



US Army Corps  
Of Engineers

EFFECTIVE 31 May 2001

EXPIRES 31 May 2006

#### GENERAL PERMIT 91-7N

#### Aquatic Farm Structures Within the State of Alaska

Under the authority of Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403), and in accordance with Department of the Army Regulations (33 CFR Parts 320-330), this General Permit (GP) is reissued to authorize the placement of aquatic farm structures, including associated floathouses and mooring buoys in certain navigable waters within the State of Alaska, east of Cape Resurrection (Latitude 59° 52' 20.4" N, Longitude 149° 17' 32.7" W), for the purpose of commercial and/or experimental aquatic plant and/or shellfish aquaculture. Cape Resurrection is located south of Resurrection Bay, near Seward, Alaska. Proposed aquatic farms west of the referenced line of longitude are not authorized by this GP and will be required to undergo an individual permit evaluation. This authorization does not include fin-fish related activities. Navigable waters of Alaska are defined as those marine and estuarine waters subject to the ebb and flow of the tide, within the limits of the Territorial Seas of Alaska, and certain inland waters. This GP excludes inland navigable waterways; the Alaska District, Corps of Engineers (Corps), Regulatory Branch, maintains a list of the navigable waters that are covered by this GP. Additional navigable waters which are excluded from authorization are specified in Conditions 5, 14, 17, and 18 of this GP. This GP does not authorize any dredging or discharge of any dredged or fill material into waters of the United States, including adjacent wetlands. Uses landward of mean high water associated with the placement (anchorage) or operation of aquatic farm structures are not authorized by this GP.

This GP would convey full authorization to place and maintain aquatic farm structures and associated equipment, including floathouses and mooring buoys in certain navigable waters provided the conditions specified below are met. Any applicant seeking authorization under this GP is responsible for ensuring compliance with all of its terms and conditions. No correspondence or authorization from the Corps is necessary. However, anyone may request written confirmation of whether or not a proposed aquatic farm structure would be authorized by this GP (see the Additional Information section below)

#### TERM

This GP shall be effective for a period of five years from the date of issuance. At the end of the five-year period, an evaluation of the GP shall be made and at that time it would be decided whether or not this permit should be renewed. The District Engineer (DE) or his authorized representative may, at any time during this five-year period, alter, modify, or revoke this permit, if he deems such action to be in the public interest.

#### PROCEDURES AND REPORTING REQUIREMENTS

Aquatic farm structures shall be authorized for placement in specified navigable waters within Alaska provided the appropriate permits listed below are

obtained from the State of Alaska and the pertinent Federal land manager, if applicable, in addition to any other permits required by State or Federal agencies, and that all portions of the proposed project are covered by those permits:

- a. Alaska Department of Natural Resources (ADNR) Aquatic Farmsite Permit
- b. Alaska Division of Governmental Coordination (ADGC) Coastal Consistency Determination
- c. Alaska Department of Fish and Game (ADFG) Aquatic Farm Operations Permit and, where applicable, a Special Area Permit.
- d. A permit and an Alaska National Interest Lands Conservation Act (ANILCA) Section 810 determination may be required and performed by the Federal land manager if the proposed project is located within areas subject to a Federal land manager's jurisdiction. Additional information can be obtained by contacting the appropriate Federal land manager's office at the addresses and telephone numbers listed in Conditions 1 through 4.

A copy of this GP will be distributed with each Aquatic Farmsite Permit application by the appropriate State office. Any person who wishes to perform work under this GP must submit an application for an Aquatic Farmsite Permit to the appropriate regional office of the ADNR for projects located on State-owned tide and submerged lands or to the appropriate regional office of the ADGC for projects located on privately owned tide and submerged lands to initiate the State review process.

The State of Alaska will provide the Corps with correspondence related to aquatic farming applications, including start-up packets, decision documents, and quarterly and annual reports during the review process. These documents will provide a means for the Corps to determine if the work proposed is in conformance with the parameters of the GP. Upon receipt of the start-up packet, the Corps will advise the State within 20 days if the applicant does not meet the terms and conditions of the GP. However, at any time during the State's permit review, the DE may, at his discretion, determine that this GP will not be applicable to a specific mariculture proposal. In such cases, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available. At the end of the State review period, the State shall provide the Corps with an Aquatic Farm Final Decision report. This report shall include the name, location, species and acreage for each Aquatic Farm Permit issued and shall be sent to: Project Evaluation Section - South, Regulatory Branch, CEPOA-CO-R-S, Box 898, Anchorage, Alaska 99506-0898. This report shall be made available to the public upon request.

Issuance of the required State and Federal permits and approvals listed above will constitute Federal authorization under this GP unless the Corps has determined that an individual permit is required for a specific proposal as noted in the preceding paragraph. If it is determined by ADGC during the initial review of a project potentially covered by this GP, that the proposed activity would have impacts of a scope not typical of projects authorized under this GP, they will inform the Corps that the Coastal Zone Certification originally issued for the GP does not apply for the specific project.

If any of the required State or Federal authorizations are denied, the Alaska Division of Governmental Coordination will inform the Corps and the Corps will inform the applicant that Federal authorization under this GP is denied without prejudice.

## CONDITIONS

The applicant shall be responsible for fulfilling the following conditions

1. The appropriate National Park Service Park Superintendent shall be notified in writing 90 days in advance prior to commencement of any proposed activity that would occur within three miles of a unit of the National Park System. The National Park Service shall also be consulted 90 days in advance prior to commencement of any proposed activity that would occur within or could affect a National Historic Landmark or a National Natural Landmark. National Park Service contact information is attached to this GP.

2. The U.S. Department of the Interior, Fish and Wildlife Service, Regional Director, 1011 East Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3542, shall be contacted regarding the need for a Special Use Permit prior to any activities within National Wildlife Refuges of Alaska.

3. When adjacent to National Forest system lands, aquatic farm structures shall be located consistent with the existing Forest land use management direction. The appropriate National Forest Supervisor's office shall be contacted prior to any activity within one mile of Chugach or Tongass National Forest lands. If the mariculture operation includes a floathouse that would be sited within one mile of National forest lands, written verification that the floathouse is consistent with the existing Forest land use management direction is required. You may contact the Chugach National Forest office at 201 E. 9th Avenue, Suite 206, Anchorage, Alaska 99501-3686, telephone (907) 271-2500 or one of the three Tongass National Forest offices at the Federal Building, Ketchikan, Alaska 99901 telephone (907) 225-3101 for the Tongass National Forest, Ketchikan Area; 204 Siginaka Way, Sitka, Alaska 99835, for the Tongass National Forest, Chatham Area, telephone (907) 747-6671; or 201 12th Street, Post Office Box 309, Petersburg, Alaska 99833, telephone (907) 772-3841 for the Tongass National Forest, Stikine Area.

4. The appropriate U.S. Department of the Interior, Bureau of Land Management office, 222 W. 7th Avenue, Room 13, Anchorage, Alaska 99513, telephone (907) 271-5960, shall be contacted prior to any activity within one mile of Federal lands under its management/ownership.

5. This GP will not apply adjacent to or within one half mile of a designated wilderness or wilderness study area administered by the U.S. Forest Service, National Park Service, or U.S. Fish and Wildlife Service unless permission is obtained from the Federal land manager. Contact the appropriate Federal land manager's office listed under Conditions a, b, or c for further information.

6. The United States Coast Guard (USCG) shall be contacted prior to the construction or placement of any aquaculture structure, floathouse or mooring buoy under this permit. The permittee must install and maintain, at the permittee's expense, any safety lights and markings prescribed by the USCG, through regulations or otherwise, on the authorized facilities. The USCG may be reached at the following address and telephone number: Commander, 17th Coast Guard District (can), Post Office Box 2-5517, Juneau, Alaska 99802-5517, (907) 463-2270.

7. Use of the permitted activity must not interfere with the public's right to free navigation around the aquatic farm structure on all navigable waters of the United States nor be placed in such a fashion as to create a hazard to navigation. Aquatic farm structures, floathouses or mooring buoys shall not be placed in locations that would hinder safe access to, or use of, existing ports, docks, piers, harbors, boat launch ramps, buoys, floats, piles, or any other existing structures or facilities within navigable waters.

8. Aquatic farm structures shall be constructed and maintained to avoid attracting or entangling marine birds, mammals, or other wildlife. The operation of aquatic farms may subject you to provisions of (1) the Marine Mammal Protection Act of 1972, 16 U.S.C. Sections 1361-1407, and amendments, and; (2) the Migratory Bird Treaty Act, 16 U.S.C. Sections 701-718h. Instances of predation by marine birds or sea otters should be reported to the Corps and USFWS. A violation of the Marine Mammal Protection Act or the Migratory Bird Treaty Act (in either case, confirmed by a judicial determination, or administrative determination having the force of law) shall be grounds to suspend, modify, or revoke this authorization.

(a) The Marine Mammal Protection Act prohibits non-natives from taking (harassing, hunting, capturing, collecting or killing; or attempting to harass, hunt, capture, collect or kill) marine mammals without a permit from the Department of Interior or Department of Commerce.

(b) The agencies responsible for enforcing the Marine Mammal Protection Act and implementing regulations are the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

(c) National Marine Fisheries Service regulations at 50 CFR Part 229.7(b) require that all lethal incidental takes of marine mammals must be reported to the nearest National Marine Fisheries Service office, in person, by phone or by letter, within 10 days of when the taking occurred.

(d) The National Marine Fisheries Service may be reached at the following address and phone number: National Marine Fisheries Service, Regional Office, Post Office Box 2-1668, Juneau, Alaska 99802, telephone (907) 586-7235.

(e) Should you have any questions regarding the requirements or provisions of the Marine Mammal Protection Act or implementing regulations, please contact the U.S. Fish and Wildlife Service at (907) 561-1239, or the National Marine Fisheries Service at the above telephone number.

(f) To prevent predator entanglement, vertical ropes, lines, wires, etc., shall not be connected by more than one horizontal lead line, long line, rope wire, etc., excluding culture gear constructed of mesh, such as lantern nets or bags.

(g) The Migratory Bird Treaty prohibits the take of migratory birds, their parts, nests and eggs outside of established legal seasons, limits, and limitations. The agency responsible for enforcing the Migratory Bird Treaty Act and implementing regulations is the U.S. Fish and Wildlife Service.

9. Aquatic farm structures, excluding structures such as racks and bags used in intertidal areas for beach culture and hardening, shall be located in waters of sufficient depth and secured in a manner to preclude grounding at any tidal stage

10. All aquatic farm structures shall be sufficiently anchored to hold in storm conditions and/or in swift current.

11. The activity authorized by this GP must be maintained in good condition and in conformance with the terms and condition of this GP. Removal of the structures associated with the authorized activity is required if the site is abandoned. Should the permittee wish to abandon the activity, this office and all appropriate state and local agencies must be notified. Abandoned is defined as a discontinuance of activity at the site for a period of one year or more. In addition, this office must be notified if the permitted facility is being transferred to a new party.

12. If any previously unknown historic or archeological artifacts or remains are discovered while accomplishing the activity authorized by this permit, the permittee must notify this office immediately of what has been found. The Corps will initiate the Section 106 process to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

13. Representatives from this office must be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this GP.

14. Aquatic farm structures and associated floathouses and mooring buoys shall be located to avoid sites where the project could cause detrimental impacts on concentrations of marine mammals, waterfowl and shorebirds, hard-shell clams, eelgrass and kelp beds, fish spawning or migration routes, large wildlife population, or adjacent to brown and black bear concentration areas and know bear travel corridors. Specifically, avoid siting:

(a) within a 300-foot radius of the mouths of anadromous fish streams at Mean Lower Low Water; these streams are listed in the State's "Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes";

(b) within fish hatchery Special Harvest Areas or Terminal Harvest Areas established by the Alaska Department of Fish and Game.

Information concerning paragraphs 1 and 2 above can be obtained from one of the two Alaska Department of Fish and Game offices, Habitat Division, 333 Raspberry Road, Anchorage, Alaska 99518-1599, telephone (907) 267-2284; or Habitat Division, Post Office Box 2526, Juneau, Alaska 99802-5526, telephone (907) 465-4105.

(c) within one mile of harbor seal haulout concentration areas or pupping areas;

(d) within three miles of Steller sea lion haulout concentration areas or pupping areas;

Information concerning paragraphs c. and d. above can be obtained from the National Marine Fisheries Service, Regional Office, Post Office Box 2-1668 Juneau, Alaska 99802, telephone (907) 586-7235;

(e) within one mile of seabird colonies;

(f) within one mile of walrus haulouts;

(g) within 330 feet of the base of the tree or structures supporting bald eagle nests; and,

(h) if within sight of an active bald eagle nest, no equipment haulouts shall occur nor work rafts on which equipment is worked on shall be present within 660 feet of the nest.

(i) within 3 miles of National Wildlife Refuges only weathervane scallops (Patinopecten caurinus), rock scallop (Crassodoma giaantea) pink scallop (Chalamys hericia), Pacific oysters (Crassostrea i as), blue mussels (Mytilus edulis), and various kelp. (Macrocystis spp., Laminaria spp., and Porphyra spp.) may be grown.

Information concerning paragraphs (a) through (i) above can be obtained from the U.S. Fish and Wildlife Service, Ecological Services Anchorage, 605 West Fourth Avenue, Room G-62, Anchorage, Alaska 99501, telephone (907) 271-2888 if the proposed project is located west of Cape Suckling; or the U.S. Fish and Wildlife Service, Ecological Services Juneau, Post Office Box 021287, Juneau, Alaska 99802, telephone (907) 586-7240, if the proposed project is located east of Cape Suckling.

15. No mariculture operation shall use any chemicals that are not approved by the Food and Drug Administration. Aquatic farm structures (i.e., rafts, booms, long lines) shall not be treated with any preservatives, as these toxic chemicals may be absorbed and accumulated within the shellfish, which are to be sold for human consumption. For additional information contact the Alaska Department of Environmental Conservation, South-central Regional office, 555 Cordova Street, Anchorage, Alaska 99503, telephone (907) 563-6529, or the Alaska Department of Environmental Conservation, Region 1, Post Office Box 32420, Juneau, Alaska 99803, telephone (907) 789-3151.

16. The harvesting operations associated with aquaculture activities have the potential to generate waste which attracts birds (gulls) potentially hazardous to flying aircraft. Proposed sites within 5 miles of a public airport runway shall be coordinated with the Federal Aviation Administration, Alaskan Region, Airports Division, 222 W. Seventh Avenue, # 14, Anchorage, Alaska 99513-7587, telephone (907) 271-5816.

17. Aquatic farm structures or associated floathouses or mooring buoys shall not be placed in any unacceptable areas specified by the State of Alaska.

18. Aquatic farm structures or associated floathouses or mooring buoys shall not be placed in areas prohibited by Federal, State, or local law.

19. Floathouses associated with mariculture operations are authorized by this GP, subject to the preceding conditions, and shall be:

- (a) sited a minimum of 300 feet outside of the aquatic farmsite boundary
- (b) limited to occupancy by no more than 4 persons
- (c) shall be equipped with USCG approved marine sanitation devices

20. Mooring buoys associated with mariculture operations and authorized by this GP shall be colored white with a three to five-inch wide blue horizontal band. The blue band shall be separated from the water's surface by a minimum of three inches of white so that the blue band is distinguishable from the water.

#### LIMITS OF THIS AUTHORIZATION

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

### LIMITS OF FEDERAL LIABILITY

In issuing this 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.

### REEVALUATION OF PERMIT DECISION

This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation includes, but are not limited to the following:

- The general permittee fails to comply with the terms and conditions of this permit.
- b The information provided by the permittee in support of the 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.

Such a reevaluation may result in a determination that it is appropriate to use, on an individual or generic basis, the suspension, modification, and revocation procedures contained in 33 CFR 326.7 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 the 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.

### ADDITIONAL INFORMATION

This GP does not require notification to the DE prior to commencement of the authorized activity, nor does it require confirmation from the District Engineer that a proposed activity in full compliance with all terms and conditions of this GP is authorized and may proceed. Nevertheless, a general permittee may choose to request in writing a verification that his proposed activity is authorized by a specific GP. The written inquiry must be sent to the Alaska District, Corps, Regulatory Branch, Project Evaluation Section South, Post Office Box 898,

Anchorage Alaska 99506-0898, and must include the following information


- a Name, address, and telephone number of the general permittee;
- b Location of the proposed work;
- c Brief description of the proposed work;
- d. Identification of the GP or permits which apply to the proposed work
- e Any other information that the general permittee believes is appropriate.

To the extent that the Corps' limited resources will allow, the Alaska District office will attempt to respond to such a request for verification in a timely manner. If the general permittee's written request for verification is complete, accurate and made in good faith, and the Alaska District does not respond to such inquiry within 20 days after the Alaska District received such inquiry, the general permittee may proceed with the activity. In such a case, the general permittee's authorization can only be suspended, modified, or revoked in accordance with the procedure set forth in 33 CFR 325.7

On the other hand, if the Corps later determines that the general permittee's written request for verification was inaccurate, incomplete or made in bad faith, and that the activity was not in fact authorized by the GP, the Federal Government may bring an appropriate enforcement action against the general permittee. Section 12 of the Rivers and Harbors Act provides civil penalties of not less than \$500, and not more than \$2,500 per day of violation or by imprisonment of up to one year, or both.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

5/24/01

  
\_\_\_\_\_  
Mirian J. Magwood  
Chief, South Section  
Regulatory Branch  
For: District Engineer  
U.S. Army Corps of Engineers



Alaska National Historic Landmarks with Coastal Frontage

<u>Name</u>	<u>Location</u>
Adak Army Base & Naval Operating Base	Adak
Alaska Native Brotherhood Hall	Sitka
Anangula Archeological District	Nikolski vicinity
Attu Battlefields & U.S. Army & Navy Airfields	Attu
Bering Expedition Landing Site	Kayak Island
Birnirk Site	Barrow
Cape Field at Fort Glenn	Umnak Island
Cape Krusenstern Archeological District	Kotzebue vicinity
Cape Nome Mining District	Nome
Chaluka Site	Umnak Island
Chilkoot Trail and Dyea	Skagway
Dutch Harbor Naval Operating Base & Fort Mears	Unalaska
Fort Durham	Taku Harbor
Holy Ascension Orthodox Church	Unalaska
Ipiutak Site	Point Hope
Iyatet	Cape Denbigh
Japanese Occupation Site	Kiska
Kodiak Naval Operating Base	Kodiak
Leffingwell Camp	Flaxman Island
New Russia	Yakutat
Old Sitka	Sitka
Palugvik	Cordova
Seal Islands	Pribilof Islands
Sitka Naval Base	Sitka
Skagway and White Pass	Skagway
Three Saints Site	Old Harbor
Wales Site	Wales
Yukon Island Main Site	Homer vicinity

Sandra Faulkner - National Historic Landmarks Program Coordinator  
 Alaska Regional Office, National Park Service  
 (907) 257-2658

Alaska National Natural  
 Landmarks with Coastal Frontage  
 Bogoslof Island  
 Clarence Rhode Nat'l Wildlife Range  
 Malaspina Glacier  
 McNeil River State Game Sanctuary  
 Middleton Island  
 Simeonof National Wildlife Refuge  
 Unga Island  
 Walrus Islands

Alaska National Parks  
 with Coastal Frontage  
 Glacier Bay Nat'l Park & Preserve  
 (907) 697-2232  
 Katmai Nat'l Park & Preserve  
 (907) 246-3305  
 Kenai Fjords Nat'l Park  
 (907) 224-3175  
 Sitka Nat'l Historic Park  
 (907) 747-6281  
 Wrangell-St. Elias Nat'l Park & Preserve  
 (907) 822-5234

Paul McLaughlin - National Natural  
 Landmarks Program Coordinator  
 Alaska Regional Office  
 National Park Service  
 (907) 257-2562

APPLICABILITY CERTIFICATION FOR  
GENERAL PERMIT 91-7

Aquatic Farm Structures Within the State of Alaska

Before completing the statement below, please read the attached General Permit carefully. If your proposed project does not comply with all of the terms and conditions contained herein, you will need to apply for an individual Department of the Army (DA) permit. If you have questions, or need clarification about whether or not the general permit applies to your project, you may call the Corps of Engineers, Regulatory Branch at (907)753-2712, or toll free in Alaska at (800) 478-2712.

Please retain the General Permit for your records, but detach and include the statement below with your Aquatic Farm Permit Application.

\_\_\_\_ I, the undersigned, desire authorization under General Permit 91-7N for placement of aquatic farm structures, located in/near \_\_\_\_\_, Alaska. I have read the general permit and have determined that my project will comply with all of the terms and conditions contained therein.

\_\_\_\_ I, the undersigned, request that my application for placement of aquatic farm structures, located in/near \_\_\_\_\_, Alaska, be processed under DA individual permit processing procedures. I have read the general permit and have determined that my project will not comply with all of the terms and conditions contained therein.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Corps' Project Number:

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

OFFICE OF MANAGEMENT AND BUDGET  
DIVISION OF GOVERNMENTAL COORDINATION

TONY KNOWLES, GOVERNOR

SOUTHCENTRAL REGIONAL OFFICE  
550 W. 7TH AVENUE, SUITE 1660  
ANCHORAGE, ALASKA 99501  
PH: (907) 269-7470/FAX: (907) 269-3981

CENTRAL OFFICE  
P.O. BOX 110030  
JUNEAU, ALASKA 99811-0030  
PH: (907) 465-3562/FAX: (907) 465-3075

PIPELINE COORDINATOR'S OFFICE  
411 WEST 4TH AVENUE, SUITE 2C  
ANCHORAGE, ALASKA 99501-2343  
PH: (907) 271-4317/FAX: (907) 272-3829

April 17, 2001

Mr. Houston Hannafious  
U.S. Army Corps of Engineers  
Alaska District  
Regulatory Branch  
Post Office Box 898

**RECEIVED**

APR 10 2001

REGULATORY BRANCH  
Alaska District, Corps of Engineer

Dear Mr. Hannafious:

SUBJECT U.S. ARMY CORPS OF ENGINEERS GENERAL PERMIT 91-7M  
AQUATIC FARM STRUCTURES IN ALASKA  
STATE I.D. NO. AK 0102-05JJ  
FINAL CONSISTENCY FINDING

The Division of Governmental Coordination (DGC) has completed coordinating the State's review of the U.S. Army Corps of Engineers' (USACE) proposed reissuance of General Permit 91-7M, Aquatic Farm Structures within the State of Alaska, for consistency with the Alaska Coastal Management Program (ACMP). DGC has developed this consistency finding based on reviewers' comments. I issued a proposed consistency determination on April 9, 2001.

### Background

GP 91-7M was originally issued statewide on February 14, 1992, for a period of five years, and was reissued statewide with the inclusion of floathouses for an additional five years, effective November 29, 1994. GP 91-7M will now be issued only for areas east of Cape Resurrection (i.e., Prince William Sound and Southeast Alaska) for another five-year period from the date of its approval. Areas west of Cape Resurrection will not qualify for GP 91-7M as a result of USACE pre-issuance consultation with the State of Alaska and federal resource agencies. At any time during the five-year period, the USACE has the authority to alter, modify or revoke GP 91-7M, if such action is in the public's best interest. At the end of the five-year period, GP 91-7M will be evaluated and a decision made as to whether a renewal is justified or whether individual permits are more appropriate for aquatic farms statewide.

### Scope of Project Reviewed

The proposed activity is the modification and five-year reissuance of General Permit 91-7M (GP

91-7M) under the authority of Section 10 of the Rivers and Harbors Act of 1899. The permit will authorize the placement of aquatic farm structures, including associated floathouses and mooring buoys, in certain navigable waters within the State of Alaska, east of Cape Resurrection, for the purpose of commercial and/or research-related aquatic plant and/or shellfish aquaculture.

#### Consistency Determination

The Alaska Departments of Environmental Conservation, Fish and Game, and Natural Resources and coastal resource districts statewide have reviewed the USACE's proposal to renew GP 91-7M for five years. Based on that review, the State concurs with the USACE's determination that this proposed project is consistent with the ACMP to the maximum extent practicable. As stated in the USACE public notice for GP 91-7M, if, during the ACMP consistency review of a project, DGC determines that the proposed activity will have impacts of a scope not typical of projects authorized under GP 91-7M, DGC will inform the USACE that the Coastal Zone Certification originally issued for GP 91-7M does not apply to the specific project.

This consistency finding, developed under 6 AAC 50, applies to the federal consistency determination required for the activity per 15 CFR 930 Subpart C. This consistency finding does not obligate any State agency to issue an authorization under its own statutory authority, nor does it supersede state agency statutory obligations. Authorities outside the ACMP may result in additional permit/lease conditions not contained in the consistency finding.

#### Discussion

An aquatic farm applicant is responsible for abiding by 19 USACE conditions to qualify for the use of GP 91-7M. The USACE conditions address land use, the public's right to access and free navigation, the protection of fish and wildlife and their habitats, water quality, archaeological resources, construction and maintenance of structures, any accompanying floathouses and buoys, and unacceptable areas as designated by the State of Alaska. Additionally, extensive State review processes associated with other permits required to operate aquatic farms consider habitats and water quality and provide an integrated approach to coastal zone management to help ensure that public resources are maintained and that public interests are considered.

With GP 91-7M in place, State review processes are supposed to focus on State resource and public interest issues outside of the aquatic farm structures. However, State reviewers have learned through experience that the structures themselves are not immune from discussion because they are such an integral part of the aquatic farm proposal. Though there have been problems with some aquatic farm proposals in the past, the State has no evidence that the problems were related to the structures only. Nevertheless, because of the interconnectedness of structures to an aquatic farm proposal, the State believes the public interest will be better served if all aquatic farms proposals statewide are subject to individual permits from the USACE. The State recommends that the USACE begin now to construct a staffing and workload plan that will accommodate the review of individual permits for aquatic farms statewide upon the expiration of GP 91-7M in five-years.

This final consistency determination is a final administrative decision for purposes of Alaska Appellate Rules 601-612. Any appeal from this decision to the superior court must be made within 30 days of the date of this determination.

Advisories

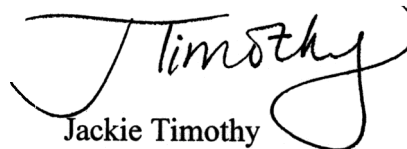
Aquatic farm applicants will be advised in their consistency determinations that if their proposed activities reveal cultural or paleontological resources, they must stop any work that would disturb such resources and immediately contact the State Historic Preservation Office (907-269-8720) and the USACE (907-753-2712) so that consultation per section 106 of the National Historic Preservation Act may proceed.

This consistency finding may include reference to specific laws and regulations, but this in no way precludes the USACE's responsibility to comply with all other applicable State and federal laws and regulations. Additionally, although the State agrees the GP 91-7M is consistent with the ACMP, individual aquatic farm applicants using the GP 91-7M will still required to meet all applicable State and federal laws and regulations.

This consistency finding is ONLY for aquatic farm structures including associated floathouses and mooring buoys in certain navigable waters within the State of Alaska, east of Cape Resurrection, for the purpose of commercial and/or experimental aquatic plant and/or shellfish aquaculture. If you propose changes to GP 91-7M, you must contact this office immediately to determine if further review and approval of the revised GP 91-7M is necessary. Changes may require amendments to this consistency finding.

If you have any questions regarding this determination, please contact me at 907-465-8798 or email Jackie\_Timothy@gov.state.ak.us.

Sincerely,

A handwritten signature in black ink that reads "Timothy". The signature is written in a cursive style with a large, looping initial "T".

Jackie Timothy  
Project Review Coordinator