

Governor's Office of Planning & Research

September 28 2021

STATE CLEARINGHOUSE



September 27, 2021

State Water Resources Control Board,
Jessica Nadolski, Jeanine Townsend

Comments sent via email to

Jessica.Nadolski@waterboards.ca.gov
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via Office of Planning and Research (SCH Number 2019100230)

From: State Coastal Conservancy

Subject: Comments- Restoration Projects Statewide Order

To: State Water Resources Control Board,

Thank you for the opportunity to provide comments from the State Coastal Conservancy (SCC) on the newly proposed **General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide** per the 7/7/21 Draft Order. The SCC is a non-regulatory and project-driven state agency whose mission is to purchase, protect, restore, and enhance coastal resources. SCC has a long history of funding, planning, permitting, and implementing riparian, estuarine, watershed, and coastal restoration projects statewide. We have developed strong working relationships with many public agencies and nonprofits on habitat restoration efforts. The regional networks of partners in the Southern California Wetlands Recovery Project, the San Francisco Bay Restoration Authority, and other regional efforts are recognized as extensive and diverse collaborations of public and private agencies and landowners engaged in collaborative restoration projects. Our goal is to implement projects based on best habitat protection and design practices, to monitor outcomes, and to share results and lessons learned from the projects, so that successful nature-based techniques can be incorporated into future restoration project.

Living shorelines have been shown to be a successful method of a combined natural bank stabilization and habitat enhancement approach that can also be utilized as a climate adaptation strategy in low- to medium-energy coastal and estuarine environments. Living shorelines and other nature-based climate adaptation approaches have been successfully tried and tested by US Fish and Wildlife Service, NOAA, and other partners for more than two decades on the East Coast and the Gulf Coast, and since 2012 by the SCC and multiple local, state, federal, and non-profit partners at

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multiple sites in California. The projects have resulted in increased wave attenuation benefits, sediment stabilization and shoreline protection, and habitat restoration and enhancement for fish, mammals, birds, and a wide variety of aquatic species.

There is strong and growing interest in testing nature-based aquatic restoration and climate adaptation approaches on the West Coast- but a shorter history of projects on the Outer Pacific Coast and associated estuaries, and a smaller number of projects that have been constructed and monitored. This results in a great need for experimentation and testing of pilot projects, in order to document success, and to document ecosystem services and functions resulting from various approaches. We greatly support this new programmatic permitting tool to make 401 permitting more standardized and efficient for aquatic restoration projects in CA, that also supports and recognizes experimentation.

Specific Comments and Questions:

Please accept these specific comments re the Draft General Order.

General:

1. The State Coastal Conservancy is pleased at this effort to create a programmatic 401 certification for aquatic habitat restoration projects. Our agency is engaged in implementing a wide variety of aquatic habitat restoration projects of all sizes in riparian, estuarine, and coastal areas. We support this effort to make Section 401 permit requirements and conditions more standardized, and to create a programmatic mechanism to qualify for the permit versus every project having to apply individually.
2. What is the associated federal action with this new General Order and PEIR? We are aware of a programmatic Biological Opinion being prepared by the US Fish and Wildlife Service. Are there additional actions being considered by US Army Corps of Engineers (USACE) and NOAA's National Marine Fisheries Service (NMFS)? Will this connect to any particular USACE Nationwide permits such as NWP 27 or NWP 13? Are there new regional general permits being considered? Are there any related actions being considered by the US EPA?
3. Please consider making more explicit references to estuarine and coastal habitats, including intertidal, tidal, and subtidal habitat types and project types. This Draft General Order is focused on riparian general protection measures and design guidelines, which is understandable since there is a longer body of practice and more riparian focused engineering and biological design guidance. Please consider including additional examples of tidal and estuarine design guidance, site conditions, tidal range, and substrate types so that it is clear that this General Order would be applied to projects and conditions in brackish and saltwater estuarine and coastal environments.
4. We appreciate seeing the supportive language and inclusion of projects that include testing and experimentation with new methods and techniques - there are very few living shoreline projects in San Francisco Bay and on the West Coast, and pilot projects must be conducted in order to document ecosystems services and functions from various design scales, methods, and habitat approaches. Some of our comments below focus on encouraging inclusion of additional innovative project types - such as enhanced rock slope protection

and living seawall pilot projects- within the “Removal and modification of dams and other structures’, ‘Bioengineered Bank Stabilization’, and ‘Tidal, Subtidal, and Freshwater Wetland Establishment, Restoration, and Enhancement’.

Attachment A:

Programmatic Sideboards Section:

5. Much of the material referenced in the Programmatic Sideboards section refers to Riparian restoration work and guidance. Please include these coastal and estuarine focused guidance documents in the list of reference documents and design guidance:

- San Francisco Bay Subtidal Habitat Goals Report
- Baylands Habitat Goals Science Update
- San Francisco Estuary Adaptation Atlas
- San Francisco Estuary Blueprint
- Native Oyster Restoration Guidelines
- San Francisco Bay Eelgrass Restoration Program
- San Francisco Bay New Life for Eroding Shorelines Report
- Wetlands on the Edge: the Future of Southern California’s Wetlands (Southern California Wetlands Recovery Project Regional Strategy Update 2018)
- California Climate Adaptation Strategy
- California 4th Climate Assessment/ Coastal Natural Infrastructure Design Guidance
- US Fish and Wildlife Service’s Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California
- Federal Highway Transportation Administration Nature-Based Design Guidelines
- USACE’s International Design Guidelines for Nature-Based Features for Flood Control
- Global Harbour Project (vertical living seawall approaches)
- Seattle Seawall (vertical living seawall design components)

Project Types:

5. **Section A.4.2 Removal of small dams, tidegates, floodgates, and legacy structures:** Can removal of derelict/failing seawalls be included? Can enhancements to structures be included, such as tiles and ledges attached to seawalls to provide more surface texture that benefits habitat, or wrapping pilings with other materials?
6. **Section A.4.3 Bioengineered Bank Stabilization:** There is a focus on riparian banks, does this also include estuarine banks such as shoreline earthen and rock levees? Can biological enhancements to estuarine and coastal bank stabilization structures be included, such as crown plantings and other biological treatments made to traditional CALTRANS rock slope protection designs?
7. **Section A.4.7 Removal of pilings and other in-water structures:** Similar comments as above- in addition to removal of pilings, piers, and docks, can enhancement of pilings, piers, and docks be included, as well as vertical living seawall approaches?
8. **Section A.4.9 Establishment of tidal/subtidal/ and freshwater wetlands:** Please confirm and include language that this includes revegetation and enhancement work in the associated upland transition zones, and the associated intertidal and subtidal habitats that aren’t wetlands (ie Living Shorelines multi-habitat and multi-objective approaches to

protect wetlands, such as placement of oyster reefs, eelgrass plantings, etc.). Does this category include placement of features in offshore estuarine and coastal habitats, in addition to areas adjacent to shorelines and wetlands? Do habitat enhancements to seawalls and riprap in the intertidal and subtidal zones fit within this category? We encourage inclusion of pilot living seawall and green riprap projects in this programmatic permit, with consultation and more information for the regional boards upon request.

General Protection Measures:

9. **GPM #3 Construction Hours:** Construction in estuarine and coastal areas includes tidally driven work windows that don't always match with business hours 9am-5pm. Please consider language that allows for exception to this for tidally influenced projects, especially those in shallow nearshore areas that are hard to access, based on consultation and input from Regional Board staff. Most dredging projects in SF Bay are allowed a 24 hour window for this reason, and it is appropriate to give the same conditions to habitat restoration efforts.
10. **GPM #7 Fencing of environmentally sensitive areas:** Please include language that this is matched to the appropriate scale of project and habitat area and will not cause more harm than the proposed action. For example, a small transition zone native planting project that would occur in a short time frame should not require exclusion fencing which can impact habitat through trenching and can be avoided by strong biological monitoring and conservation measures to clear the area before planting and manage work practices to avoid impacts.
11. **GPM #8 Prevent Spread of invasive species:** We are extremely supportive of this language regarding equipment cleaning and other methods to prevent introduction or spread of invasive species. We recommend strengthening text to also include more reference to estuarine and coastal invasive species in addition to existing text on riparian (ie use example such as native oyster vs Pacific oyster focus, native Pacific cordgrass vs east coast forms). It would be helpful to provide some acknowledgement that in estuarine aquatic areas like SF Bay there are substantial non-native aquatic invertebrate, plant, and fish species that are now present in the bay and can't be controlled at the site level; but project design and success criteria can encourage monitoring and actions to take if treatments increase non-native species compared to baseline or control data at nearby sites.
12. **GPM #11 Revegetate disturbed areas:** Hydroseeding is often ineffective if not done with native species and the right attention to planting medium, watering, and maintenance. Please include best design guidance for hydroseeding in riparian, estuarine, and coastal areas; and also include potential for container plantings as needed
13. **IWW-1 Appropriate in water material placement:** Please also include clean shell (oyster half shell, other) as a material allowable for in water placement. Include reference to ensuring shell material is cured and inspected and free of pathogens or non-native species.
14. **IWW-3-: In-Water Placement of Materials, Structures, and Operation of Equipment:** Please include more estuarine and coastal focus on language and examples- currently heavily focused on riparian information. Can construction of living seawall demonstration projects be included? Can encouragement of green-grey hybrid approaches to structure design be included (combination of lower intertidal shoreline berm plus oyster reefs offshore, etc.)?

15. **VHDR-6. General Herbicide Use.** Chemical control may at times have less environmental impact or result in less habitat disturbance than other methods, yet the order stipulates that “Chemical control of invasive plants and animals shall only be used when other methods are determined to be ineffective or infeasible.” Please add the text “or when chemical control will result in significantly less environmental impact than other methods.”

Design Guidelines:

16. **Bioengineered Bank Stabilization:** (similar as previous comment on this project type)- Can biological enhancements to estuarine and coastal bank stabilization structures be included, such as crown plantings and other biological treatments made to traditional CALTRANS rock slope protection designs?
17. **Piling and Other In-Water Structure Removal:** One condition states to keep all equipment out of the water- this may be riparian focused comment- in an estuarine site, piling removal is most often conducted via barge and cranes in the water. Equipment is used to grasp piling at the mudline or benthos and extract full pile if possible or cut pile below mudline if necessary. We recommend cutting pile to 2-3’ below mudline, in order to ensure that there are no pile stubs remaining above the benthos that can cause safety, navigational, and environmental hazards.
18. **Tidal, Subtidal, and Freshwater Wetland Establishment, Restoration, and Enhancement:** Please improve language regarding estuarine and coastal areas and techniques. For areas such as San Francisco Bay that are highly altered due to historic fill, it is not always possible to base site plans and designs on historic conditions or locations. We are pleased to see support for experimental techniques and are glad to see that monitoring plans and reporting is required so that innovative techniques are tracked and assessed to make they are functioning as planned and providing data on outcomes. Please improve language regarding additions of native oyster spat to include justification of need, as many sites are substrate limited and not limited in available local oyster larvae; and include reference to strong oversight on source locations for oyster spat, and prevention of spread of any pathogens or disease.

Thank you very much for your review of these comments. Please contact myself (mary.small@scc.ca.gov) or Marilyn Latta (marilyn.latta@scc.ca.gov) if you have any questions or want to discuss any of these comments.

Sincerely,

Mary Small

Mary Small
Acting Executive Officer
California State Coastal Conservancy

