
  - iv. Top view and cross section drawings depicting the proposed distances and depths the upland dredging material placement area will be from the nearest water body as measured from the pool elevation line, depth of water at the beginning of the terminal structure as measured from pool elevation, presence or absence of vegetation on bottom, and height and length of all structures;
  - v. The distance from dredge areas to the top edge of any navigable channel in the immediate vicinity; and,
  - vi. An aquatic resource delineation map that clearly demonstrates the locations and boundaries of any aquatic resources (i.e. wetlands, submerged aquatic vegetation, and/or other special aquatic sites defined in 40 CFR 230.3(q-1)) or mussel beds located within 50 feet of any portion of the proposed project. The size of each aquatic site (in acres or square feet) and its distance to the edge of the project boundary must be depicted on this map.
- c. A statement that the work will be conducted in compliance with the terms and conditions of this General Permit.
  - d. A statement of estimated start and completion dates.

#### **D. MITIGATION:**

1. After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the permit will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the permit verification for that activity if it meets the terms and conditions of that permit, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

#### **E. GENERAL CONDITIONS:**

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any

written verification letter from the Corps. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the permit. Any authorized work shall be properly maintained, including maintenance to ensure public safety and compliance with applicable permit conditions, as well as any activity-specific conditions added by the Corps to a permit authorization.

2. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the permit authorization.
3. **Property Transfer:** If the permittee sells the property associated with this authorization, the permittee shall make a good faith transfer of this authorization by obtaining the signature of the new owner in the space provided and forward a copy to the Corps to validate the transfer of this authorization.
4. **Stumps:** Stumps located within the footprint of the proposed dredge area shall be removed only if their presence impedes maneuvering a boat for docking. In addition, the applicant must have a receipt of permission from the TRA and a copy of that permission shall be submitted along with the PCN. All portions of stumps cut or sheared shall be removed from Lake Livingston.
5. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species. To prevent the transfer of invasive species, any vessel, watercraft, trailer, motor vehicle, or other device used to transport or launch a vessel or watercraft that has been in a waterbody other than Lake Livingston must complete the following prior to deployment in Lake Livingston to conduct work under this permit:
  - a. Remove all plants, animals, and mud and thoroughly wash everything, including crevices and other hidden areas;
  - b. Eliminate all water before leaving the area, including wells, ballast, and engine cooling water;
  - c. Allow time for your boat to completely dry before launching in other waters;
  - d. Any vessel, watercraft, trailer, motor vehicle, or other device used to transport or launch a vessel or watercraft has been in waters identified by the State of Texas as having zebra or quaggy mussels, shall be cleaned with high-pressure hot water (>140°F) before placement in Lake Livingston to conduct work under this permit; and,
  - e. Any vessel, watercraft, trailer, motor vehicle, or other device used to transport or launch a vessel or watercraft has been used in Lake Livingston and is removed for use in another water shall be cleaned with high-pressure hot water (>140°F) before placement in any other water.
6. **Cultural and Historic Resources:** The Corps will review all activities proposed under this RGP for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas Historical Commission (THC).
  - a. In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the

- requirements of Section 106 of the National Historic Preservation Act have been satisfied.
- b. If potential historic properties are located in the project area, permit specific conditions may be implemented for additional protection to avoid these resources by a sufficient margin as designated by the Corps and the THC. If avoidance of the potential historic is not feasible, further archeological investigations shall be required.
  - c. The activity shall not begin until the Corps notifies the prospective permittee that the activity has no potential to cause effects to historic properties and/or that NHPA section 106 consultation has been completed and that the activity is authorized.
7. **Unknown Historic and Archeological Remains:** If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this RGP, you must immediately cease and desist any activity on the project and notify the Galveston District Regulatory Division of what you have found. The Corps will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. No work shall continue until all required coordination has been completed and written notification by the Corps has been provided.
8. **Tribal Rights:** Any activity proposed under this RGP may cause no more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
9. **Threatened and Endangered Species:** No activity proposed under this RGP is authorized that is likely to directly or indirectly 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 will directly or indirectly destroy or adversely modify the critical habitat of such species.
- a. The Corps will review all proposed activities authorized under this RGP for Endangered Species Act requirements, and, when appropriate, coordinate these activities with the US Fish and Wildlife Service (FWS).
  - b. No activity is authorized under this RGP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed.
    - i. Direct effects are the immediate effects on listed species and critical habitat caused by the activity.
    - ii. Indirect effects are those effects on listed species and critical habitat that are caused by the activity and are later in time, but still are reasonably certain to occur.
  - c. Authorization of an activity by this RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the US to take a listed species:
    - i. "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
    - ii. "Harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or

- degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
- d. Work shall not begin on the activity until the Corps has notified the permittee that the requirements of the ESA have been satisfied and that the activity is authorized.
  - e. As a result of formal or informal consultation with the FWS, the Corps may add species specific permit conditions to the RGP authorization.
10. **Discovery of Mussels:** If mussels are found during dredging, the permittee must immediately cease work and notify the Galveston District Regulatory Division. The Corps will initiate coordination with Texas Parks and Wildlife and the FWS to determine the appropriate action to minimize impacts prior to work being finalized. Work may only resume upon approval of the District Engineer.
  11. **Migratory Bird Breeding Areas:** Activities in waters of the US that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
    - a. Work is prohibited within 1000 feet of an identified bird rookery between February 14th and September 1st.
    - b. Any work within 1,000 feet of a known wading bird or seabird rookery shall be restricted to the non-nesting period of the species comprising that rookery.
  12. **Navigation:** The permittee will not prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit. No structures or fill will be allowed to obstruct any navigation channels or impact any federal properties.
  13. **Aids to Navigation:** Unless prohibited by law, the permittee will install, display, and maintain, at the expense of the permittee, light and signals on all structures and/or work authorized herein as may be prescribed by the US Coast Guard. Aids to navigation will be permitted and placed in accordance with US Coast Guard Regulation 33 C.F.R. 66.
  14. **Future Operations by the US:** The permittee understands and agrees that, if future operations by the US require the removal, relocation, or other alteration, of the structure and/or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the US. No claim shall be made against the US on account of any such removal or alteration.
  15. **Other Authorizations:** This RGP will not be valid without all other state, local or regional authorizations required by law.
  16. **Property Rights:** This RGP does not convey any property rights, either in real estate or material, or any exclusive privileges and does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or

regulations, nor does it obviate the requirement to obtain State or local authorization required by law for the activity authorized herein.

17. **RGP Terms and Conditions:** All activities identified and authorized herein shall be consistent with the terms and conditions of this permit. Any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit.
18. **Claims against the United States:** Any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

<b>F. FURTHER INFORMATION:</b>
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1. **Limits of this Authorization:**
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.
2. **Limits of Federal Liability:** In authorizing a project under this General Permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
  - d. Design or construction deficiencies associated with the permitted work.
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
3. **Reliance on Applicant's Data:** The determination of this office to authorize the activity under this RGP as not contrary to the public interest will be made in reliance on the information provided by the applicant.
4. **Re-evaluation of Permit Decision:** This office may re-evaluate its decision to authorize an activity under this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. The applicant fails to comply with the terms and conditions of this permit.
  - b. The information provided by the applicant to support their permit application proves to have been false, incomplete, or inaccurate.
  - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
  - d. Significant new information surfaces which this office did not consider in reaching the original decision. Such a re-evaluation may result in a

determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office; and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

5. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with this RGP authorization, the permittee may transfer the authorization to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the permit authorization must be attached to the letter, and the letter must contain the following statement and signature:

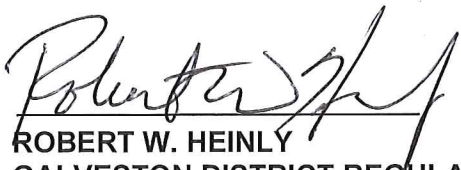
"When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

This RGP becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE GALVESTON DISTRICT ENGINEER:



**ROBERT W. HEINLY**  
**GALVESTON DISTRICT REGULATORY DIVISION**  
**DIVISION CHIEF**  
**FOR COLONEL TIMOTHY VAIL**

\_\_\_\_\_  
DATE

9/18/19