

## DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT

**Permittee** Texas General Land Office

**General Permit Number** SWG-2010-00605

**Issuing Office** U.S. Army Corps of Engineers, Galveston District (Corps)

**Project Description:** This General Permit (GP) authorizes the Texas General Land Office (GLO) to conduct work, and temporarily excavate and place dredged and/or fill materials for the purpose of removing debris that presents a physical hazard, derelict vessels, derelict structures, and abandoned pipelines from Waters of the United States.

**Project Location:** The GP is limited to waters of the United States under the authority of the GLO, including state owned submerged land and waters of the state of Texas.

### **Permit Conditions:**

1. The time limit for completing the work authorized herein ends on **May 12, 2022** or if the Department of the Army authorization is within two years of the expiration of this General Permit, **within 2 years of the Department of the Army approval.**
2. This GP only applies to projects managed, performed, and contracted by the Texas General Land Office (GLO) for the removal of debris that presents a physical hazard, derelict structures, or derelict vessels.
3. This GP does not authorize any permanent excavation or dredging in waters of the United States.
4. This GP does not authorize any permanent discharge of dredged or fill material into waters of the United States.
5. This GP authorizes temporary excavation necessary to expose debris that presents a physical hazard, derelict structures, or derelict vessels for removal. Material excavated to expose debris that presents a physical hazard, derelict structures, or derelict vessels will be replaced, and the original pre-construction elevation counters restored as closely as possible. This GP does not authorize permanent dredging or the creation of access channels.
6. GLO will submit notification to the District Engineer (DE) for all projects authorized by this permit and, with the exception of emergency removals, no work shall be performed until GLO has received written authorization by the DE or if 45 calendar days have passed from the DE's receipt of the complete notification.

Notification will be in accordance with the Special Conditions and General Conditions of this permit. GLO will submit notification as follows. The notification shall include:

- a. A completed and signed Department of the Army (DA) application (ENG Form 4345) or a letter containing the required information may also be used, stating the number of the Regional General Permit under which the work is to be conducted.
  - b. A copy of DA authorizations previously issued for the removal site if available.
  - c. A statement that the work will be conducted in compliance with the terms and conditions of this GP.
  - d. A statement of estimated start and completion dates.
  - e. For projects proposing to discharge dredged material, a comprehensive analysis of all existing and readily available physical, chemical, and biological monitoring data and testing for both the dredged material excavation site and the proposed disposal site shall be provided.
  - f. A vicinity map, typical plan view, typical cross-section, and a description of the proposed removal method. Drawings shall include:
    - i. A vicinity map with the precise location of the project so that its geographic coordinates can be determined. This map shall also include all ingress and egress routes and staging locations.
    - ii. A plan view drawing showing each the property, its owner(s), specific project location, and showing the areas to be temporarily excavated or filled, and their relative location to the waters of United States, including a delineation of special aquatic sites if applicable.
    - iii. A cross-section drawing showing the areas to be excavated and/or filled, the cubic yards of material to be removed and/or added, method of removal, plans for restoration, access route to the project, and any other relevant information and data required in the Special Conditions.
7. The GLO shall notify the Corps, in writing, of the date that the work authorized herein commences.
8. The GLO must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Permit Condition 9 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
9. When structures, work or fill authorized by this permit are still in existence at the time they are transferred to new ownership, the GLO must obtain and submit to the Corps a signed statement from the new owner(s) stating that they agree that the terms and conditions of this permit will continue to be binding on the new owner(s).
10. No structure or fill that may affect historic properties listed or eligible for listing in the National Register of Historic Places is authorized until the Corps and applicant has complied with the provisions of Section 106 of the National Historic Preservation Act.

- a. The Corps will review all proposed activities for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas Historical Commission (THC). If potential historic properties are located in the project area, they shall be avoided by a sufficient margin as designated by the Corps and the THC. If avoidance of the potential historic properties is not feasible, further archeological investigations shall be required.
  - b. If any previously unknown historic or archeological remains are located while accomplishing the activity authorized by this permit, you must immediately cease and desist and notify this office of what you have found. We 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.
11. For the project to satisfy the Texas Commission on Environmental Quality's (TCEQ) water quality certification requirements, the Applicant shall agree to use the Best Management Practices (BMPs) for Tier 1 projects and shall submit a signed statement that the applicable BMPs will be used. If an applicant fails to implement these provisions and BMPs, the permit is subject to enforcement. Applications that do not incorporate all the provisions of the checklist into their project or use other alternatives are not authorized under this GP. Descriptions of the BMPs may be obtained from the U.S. Army Corps of Engineers, Galveston District, web site at: <http://www.swg.usace.army.mil/reg/> or the TCEQ web site at [http://www.tceq.state.tx.us/pennitting/water\\_quality/w~assessment/401certification/401certification\\_tier1.html](http://www.tceq.state.tx.us/pennitting/water_quality/w~assessment/401certification/401certification_tier1.html), or by calling TCEQ at 512-239-5366.
12. Work conducted within 1000 feet of an identified bird rookery between February 14<sup>th</sup> and September 1<sup>st</sup> will be coordinated with the appropriate U.S. Fish and Wildlife Service Ecological Field Office and Texas Parks and Wildlife Department Offices prior to authorization to minimize impacts. The application will not be complete until this coordination is concluded.
13. No structure or fill will be authorized that is likely to jeopardize the continued existence of a threatened or endangered species or which is likely to destroy or adversely modify critical habitat of such species as identified under the federal Endangered Species Act. Work located in Federally listed or proposed threatened or endangered species habitat and/or critical habitat will comply with the following requirements:
  - a. Any work on gulf beaches conducted between March 15 and October 1 will be coordinated with the appropriate U.S. Fish and Wildlife Service Ecological Field Office or the National Marine Fisheries Service, as appropriate, prior to authorization to minimize impacts during the peak of sea turtle nesting activity. The application will not be complete until this coordination is concluded.
  - b. Any work in wintering whooping crane habitat in San Patricio, Refugio, Aransas, Calhoun and Matagorda Counties conducted between October 15 and April 15 will be coordinated with the appropriate U.S. Fish and Wildlife Service Ecological Field Office prior to authorization to minimize impacts during the peak of winter whooping crane activity. The application will not be complete until this coordination is concluded.
  - c. Any work on designated piping plover critical habitat will be coordinated with the appropriate U.S. Fish and Wildlife Service Ecological Field Office prior to authorization to minimize impacts. The application will not be complete until this coordination is concluded.
  - d. In order to maintain compliance with the Endangered Species Act, there will be an independent qualified environmental monitor on site during all removal activities in

identified threatened and endangered species habitat and/or critical habitat. The monitor will serve as the single point of contact for endangered or threatened species requirements. The monitor will conduct a daily visual inspection of the work site prior to any work commencing to ensure there has been no recent turtle nesting activity or piping plovers on site. If the monitor observes a piping plover, sea turtle, whooping crane or other threatened or endangered species, work will stop immediately. Contractors will be informed that there may be piping plovers, sea turtles, whooping crane or other threatened or endangered species at the site, and the contract prohibits work when these species are present.

- e. Wintering piping plovers are especially vulnerable during cold temperatures (below 40 degrees F), high winds (above 15-20 MPH), and precipitation. No work authorized by this GP may be performed in piping plover habitat when the temperature is or predicted by the National Weather Service to fall below 40 degrees F.
- f. Prior to authorizing work and/or a discharge which may affect any listed species not previously mentioned or its critical habitat, the DE may consult or confer with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. The application will not be complete until this consultation is concluded.

14. Work located within a special aquatic site, as defined in 40 CFR Part 230, will comply with the following requirements:

- a. Special Aquatic sites shall be avoided to the greatest extent practicable. The GLO shall submit a delineation of all special aquatic sites within the project area both before and within 60 days after removal of debris that presents a physical hazard, derelict structures, or derelict vessels.
- b. If the DE determines that special aquatic sites cannot be avoided, this GP authorizes the temporary placement of wooden mats into special aquatic sites for the purpose of minimizing impacts associated with the removal of debris that presents a physical hazard, derelict structures, or derelict vessels. Wooden mats shall only be authorized when removal by water, by hand, or with low ground pressure vehicles is not possible. Any permanent change in elevation greater than 6 inches resulting from the use of wooden mats must be restored to pre-project conditions using suitable material, and be replanted if the site does not re-vegetate naturally with native, non-invasive species within 2 years. A monitoring report, in accordance with Regulatory Guidance Letter 08-03 will be submitted to the DE by the second anniversary of completion of the removal of debris that presents a physical hazard, derelict structures, or derelict vessels.
- c. If the DE determines that the adverse effects of the proposed work are more than minimal, then the DE will notify the applicant either: (1) That the project does not qualify for authorization under the GP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the GP subject to the applicant's submission of a DE approved compensatory mitigation and monitoring plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the GP with specific modifications or additional special conditions.

15. Prop/wheel washing is not authorized by this general permit.
16. 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: (1) That the project does not qualify for authorization under the GP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the GP 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 (3) that the project is authorized under the GP with specific modifications or conditions.
17. The Applicant must allow representatives from the appropriate Corps office to inspect the authorized activity to ensure that it is, or has been, accomplished in accordance with the terms and conditions of the permit.
18. The DE will coordinate with state and federal agencies, through 15-day interagency coordination notice, if proposed locations are in: 1) special aquatic site, as defined in 40 CFR Part 230; 2) designated Superfund Sites (P.L. 96-510). The application will not be complete until this coordination is concluded.
19. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure 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 United States. No claim shall be made against the United States on account of any such removal or alteration.
20. When structures or work authorized by this permit are determined by the District Engineer to have become abandoned, or obstructive to navigation, or cease to be used for the purpose for which they were permitted, such structures or other work must be removed and the area cleared of all obstructions, and written notice given to the Chief of Compliance, Galveston District Regulatory Branch within 30 calendar days of completion.
21. Aids to navigation will be permitted and placed in accordance with United States Coast Guard Regulation 33 C.F.R. 66.
22. Emergency removal activities are limited to those activities necessary for the removal of those debris, derelict structures, or derelict vessels that pose an imminent threat to human health and safety, or the environment. Removal activities that require temporary fill must be restored to the contours that existed prior to the removal. Excavation is limited to the amount necessary to remove hazardous derelict structures, debris, or derelict vessels, and the bottom contour restored to the surrounding elevation. The GLO will submit notification of the work to the DE, including all information required in Special Condition 6, within 45 days of commencement of the emergency work.
23. Any dredged or excavated material not used during the project shall be deposited and confined in an upland area such that sediment will not re-enter the water or wetlands and shall not interfere with natural drainage.

24. Ingress/egress routes and staging sites used to access debris that presents a physical hazard, derelict structures, or derelict vessel removal sites will avoid any areas, as determined by the DE, in which plant or animal life or their habitats are either rare or especially valuable, and will utilize the minimum tree and vegetation removal necessary for all other sites.
25. Temporary structures, work, and discharges, including but not limited to cofferdams, linear transportation crossings, utilities, low-water crossings, and portable spans necessary for construction activities and access or dewatering of construction sites are authorized provided that the associated primary removal activity is authorized under this permit and provided the following criteria are met:
  - a. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.
  - b. Fill must consist of suitable materials placed in a manner that are not expected to be eroded by expected high flows.
  - c. Following completion of construction, all temporary structures, fill, or discharges shall be removed and the site returned to pre-construction elevation contours.
  - d. Cofferdams cannot be used to dewater jurisdictional wetlands to change their use.

Further Information:

I. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. Authorization under this General Permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. Authorization under this General Permit does not grant any property rights or exclusive privileges.
- c. Authorization under this General Permit does not authorize any injury to the property or rights of others.
- d. Authorization under this General Permit does not authorize interference with any existing or proposed Federal project.

3. 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.

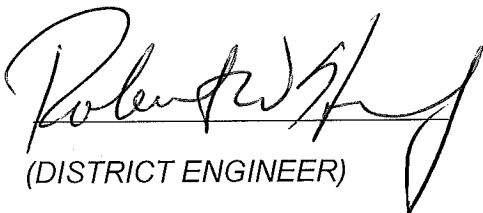
4. Reliance on Applicant's Data: The determination of this office to authorize the activity under this General Permit as not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. Reevaluation of Permit Decision. This office may reevaluate its decision to authorize an activity under this General Permit 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 (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contain 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 applicant to comply with the terms and conditions of their authorization under this General Permit and for the initiation of legal action where appropriate. The applicant will be required to pay for any corrective measures ordered by this office, and if they fail 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 you the applicant for the cost.

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



(DISTRICT ENGINEER)

**ROBERT W. HEINLY, CHIEF  
POLICY ANALYSIS BRANCH  
FOR COLONEL LARS N. ZETTERSTROM**

5/11/17  
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(DATE)