



US Army Corps
of Engineers
Alaska District

Special Public Notice

ANCHORAGE
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(In reply, refer to above number)
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**PROPOSAL TO REISSUE GENERAL PERMIT (GP) 2006-214-M1
PREVIOUSLY IDENTIFIED AS GP-2007-372
STATE OF ALASKA SUCTION DREDGE GENERAL PERMIT**

The public is hereby notified that the Alaska District, U.S. Army Corps of Engineers (Corps) is proposing to reissue and modify General Permit (GP) 2007-372 under authority of Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403). This GP would authorize floating devices in navigable waters of the United States (U.S.), for the purpose of mineral recovery in the State of Alaska.

We are soliciting and accepting comments for the next 30 days on our intent to modify and re-issue this GP. Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact **Ms. Leslie Tose** at (907) 753-2712, toll free from within Alaska at (800) 478-2712, or by email at leslie.w.tose@usace.army.mil if further information is desired concerning this notice.

General Permits (GPs) are considered appropriate for activities which are substantially similar in nature, cause only minimal adverse environmental impacts when performed separately, would have only minor cumulative effect on water quality, and would provide more effective administration of the Rivers and Harbors Act without creating an undue burden on the public.

If reissued this GP will be in effect for five more years and will be re-named GP 2007-372-M1. The activities intended for re-authorization under this GP are essentially the same, with the following changes. A copy of the Draft Proposed GP is attached.

- ▶ The GP will only apply to Section 10 water.
- ▶ The Corps is clarifying that there is no 404 Clean Water Act fill material discharged from a sluice box on a suction dredge.
- ▶ The Corps eliminated all reference to suction dredges and nozzle size in the GP. This GP will apply to floating recovery devices.
- ▶ The Corps is proposing to allow floating recovery devices in water depths out to minus 20 feet Mean Lower Low Water statewide without notification to the Corps. The operator is responsible to meet the Special Conditions of the General Permit.
- ▶ The Corps has clarified the difference between a Clean Water Act 402 permit and a Clean Water Act 404 permit for floating recovery devices.
- ▶ The Corps has changed the Endangered Species condition to mirror the new Nationwide Permit conditions.
- ▶ The Corps has changed the Section 106 condition to mirror the new Nationwide Permit conditions.

The Corps has completed a Preliminary Determination that the proposed activities are in compliance with the requirements for issuance of a general permit. A copy of this Preliminary Determination is available upon request from the letterhead contact information, or by contacting: leslie.w.tose@usace.army.mil.

BACKGROUND: On December July 3, 2007, the Corps authorized **GP 2007-372**, which will expire on July 3 2012. Since issuance the GP has been verified 142 times. The GP was used to authorize suction dredges in both marine and fresh water in the State of Alaska.

PROPOSED ACTIVITY: The Corps of Engineers proposes to reissue and modify General Permit (GP) 2007-372 as GP 2007-372-M1 under authority of Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403. This GP would authorize floating devices in navigable waters of the United States (U.S.), for the purpose of mineral recovery in the State of Alaska.

GENERAL PERMIT BOUNDARY: The GP boundary is the entire State of Alaska.

MITIGATION: The need for compensatory mitigation would be determined on a case-by-case basis. The GP incorporates best management practices into the permit conditions and would allow for project-specific conditions.

ENDANGERED SPECIES: The Corps has conditioned the GP to protect threatened and endangered species. The Corps has changed the Endangered Species condition to mirror the new Nationwide Permit condition.

Preliminarily, the described activity will not affect endangered or threatened species, or their critical habitat designated as endangered or threatened, under the Endangered Species Act of 1973 (87 Stat. 844). This application is being coordinated with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

Preliminarily, the described activity would have no more than a minimal impact and would not result in any substantive adverse effect on EFH. This Public Notice initiates EFH consultation with the NMFS. Any comments or recommendations they may have concerning EFH will be considered in our final assessment of the described work.

CULTURAL RESOURCES: The Corps has conditioned the GP to protect cultural resources. The Corps has changed the Section 106 condition to mirror the new Nationwide Permit condition.

Any comments the State Historic Preservation Officer has concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision)

have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following authority:

(X) Perform work in or affecting navigable waters of the United States - Section 10 Rivers and Harbors Act 1899 (33 U.S.C. 403).

The Draft Proposed GP 2007-372-M1 to this Public Notice is available online.

District Commander
U.S. Army, Corps of Engineers

****NOTICE TO EDITORS**: This public notice is provided as background information and is not a request or contract for publication.

****NOTICE TO POSTMASTERS**: It is requested that this notice be conspicuously and continually placed for 30 days from the date of issuance of this notice.

GENERAL PERMIT POA-2007-372-M1

FLOATING DEVICES IN NAVIGABLE WATERS OF THE UNITED STATES, FOR THE PURPOSE OF MINERAL RECOVERY, IN THE STATE OF ALASKA.

This General Permit (GP) authorizes floating devices in navigable waters of the United States (U.S.), for the purpose of recovering precious metals within the State of Alaska. The authorized work shall be conducted under the specific conditions listed below. The conditions of the GP are intended to ensure that impacts to navigation are minimal under Section 10 of the Rivers and Harbors Act of 1899.

TABLE OF CONTENTS:

Authorized Activities
 Section 10 Waters
 Water Depth
 Section 404 Waters
Exclusions
Special Conditions
 Inspection
Application Procedure
 Notification Process
 Authorization Process
Other Information
Term

AUTHORIZED ACTIVITIES:

WITHIN SECTION 10 WATERS: Section 10 waters are navigable waters defined as "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce." All tidal and marine waters are considered navigable. Also, the Alaska District has approved 47 segments of waters that are not tidal, but are considered navigable. Specifically, the Corps regulates work in, over, or under navigable waters of the U.S., or which affects the course, location, condition or capacity of the Section 10 waters. For example, in a Section 10 waters such as Norton Sound, the Corps regulates the floating device in the navigable waters. The Corps DOES NOT regulate the discharge or release of rocks and or sediment from a sluice box mounted on a recovery device. Floating devices result in a discharge from a sluice box regulated by the Alaska Department of Environmental Conservation (ADEC) under a State of Alaska, Alaska Pollutant Discharge Elimination System Permit. The Corps is not going to require a permit for an action regulated and permitted by ADEC. Therefore, the discharge into navigable water from a sluice, trommel, screen, and or any other classification device mounted on a floating device is regulated by ADEC.

The GP would authorize an operator to float a device in navigable waters of the U.S., for the purpose of recovering precious metals or stones within the State of Alaska. Activities must comply with the terms and conditions of the GP listed below.

WATER DEPTH: All operations in marine waters working in less than minus 20 feet Mean Lower Low Water (MLLW) are approved for operation if they comply with the terms and conditions of this GP.

Operations in navigable water depths deeper than minus 20 feet MLLW water will require notification to the Corps as well as written Corps verification.

WITHIN SECTION 404 WATERS: No authorization is required under Section 404 of the Clean Water Act for a floating device. These are devices anchored or operating in 404 waters. Precious metal recovery results in a discharge regulated by ADEC under an Alaska Pollutant Discharge Elimination System Permit. The Corps is not

going to require a permit for an action regulated and permitted by ADEC. Therefore, the discharge into 404 water from a sluice, trommel, screen, and or any other classification device mounted on a floating device is regulated by ADEC.

EXCLUSIONS: This GP does not cover the following operations:

- Habitat: This GP does not apply to projects in coral, eelgrass beds, seagrass beds, kelp beds, macro-algae, vegetated shallows, shellfish beds, mudflats, or wetlands.
- Essential Fish Habitat: The GP does not apply to projects that would adversely affect Essential Fish Habitat (EFH).

Additionally, this GP does not apply unless appropriate coordination is completed through the respective agency:

- State Designated Special Areas: **Unless** the activity is specifically authorized by the agency with jurisdiction over these lands. Examples of these special areas are Game Refuges and Sanctuaries, and Critical Habitat Areas.
- Federally Designated Areas (existing or nominated): **Unless** the activity is specifically authorized by the agency with jurisdiction over these lands. Examples of these designated areas are National Wildlife Refuges, National Parks.
- Endangered Species: The GP does not apply to projects that would adversely affect endangered species; unless Section 7 consultation is completed. See condition #7.
- Archaeological, cultural, or historic properties: In cases where the District Commander determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. See condition #8.

SPECIAL CONDITIONS OF THE GENERAL PERMIT:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802, (907) 463-2272
3. The permittee understands and agrees that, if future operations by the U.S. 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 U.S. No claim shall be made against the U.S. on account of any such removal or alteration.
4. Operations which are located in waters used by anadromous fish species shall be consistent with State of Alaska Department of Fish and Game and comply with any Alaska Department of Fish and Game, Fish Habitat Permit issued for the project under Alaska Statute if a permit is required. Violation of the Fish Habitat permit shall be grounds to suspend or revoke the authorization granted by this GP.

5. The proposed activity shall not adversely affect Essential Fish Habitat (EFH). Section 305 (b) of the Magnuson-Stevens Fishery Conservation and Management Act and 50 CFR Part 600 provide the requirements for EFH consultation. The District Commander (DC) shall make a determination whether or not the action will adversely affect EFH. The determination and an EFH assessment (per 50 CFR 600.920) shall be provided in any subsequent notice should the action adversely affect EFH. If necessary, the National Marine Fisheries Service (NMFS) will provide EFH Conservation Recommendations as defined in Section 305 (b)(4)(A) and 50 CFR Part 600.
6. The proposed operation activity shall be in compliance with applicable State of Alaska, Department of Environmental Conservation, Alaska Pollution Discharge Elimination System Permit.
7.
 - (a) No activity is authorized under any GP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any GP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - (b) Permittees must submit a notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
 - (c) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the GP.
 - (d) Authorization of an activity by a GP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(e) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their World Wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

8. (a) In cases where the District Commander determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Permittees must submit a notification to the District Commander if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing notifications, District Commanders will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The District Commander shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the District Commander shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the District Commander either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(c) The District Commander will notify the prospective permittee within 45 days of receipt of a complete notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the District Commander will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking

occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

INSPECTION: You must allow the DC, or his designated representative(s), to inspect the authorized activity at any time deemed necessary to ensure work is being, or has been, accomplished in accordance with the terms and conditions of this GP.

In the event that work is being or has been performed in noncompliance with this GP, appropriate measures will be taken to resolve the violation. This may include a requirement to obtain an individual permit.

Refusing access to an inspection of the authorized activities shall be considered non-compliance with the terms and conditions of this GP.

Any operator found in non-compliance with this GP may not be issued another GP authorization until the non-compliance is resolved.

Non-compliance with reporting requirements may result in permit revocation, directed restoration of affected areas, and/or imposition of civil and criminal penalties.

APPLICATION PROCEDURES:

Notification Requirement: Required for all operators floating a device in water depths deeper than minus 20 feet mean lower low water.

1. The operator must complete a DA permit application (ENG FORM 4345) [available at a Corps office or at our website: <http://www.poa.usace.army.mil/reg/>]. Applications will receive initial review for completeness within fifteen days of receipt. The application request must include:

- a legible map showing the location of the proposed work
- a description of the floating device, size, and anchoring mechanism to be used
- plan drawings that show the operation relative to tidal datum's
- Latitude and Longitude of the project area

The application and accompanying drawings must have sufficient detail for the application to be considered completed. The Corps will contact the applicant for additional drawings and/or information if necessary. After receipt of a complete application, the Corps will notify the applicant to confirm that their work will be covered under this GP, or that an individual permit is required.

Authorization Process: All operations proposed for authorization under this GP will be authorized as follows:

1. Applicant notifies the Corps by the methods outlined above.
2. The Corps will review the application and preliminarily determine that the GP is applicable.
3. Agency coordination will be initiated by the Corps on complete applications.
4. Agencies have 10 calendar days from the date this notification is transmitted to contact the Corps in writing, by FAX, e-mail, or by telephone, with comments on the project.

5. The Corps issues the applicant a GP authorization letter, or based upon review, the Corps notifies the applicant that a GP is not appropriate for the proposed operation. Special conditions can be added to the GP letter.
6. Permittee should retain all original authorizations in a safe location, and a duplicate copy at the mine site in possession of the operator for review by visiting agencies.

OTHER INFORMATION:

▪**Reevaluation of a Permit Decision:** The Corps may reevaluate its decision to issue a GP authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- The permittee fails to comply with the terms and conditions of this permit.
- Appropriate new information surfaces, which this office did not consider in reaching the original public interest decision.

A reevaluation may result in:

- a decision to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7
- A decision to use enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. These enforcement procedures provide for the issuance of an administrative order requiring compliance 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 there is a failure 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 for the cost.

Extension, modification, and revocation of the general permit:

- This GP may be revoked by issuance of a Public Notice at any time the DC determines that the singular or cumulative effects of the activities authorized herein are having an unacceptable adverse impact upon the public interest. Following such revocation, all new applications will be processed under individual permit application review procedures and the DE would decide on a case-by-case basis if previously authorized activities should be revoked, suspended, or modified.
- The DC has the discretionary authority to review any individual mining activity, or class of activities to determine whether the activity complies with the GP. If the DC finds that the activity has more than minimal individual or cumulative net adverse impacts on the environment or otherwise may be contrary to the public interest, prospective permittees will be required to apply for an individual permit.
- This GP will be effective for a period of five (5) years. During that time, the DC may modify it if he determines that the singular or cumulative impacts of the activities authorized by this GP have an unacceptable adverse effect upon the public interest. During its fifth year, this GP and the work authorized under it shall be reviewed to determine if this GP should be modified, extended, or discontinued.
- Activities that are authorized/underway prior to the GP expiration date must be completed within twelve (12) months of the GP's expiration date, and the permittee must notify the Corps of his/her intent to continue mining. Further time extensions may be considered on a case-by-case basis under the provisions of 33 CFR 325.6.

Penalties for Violations: Failure to comply with the terms and conditions of this GP may result in:

- suspension of work
- revocation of permit
- directed restoration of waters
- imposition of penalties as provided under Section 301 of the Clean Water Act (33 USC 1319), or Section 9 of the Rivers and Harbors Act of 1899 (33 USC 401).

Limits of This Authorization:

- This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- This permit does not grant any property rights or exclusive privileges.
- This permit does not authorize any injury to the property or rights of others.
- 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:

- Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- 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.
- Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- Design or construction deficiencies associated with the permitted work.
- Damage claims associated with any future modification, suspension, or revocation of this permit.

TERM:

This GP is effective for 5 years from the date of issuance unless otherwise modified, suspended, or revoked. Authorized work must be completed by the date specified in the authorization letter.

FOR THE DISTRICT COMMANDER:

Chief, North Branch
Regulatory Division
Alaska District, Corps of Engineers

Date