

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER No. R2-2018-0009

**GENERAL WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY
CERTIFICATION for:**

**CONSTRUCTION AND MAINTENANCE OF OVERWATER STRUCTURES
SAN FRANCISCO BAY**

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds that:

1. The Regional Water Board regulates the construction and maintenance of overwater structures in San Francisco Bay, as well as associated bank and shoreline stabilization projects, because these activities discharge or have the potential to discharge sediment and other wastes into waters of the State. The Regional Water Board issues up to 20 Clean Water Act (CWA) section 401 water quality certifications/WDRs annually for the construction and maintenance of overwater structures. This general order will streamline the CWA section 401 permitting process for projects below certain size limits that are not expected to have significant water quality impacts and will reduce the number of individual water quality certifications issued by the Regional Water Board.
2. Section 13260(a) of the California Water Code (Water Code) requires any person discharging waste or proposing to discharge waste where it could affect the quality of the waters of the State to file a report of waste discharge. The activities regulated under this Order constitute a discharge of waste that could affect the quality of waters of the State. Every person (Permittee) proposing such an activity shall file a report of waste discharge (Application) with the Regional Water Board.
3. CWA section 401 (33 U.S.C. § 1341) requires Permittees to obtain “water quality certification” from the State of California that the project will comply with State water quality standards before the U.S. Army Corps of Engineers (Corps) may issue a Clean Water Act section 404 dredge and fill permit or a Rivers and Harbor Act section 10 permit for structures affecting navigable waters. (33 USC §§ 401-413; 1251 *et seq.*).
4. Water Code section 13263(a) requires that waste discharge requirements (WDRs) be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of Water Code section 13241.
5. Water Code section 13263(i) authorizes the Regional Water Board to prescribe general WDRs for a category of discharges if the discharges are produced by the same or similar operations; the discharges involve the same or similar types of waste; the discharges require the same or similar treatment standards; and the discharges are more appropriately regulated under general discharge requirements than individual discharge requirements. Here, general WDRs are warranted because construction and maintenance of similarly-sized overwater structures generate similar types and amounts of wastes and are subject to similar treatment standards. General WDRs will simplify the application and oversight management process.

Program Description, Impacts, and Mitigation

6. This Order applies to the construction and maintenance of certain overwater structures in San Francisco Bay, including intertidal, tidal, and subtidal habitats from the Golden Gate to the Region's boundary near Pittsburg, within the jurisdiction of the Regional Water Board. The Order applies to the following Bay segments: Sacramento and San Joaquin Delta, Suisun Bay, Carquinez Strait, San Pablo Bay, Richardson Bay, Central Bay, Lower Bay, and South Bay.
7. This Order refers to Project proponents authorized for coverage under the Order as Permittees.
8. "Overwater structure" is an umbrella term encompassing a number of types of buildings, structures, and apparatuses built in or over water, generally for purposes of facilitating vessel mooring, loading, or navigation. Common overwater structures include piers, docks,¹ wharves,² marinas,³ floats, and buoys.
9. The Order covers activities associated with construction or maintenance, including upgrades, retrofit, expansion, demolition, and reconfiguration of piers and docks (including associated ramps and floating docks) where the Permittee owns or operates a facility of less than 10,000 square feet (sq. ft.) of overwater coverage, including any expanded areas. This includes pile removal, replacement, and installation. The General WDRs do not cover such activities by owners or operators of piers and docks greater than 10,000 sq. ft.
10. The Order covers activities associated with upgrade, retrofit, expansion, demolition, and reconfiguration and new construction of wharves and marinas where the Permittee owns or operates a facility of less than 50,000 sq. ft. of overwater coverage. This includes pile removal, replacement, and installation. The General WDRs do not cover such activities by owners or operators of wharves and marinas greater than 50,000 sq. ft.
11. The Order covers bank and shoreline stabilization activities associated with the construction, maintenance, demolition, and reconfiguration of an associated overwater structure. Bank stabilization activities covered by the Order are limited to 500 linear feet of shoreline for repair of existing structures, 200 linear feet for new structures, and 1,000 sq. ft. in area. Bank stabilization or breakwater projects not connected to the construction, maintenance, or demolition of an overwater structure are not covered by this Order.
12. The Order covers the placement and replacement of temporary and permanent floats and buoys, when that replacement is part of the construction and maintenance of overwater structures.
13. Most of the shoreline covered by this Order is highly urbanized. Most of the projects authorized by this Order are expected to take place in areas where overwater structures have been historically present.
14. The Order requires the potential impacts of construction, maintenance and demolition activities to be avoided, minimized, and mitigated in accordance with mitigation and monitoring plans. Unavoidable temporary and permanent impacts to beneficial uses are required to be offset with

¹ "Pier" and "dock" are used interchangeably for purposes of this order to mean a structure, often wooden, used for the loading or unloading of materials or as a moorage for boats.

² A "wharf" has a very similar definition to "pier" and "dock," in that it is also "a structure built along or at an angle from the shore of navigable waters so that ships may lie alongside to receive and discharge cargo and passengers."

³ A "marina" for the purposes of this order refers "a basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities."

appropriate compensatory mitigation, including creation, restoration, and enhancement of waters of the State.

15. This Order is effective only if the Permittee proposing such an activity pays all fees required under Title 23, California Code of Regulations (23 CCR).

Regulatory Framework

16. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), the Office of Administrative Law, and U.S. EPA, where required.
17. The Basin Plan lists the following existing and potential beneficial uses for surface waters in San Francisco Bay:
 - (a) Ocean, Commercial, and Sport Fishing (COMM);
 - (b) Estuarine Habitat (EST);
 - (c) Industrial Service Supply (IND);
 - (d) Fish Migration (MIGR);
 - (e) Navigation (NAV);
 - (f) Industrial Process Supply (PROC);
 - (g) Preservation of Rare and Endangered Species (RARE);
 - (h) Water Contact Recreation (REC-1);
 - (i) Non-water Contact Recreation (REC-2);
 - (j) Shellfish Harvesting (SHELL);
 - (k) Fish Spawning (SPWN); and
 - (l) Wildlife Habitat (WILD).
18. State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" (Antidegradation Policy), states that discharges to existing high quality waters will be required to meet WDRs that will result in the best practicable treatment or control of the discharge necessary to assure that (a) a condition of pollution or nuisance will not occur, and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained. These General WDRs are consistent with Resolution No. 68-16 because implementation of the proposed activities as mitigated is not expected to adversely affect existing or potential beneficial uses of the waters of the State, and existing water quality will be maintained or improved. Any impacts to beneficial uses that do occur must be offset by mitigation.
19. Pursuant to 23 CCR sections 3857 and 3859, the Regional Water Board is issuing General WDRs for the construction and maintenance of overwater structures, including associated bank stabilization projects, in San Francisco Bay. Water Code section 13260(d)(1) requires that the Permittees for whom WDRs have been prescribed pursuant to section 13263 submit a fee according to a reasonable schedule. The fee shall be in accordance with the current fee schedule, per 23 CCR, Division 3, Chapter 9, Waste Discharge Reports and Requirements Article 1 Fees, section 2200(a)(2).
20. The following California- and federally-listed species and designated critical habitat are present at the project location:

- (a) Delta smelt (*Hypomesus transpacificus*);
 - (b) Longfin smelt (*Spirinchus thaleichthys*);
 - (c) Green sturgeon (*Acipenser medirostris*);
 - (d) Steelhead trout, central California coast evolutionarily significant unit (ESU) (*Oncorhynchus mykiss*);
 - (e) Steelhead trout, California central valley ESU (*Oncorhynchus mykiss*); and
 - (f) Chinook salmon, Central Valley (Sacramento) spring-run (*Oncorhynchus tshawytscha*).
21. The following Federal Fisheries Management Plans (FMP) are applicable at the project location: the *Pacific Groundfish FMP*, the *Coastal Pelagic FMP*, and the *Pacific Coast Salmon FMP*.
 22. On October 11, 2011, the National Marine Fisheries Services (NMFS) issued an Essential Fish Habitat Consultation (2011 NMFS Consultation) (Attachment A) for the construction and maintenance of overwater structures in San Francisco Bay. The purpose of the Consultation is to expedite the formal federal section 7 consultation process for such projects. The Consultation analyzes the potential adverse effects to federally-listed species resulting from all anticipated construction and maintenance of overwater structures in the San Francisco Bay Area.
 23. In October 2014, NMFS issued the California Eelgrass Mitigation Policy and Implementation Guidelines (Eelgrass Guidelines) (Attachment B). The purpose of the Eelgrass Guidelines is to implement NMFS' policy of no net loss of eelgrass habitat function in California.
 24. Filling of waters of the U.S. and State may cause partial or complete loss of the beneficial uses provided by those waters. This Order requires Permittees to complete and implement mitigation and monitoring plans to ensure that impacts are mitigated through avoidance and minimization and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation, including creation, restoration, or (in exceptional cases) preservation of other waters of the State, or a combination thereof. These mitigation requirements are consistent with those adopted by U.S. EPA and the Army Corps for regulation of dredged or fill discharges to federal waters under CWA section 404.
 25. Title to all abandoned archaeological sites and historic or cultural resources on or in the submerged lands of California is vested in the State and under the jurisdiction of the California State Lands Commission (Pub. Resources Code, § 6313).
 26. Projects authorized by this Order may still require authorizations from other local, State, or federal agencies.
 27. Potential dischargers and all other known interested parties have been notified of the intent to adopt these General WDRs.
 28. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

California Environmental Quality Act

29. The Regional Water Board is the lead agency for these General WDRs (Project) under the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 *et seq.*). The Regional Water Board prepared and circulated an Initial Study/Mitigated Negative Declaration (IS/MND) for the Project for public review. The Regional Water Board adopted the IS/MND as Resolution No. R2-2018-XXXX finding that the IS/MND reflects the independent judgment and analysis of the Regional Water Board and that there is no substantial evidence that

these General WDRs will have a significant effect on the environment with implementation of mitigation measures identified in the IS/MND and required by this Order (Cal. Code Regs., tit. 14, § 15074). The Regional Water Board further finds that the mitigation measures identified in the Mitigated Negative Declaration to keep impacts to less-than-significant levels, as well as a program for monitoring and reporting on such mitigation measures, are required as conditions of these General WDRs. The Regional Water Board's decision is based on the record as a whole for the Project, which is available at the Regional Water Board's offices.

30. This Order authorizes the permitting of the construction and maintenance of overwater structures, such as piers and docks, wharves and marinas, mooring, floats and buoys, and associated bank stabilization projects subject to the limits set forth in this Order. The Order is designed to enhance the protection of surface water resources.
31. The Regional Water Board has satisfied its obligation to address tribal cultural resources under AB 52. The notification and consultation provisions of AB 52 were triggered and completed, and no comments were received on the Project.

Public Notice

32. The Regional Water Board has reviewed the contents of this Order and all evidence concerning this matter, written public comments, and testimony provided at the public hearing on February 14, 2018, in Oakland, California, and hereby finds that the adoption of this Order is consistent with the Basin Plan and is in the public interest.
33. The Regional Water Board has publicly notified interested agencies and persons of its intent to issue this Order for discharges of wastes from the construction and maintenance of overwater structures, has provided them with an opportunity for a public meeting and an opportunity to submit comments, and has considered all comments and testimony on the Order.

IT IS HEREBY ORDERED that the Permittees under this Order shall comply with the following. The Regional Water Board certifies that the overwater activities described herein comply with CWA sections 301, 302, 303, 306, and 307 and with applicable provisions of State law, provided that the Permittees comply with the following:

A. Discharge Prohibitions

1. The direct or indirect discharge of wastes, as defined in Water Code section 13050(d), within or outside of an active project site, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.
2. Maintenance activities subject to these requirements shall not cause a condition of pollution or nuisance as defined in Water Code section 13050 (l) and (m), respectively.
3. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
4. Existing creosote piles in the project area shall be completely removed or cut/broken at least three feet below the mud-line and disposed at appropriate upland disposal sites. No new creosote piles shall be installed. Any chemically-treated wood material (e.g., pilings, decking) shall comply with the 2011 NMFS Consultation.

5. Construction and maintenance activities shall not occur within tidal marshes.

B. Discharge Specifications

1. Effective erosion and sediment control best management practices (BMPs) shall be undertaken and maintained to prevent discharge of sediment to waters of the State.
2. Excavated material shall be fully contained to prevent any transport by wind, surface runoff, or other means into waters of the State.
3. All staging must occur on adjacent access roads or previously-disturbed areas.
4. For construction and maintenance of overwater structures within 150 feet of mapped eelgrass beds, Permittees must perform pre-construction eelgrass surveys of the project area during the active growth period for eelgrass in San Francisco Bay.
5. The discharge of any hazardous, designated or non-hazardous waste as defined in 27 CCR, Division 2, Subdivision 1, Chapter 2 must be conducted in accordance with applicable State and federal regulations.
6. The Permittees shall clean up, remove, and relocate any wastes discharged in violation of the General WDRs/Certification.
7. Projects that include placing rock rip-rap or other hardscape materials for bank protection may be allowed, where those materials are replacing existing rip-rap or other hardscape materials. Gabions, concrete mats, tires, and rubble are prohibited.
8. In accordance with Water Code section 13260, the Permittees shall file with the Regional Water Board a report of any material change in the character, location, or quantity of this waste discharge that is beyond the scope of this Order. Any proposed material change in the discharge requires approval by the Regional Water Board after a hearing under Water Code section 13263.
9. No later than within 24 hours of occurrence of an adverse condition, the Permittees shall notify Regional Water Board staff by telephone or e-mail. An adverse condition includes, but is not limited to, a violation or threatened violation of the conditions of this Order, spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance. A written notification of the adverse condition shall be submitted to the Regional Water Board within five days of occurrence of an adverse condition. The written notification shall identify the adverse condition, describe the actions taken or necessary to remedy the condition, and if applicable, specify a timetable for the remedial actions that follow any initial response to the adverse condition and any further reporting of the effectiveness of the remedy for the adverse condition.

C. Receiving Water Limitations

1. Construction and maintenance of overwater structures shall not cause the following conditions to exist in waters of the State at any place:
 - a. Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.
 - b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

- c. Waters shall not contain bio-stimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect beneficial uses.
 - d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.
 - e. There shall be no alteration of temperature beyond present natural background levels.
 - f. *Dissolved Oxygen:*
For all tidal waters, the following objectives shall apply:
 - Downstream of Carquinez Bridge 5.0 mg/l minimum
 - Upstream of Carquinez Bridge 7.0 mg/l minimum
 - g. *pH:*
The pH shall not be depressed below 6.5 nor raised above 8.5. Controllable water quality factors shall not cause changes greater than 0.5 units in normal ambient pH levels.
 - h. *Turbidity:*
Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
2. Activities shall not cause a violation of any particular water quality standard for receiving waters adopted by the Regional Water Board or the State Water Board as required by the CWA and regulations adopted there under. If more stringent applicable water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board will revise and modify this Order in accordance with more stringent standards.

D. Provisions

Overwater Activities

1. Construction and maintenance activities shall incorporate effective BMPs to ensure that no debris, cement, concrete, or washings thereof, or other construction-related materials or wastes, petroleum products, or other organic or earthen materials shall be allowed to enter into or be placed where it may discharge to waters of the State.
2. All staging shall occur on adjacent access roads or previously-disturbed areas. Soil and riprap shall be staged in areas that have been previously disturbed (e.g., service roads and turnouts). Alternative staging options shall be submitted with the NOI to the Regional Water Board and may not be implemented until approved by the Regional Water Board Executive Officer.
3. The discharge of any hazardous, designated or non-hazardous waste as defined in 27 CCR, Division 2, Subdivision 1, Chapter 2 shall be conducted in accordance with applicable State and federal regulations.
4. The Permittees shall clean up, remove, and relocate any wastes that are discharged in violation of this Order.

Avoidance, Mitigation, and Monitoring

1. If the proposed project is within 150 feet of a mapped eelgrass bed,⁴ then prior to construction, the Permittees shall perform an eelgrass survey of the project area during the months of May through September (i.e., the active growth period for eelgrass in San Francisco Bay). All eelgrass surveys shall be performed in accordance with the latest version of NMFS' California Eelgrass Mitigation Policy and Implementing Guidelines.⁵ The survey is valid for either 60 days from the survey date or until the next active growth period if construction occurs after the end of the active growth period.
2. If the results of the pre-construction survey indicate that the proposed project is located within an eelgrass bed, the Permittees shall modify the project to avoid placing any portion of the overwater structure in or over eelgrass unless the Permittees submit an assessment of alternatives that demonstrates that it is infeasible to avoid placing the structure in or over eelgrass.
3. If it is infeasible to avoid placing the structure in or over eelgrass, the Permittees shall design the project to minimize impacts to eelgrass beds to the maximum extent feasible. At a minimum, decking materials above eelgrass shall be comprised of slotted materials or spaced to provide a minimum 40 percent transparency, thereby minimizing impacts from shading of eelgrass by allowing light penetration below the structure.
4. If it is not feasible to avoid placement of the structure in or over eelgrass, the Permittees shall submit to the Regional Water Board a mitigation and monitoring plan (MMP) that shall be implemented to compensate for unavoidable impacts to eelgrass. Construction of the proposed project shall not commence until the Executive Officer provides written approval of the MMP.
5. To compensate for any remaining unavoidable impacts to eelgrass beds, the Permittees shall prepare an MMP that includes:
 - a. A post-construction eelgrass survey and assessment of impacts, which shall be completed in the same month as the preconstruction survey during the next growing season immediately following the completion of the project, or within the first 30 days of completion of construction if within the active growth period. The post-construction survey shall document adverse impacts to eelgrass and any changes in density and extent of vegetative cover. The post-construction survey and impact assessment shall be conducted in compliance with all recommendations of Section II.D., "Assessing Impacts to Eelgrass Habitat," of the California Eelgrass Mitigation Policy and Implementing Guidelines prepared by NMFS West Coast Region, dated October 2014.
 - b. The affected area shall be monitored for a period of no less than 2 years following construction.
 - c. Eelgrass beds shall reach a minimum recovery of 100 percent aerial coverage and 85 percent density compared to preconstruction levels.

⁴ Maps of eelgrass beds in the San Francisco Bay are available on the Department of Fish and Wildlife's MarineBIOS website at http://www.westcoast.fisheries.noaa.gov/habitat/habitat_types/seagrass_info/california_eelgrass.html. To access the eelgrass layers, click on the habitat drop down menu of the layers tab.

⁵ NOAA Fisheries. October 2014. *California Eelgrass Mitigation Policy and Implementing Guidelines*. Available on-line at http://www.westcoast.fisheries.noaa.gov/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf.

- d. If the affected eelgrass mitigation areas have not met the recovery criteria described above at the end of the 2-year monitoring period, additional mitigation will be required at a minimum mitigation ratio of areal coverage of 1.2:1.

The MMP shall be prepared by a qualified biologist with experience in surveying, monitoring, and implementing eelgrass mitigation plans.

6. To compensate for impacts not related to eelgrass impacts, the Permittee shall propose mitigation commensurate with the impacts.
7. The purpose of the required monitoring is to evaluate the success or failure of avoidance, minimization, and compensatory mitigation for eelgrass impacts. The level of detail of the MMP and associated reporting shall be commensurate with the scope and size of the restoration.
8. New anchored moorings and persistently moored vessels shall be placed in areas in which submerged aquatic vegetation habitat is ordinarily absent.
9. Persistently moored vessels shall be placed in waters deep enough so that the bottom of the vessel remains a minimum of 18 inches off the substrate during extreme low tide events to prevent adverse grounding impacts to benthic habitat.
10. Piles shall be removed with a vibratory hammer whenever practicable.
11. Piles shall be installed during low tide periods using a vibratory hammer, unless the Permittee demonstrates that it is infeasible.
12. Impact hammer use with wood piles shall be limited to projects using only one hammer, and no more than 20 piles shall be installed per day.
13. Impact hammer use with concrete piles shall be limited to piles less than 18 inches in diameter, and no more than 20 piles shall be installed per day.
14. Impact hammer use with steel piles shall be limited to piles less than 12 inches in diameter, and the hammer must be 3000 pounds or smaller and must use a wood or nylon (plastic) cushion block between hammer and pile. Projects shall be limited to using only one hammer, and no more than 20 piles shall be installed per day.
15. In-water construction periods shall be restricted to environmental work windows protective of aquatic species (June 1 – November 30).
16. Project activities within 700 feet of tidal marsh or suitable Ridgway's Rail (formerly California Clapper Rail) or California Black Rail habitat are prohibited during rail breeding season (January 15 – August 31 for Ridgway's Rail, February 1 – August 31 for California Black Rail).
17. No project activities shall occur within 50 feet of suitable Ridgway's Rail or California Black Rail habitat during extreme high tide events or when adjacent tidal marsh is flooded. Extreme high tides events are defined as a tide forecast of 6.5 feet or higher measured at the Golden Gate Bridge and adjusted to the timing of local high tides.

Application Requirements

18. The Order covers activities associated with construction or maintenance, including upgrades, retrofit, expansion, demolition, and reconfiguration of piers and docks (including associated ramps and floating docks) where the Permittee owns or operates a facility of less than 10,000 sq. ft. of overwater coverage, including any expanded areas. This includes pile removal, replacement, and

installation. The General WDRs do not cover such activities by owners or operators of piers and docks greater than 10,000 sq. ft.

19. This Order covers activities associated with upgrade, retrofit, expansion, demolition, and reconfiguration and new construction of wharves and marinas where the Permittee owns or operates a facility of less than 50,000 sq. ft. of overwater coverage. This includes pile removal, replacement, and installation. The General WDRs do not cover such activities by owners or operators of wharves and marinas greater than 50,000 sq. ft.
20. This Order covers bank and shoreline stabilization activities associated with the construction, maintenance, demolition, and reconfiguration of an associated overwater structure. Bank stabilization activities covered by the Order are limited to 500 linear feet of shoreline for repair of existing structures, 200 linear feet for new structures, and 1,000 sq. ft. in area. Bank stabilization or breakwater projects not connected to the construction, maintenance, or demolition of an overwater structure are not covered by this Order.
21. This Order covers the placement and replacement of temporary and permanent floats and buoys, when that replacement is part of the construction and maintenance of overwater structures.
22. Permittees shall submit to the Regional Water Board a project plan along with a completed Notice of Intent to Comply with the Terms of the WDRs/WQC Form (NOI) (Attachment C), which will serve as a report of waste discharge, indicating the intent to discharge in compliance with the terms and conditions of this Order.
23. The NOI must be signed by the Permittee or the Permittee's authorized agent. The NOI must include a statement that the submitted information is complete and describe why the project is water dependent. Pre-project photographs shall also be included with a descriptive title, date taken, photographic site, and photographic orientation.
24. The NOI shall indicate whether the project area contains eelgrass beds and the result of any pre-construction eelgrass survey(s).
25. The NOI shall indicate whether Ridgway's Rail or California Black Rail are present, if work is proposed within their breeding season.
26. The NOI shall include an alternative analysis consistent with the specifications of U.S. EPA's Clean Water Act Section 404(b)(1) Guidelines (Alternatives Analysis) demonstrating that the Permittee will sequentially avoid and minimize any adverse impacts to waters of the State and U.S. resulting from the project to the maximum extent practicable, The thoroughness of the alternatives analysis shall be commensurate with the purpose of the discharge, the value and sensitivity of the receiving water(s), and the extent, severity, and duration of the effect on the quality of waters. The Alternatives Analysis shall demonstrate the following:
 - a. Avoidance - No discharge shall be permitted if there is a practicable alternative⁶ to the proposed discharge, which would have less adverse impact to the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences.

⁶ An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the Permittees which could reasonably be obtained, utilized, expanded, or managed in order to fulfil the basic purpose of the proposed activity may be considered (this definition is the same as presented in federal regulations at section 230.10(a)(2) of Title 33 of the CFR).

- b. Minimization – Unavoidable temporary impacts shall be mitigated by restoring waterbodies and vegetation to pre-discharge conditions as quickly as practicable and by taking other practicable measures to reduce the severity and duration of such impacts.
27. If the Alternatives Analysis demonstrates that it is not practicable to avoid all adverse impacts to waters of the State and U.S., the NOI shall include a MMP that, when implemented, will compensate for any unavoidable adverse impacts to waters of the State and U.S. Specifically, the MMP shall demonstrate that discharges resulting in unavoidable permanent impacts to waters of the State and U.S. shall result in “no net loss” of area (acreage), functions, and beneficial use values by providing appropriate compensatory mitigation including creation, restoration, enhancement, or (in exceptional cases) preservation of waters of the State and U.S. The Executive Officer will consider, at a minimum, the following when reviewing the adequacy of compensatory mitigation:
- Highest potential condition of habitat onsite;
 - Value of project site for habitat connectivity;
 - Ratio of area of proposed compensation to proposed loss;
 - Certainty of successfully implementing the compensatory mitigation proposal;
 - Monitoring methods and performance criteria for determining success of the compensatory mitigation proposal;
 - Contingency plan for failure to meet performance criteria; and
 - Any other information requested by the Regional Water Board or State Water Board.

Upon finding that a Permittee has submitted a complete and acceptable NOI, the Executive Officer may issue a Notice of Applicability (NOA) to the Permittee, indicating that the project activities are authorized under this Order. If project activities do not qualify for coverage, the Executive Officer shall issue a Notice of Exclusion (NOE) stating the project is not authorized under the Order. If a project does not comply with State water quality standards, the Executive Officer may issue a denial of certification for the project. If the State or Regional Water Board does not issue a NOA or NOE to the Permittee within 30 days of receipt of the Application, the Permittee may proceed with the discharge.

28. Notice of Completion - Permittees shall provide the Regional Water Board a Notice of Completion (NOC) no later than 30 days after project completion and shall demonstrate that the project has been carried out in accordance with the project's description as provided in the Application. The NOC shall include a map of the project location(s), including the final boundaries of the project area(s) and post-project photographs. Each photograph shall include a descriptive title, date taken, and photographic site identification.

General Provisions

29. All Provisions in this Order apply to all waters located within San Francisco Bay.
30. Permittees shall comply with all the Discharge Prohibitions, Discharge Specifications, Receiving Water Limitations, and Provisions of this Order immediately as provided in the Order.
31. Permittees shall comply with all necessary approvals or permits for the proposed overwater activities, including, but not limited to, those issued by the Regional Water Board, California Department of Fish and Wildlife (CDFW), the Corps, the U.S. Fish and Wildlife Service (USFWS), NMFS, and local agencies. Permittees shall submit copies of such approvals or permits to the Executive Officer with their NOIs and not later than prior to implementation of overwater activities.

32. The final disposition of archaeological, historical, and paleontological resources recovered on State land under the jurisdiction of the California State Lands Commission must be approved by the Commission.
33. These WDRs and water quality certification do not allow for the take, or incidental take, of any special status species. Permittees shall use the appropriate protocols, as approved by CDFW, USFWS, and NMFS, to ensure that overwater activities do not impact the beneficial use of the Preservation of Rare and Endangered Species.
34. Permittees shall implement overwater activities in accordance with the findings herein and shall comply with all applicable water quality standards.
35. If, at any time, an unauthorized discharge to surface water occurs, or any water quality problem arises, the associated overwater activities shall cease immediately until corrective actions have been implemented, including ensuring that adequate BMPs are implemented to eliminate the discharge, and clean up and remediate any recoverable pollutants. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
36. Permittees shall report promptly to the Regional Water Board any proposed material change in the character, location, area, and/or volume of the discharge. Permittees shall obtain confirmation from the Regional Water Board that such proposed modifications do not disqualify the Permittee from coverage under these General WDRs.
37. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and 23 CCR section 3867.
38. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Water Code or CWA section 303.
39. Permittees shall maintain a copy of this Order and all relevant plans at work sites, so as to be available at all times to site operating personnel.
40. Permittees shall permit Regional Water Board staff or its authorized representative, upon presentation of credentials:
 - a. Entry on to the premises on which maintenance activities are planned or under way, wastes are located, or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Access to sample any discharge or surface water covered by this Order.
41. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. Permittees shall implement all mitigation measures identified in the Order relating to aquatic species, water quality, and hazardous materials.
42. Permittees shall pay the full fees required by 23 CCR section 3833 and owed by the Permittees. The State Water Board dredge and fill fee calculator for General Orders is located at http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredgefillcalculator.xlsx A check payable to the Regional Water Board in the appropriate amount shall be enclosed with the copy of the NOI.

43. This Order is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
44. This Order is not transferable.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on February 14, 2018.

Bruce H. Wolfe
Executive Officer

- Attachment A: National Marine Fisheries Services Essential Fish Habitat Consultation for the construction and maintenance of overwater structures in San Francisco Bay
- Attachment B: California Eelgrass Mitigation Policy and Implementation Guidelines
- Attachment C: Notice of Intent to Comply with the Terms of the WDRs/WQC Form