



US Army Corps
Of Engineers

GENERAL PERMIT POA-2006-1035

Reissuance of General Permit 91-7

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 re-issued to authorize the placement of aquatic farm structures, including associated floathouses and mooring buoys in certain navigable waters within the State of Alaska. 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, which can be found on the Corps website at www.poa.usace.army.mil/reg. Additional navigable waters which are excluded from authorization are specified in Conditions 5, 15, 17, and 18 of this GP. **This authorization does not include fin-fish related activities.** This GP does authorize specific discharges of dredged or fill material into waters of the United States. 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. Written confirmation of whether a proposed aquatic farm structure would be authorized by this GP is necessary, and should be requested by an applicant (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) Division of Mining, Land and Water, Aquatic Farm Lease.
- b. Alaska Department of Fish and Game (ADFG), Division of Commercial Fisheries, Aquatic Farm Operations Permit and, where applicable, a Special Area Permit.

c. 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.

d. ADNR, Division of Coastal and Oceanic Management (DCOM) Alaska Coastal Management Program (ACMP) Consistency Determination in favor of the project.

A copy of this GP is located on the Corps of Engineers website www.poa.usace.army.mil/reg, Special Public Notice, Aquatic Farm Structures Within the State of Alaska. The website location will be distributed with each Aquatic Farmsite Permit application by the appropriate State office. To initiate the state review process, you must submit an application for an Aquatic Farm Operations Permit to the appropriate regional office of the ADNR for projects located on State-owned tide and submerged lands or located on privately owned tide and submerged lands.

The State of Alaska will provide the Corps with correspondence related to aquatic farming applications, including start-up packets, and decision documents 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, and will constitute notification to the DE.

Upon receipt of the State's Final ACMP Consistency Determination, the Corps will advise the State within 30 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 a standard 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:

U.S. Army Engineer District, Alaska, Regulatory Branch, CEPOA-RD, Post Office Box 6898, Elmendorf AFB, Alaska 99506-0898; or emailed to regpagemaster@usace.army.mil.

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 a standard permit is required for a specific proposal as noted in the preceding paragraphs. If it is determined by ADNR 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 ADNR, DCOM 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 and submit written notification to the Corps of Engineers that each condition has been met:

1. The appropriate National Park Service (NPS) 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 NPS 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. NPS contact information is attached to this GP.

2. The U.S. Department of the Interior (DOI), Fish and Wildlife Service (USFWS), 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 directions. 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 directions is required. You may contact the Chugach National Forest office at 3301 C Street, Suite 300, Anchorage, Alaska 99503, telephone (907) 743-9500 or one of the three Tongass National Forest offices at the Federal Building, Ketchikan, Alaska 99901 telephone (907) 228-6201 for the Tongass National Forest, Ketchikan Area; 204 Siginaka Way, Sitka, Alaska 99835, for the Tongass National Forest, Chatham Area, telephone (907) 747-4295; or 15 North 12th Street, Post Office Box 309, Petersburg, Alaska 99833, telephone (907) 772-5801 for the Tongass National Forest, Stikine Area.

4. The DOI, Bureau of Land Management office, 222 W. 7th Avenue, Room 148, 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, NPS, or USFWS, unless permission is obtained from the Federal land manager. Contact the appropriate Federal land manager's office listed under Conditions 1-4 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. 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 99802-5517, (907) 463-2269.

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 (MMPA) of 1972, 16 U.S.C. Sections 1361-1407, and amendments, and; (2) the Migratory Bird Treaty Act (MBTA), 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 MMPA or the MBTA (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 MMPA 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 MMPA and implementing regulations are the USFWS and the National Marine Fisheries Service (NMFS).

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

(d) The NMFS may be reached at the following address and phone number: NMFS, Regional Office, Post Office Box 21668, Juneau, Alaska 99802, telephone (907) 586-7235.

(e) Should you have any questions regarding the requirements or provisions of the MMPA or implementing regulations, please contact the USFWS at (907) 786-3800, or the NMFS 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 MBTA prohibits the take of migratory birds, their parts, nests and eggs outside of established legal seasons, limits and limitations. The agency responsible of enforcing the MBTA and implementing regulations is the USFWS.

9. Aquatic farm structures, excluding structures such as racks and bags used in intertidal area 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. Geoduck tubes are authorized under this GP. Aquatic Farms requiring seeding and harvesting operations are also covered. Nationwide 4, [Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities], and Nationwide 48, [Existing Commercial Shellfish Aquaculture Activities] authorizations are both superseded by use of this GP.

12. 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. Abandonment is defined as a discontinuance of activity at the site for a period of one year or more. All appropriate state and local agencies must be notified. In addition, this office must be notified if the permitted facility is being transferred to a new party.

13. 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.

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

15. 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 a and b 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) 267-2342; 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 NMFS, Regional Office, Post Office Box 21668 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 work rafts on which equipment is worked on shall be present and no equipment haulouts shall occur 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 gigas*), blue mussels (*Mvtilus edulis*), and various kelp (*Macrocystis* app., *Laminaria* spp., and *Porphyra* app.) may be grown.

Information concerning paragraphs (a) through (i) above can be obtained from the USFWS, Ecological Services Anchorage, 605 West Fourth Avenue, Room 62, Anchorage, Alaska 99501-2249, telephone (907) 271-2888 if the proposed project is located west of Cape Suckling; or the USFWS, Ecological Services Juneau, 3000 Vintage Park Boulevard, Suite 201, Juneau, Alaska 99801-7100, telephone (907) 780-1160, if the proposed project is located east of Cape Suckling.

16. 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) 269-7638.

17. The harvesting operations associated with aquaculture activities have the potential to generate waste which attracts birds (gulls) that are 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) 271-5438.

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

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

20. 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; and

(c) shall be equipped with USCG approved marine sanitation devices.

21. 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:

- 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.

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.
- The information provided by the permittee in support of the permit application proves to have been false, incomplete, or inaccurate.
- 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

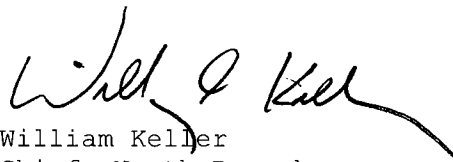
This GP does require direct written notification to the DE prior to commencement of the authorized activity. This GP also require written verification from the DE that the proposed activity is authorized. To request written verification check the appropriate box(es) on the Applicability Certification for GP form. Alternatively, the request can be submitted in writing directly to: U.S. Army Engineer District, Alaska, Regulatory Branch, CEPOA-RD, Post Office Box 6898, Anchorage, Alaska 99506-0898.

To the extent that the Corps' limited resources will allow, the Alaska District 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 (including all required state authorizations, accurate, and made in good faith, and the Alaska District does not respond to such inquiry within 60 days of the receipt of the request and copies of the required state authorizations, 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 not made in good 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:

FOR THE DISTRICT COMMANDER



William Keller
Chief, North Branch
Regulatory Division

Alaska National Historic Landmarks With Coastal Frontage

Ms. Janet Clemens, National Historic Landmarks Program Coordinator
Alaska Regional Office, National Park Service (907) 644-3461

<u>Name</u>	<u>Location</u>
Adak Army Base & Naval Operating Base	Adak
Alaska Native Brotherhood Hall	Sitka
Anangua Archeological District	Nikolski vicinity
Attu Battlefields & U.S. Army & Navy Airfields	Attu
Bering Expedition Landing Site	Kayak Island
Birnik 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 & Point 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
Ssitka Naval Base	Sitka
Skagway and White Pass	Skagway
Three Saints Site	Old Harbor
Wales Site	Wales
Yukon Island Main Site	Homer vicinity

Alaska National Natural Landmarks with Coastal Frontage
National Natural Landmarks Coordinator
Alaska Regional Office, National Park Service (907) 271-2739

Glacier Bay National Park and Preserve	(907) 697-2232
Katmai National Park and Preserve	(907) 246-3305
Kenai Fjords National Park	(907) 224-7500
Sitka National Historic Park	(907) 747-6281
Wrangell-St. Elias National Park and Preserve	(907) 822-5234
Bogoslof Island	
Clarence Rhode National Wildlife Range	
Malaspina Glacier	
McNeil River State Game Sanctuary	
Middleton Island	
Simeonof National Wildlife Refuge	
Unga Island	
Walrus Islands	

Aquatic Farm Structures Within the State of Alaska

Before completing the statement below, please read the attached General Permit (GP) carefully. If your proposed project does not comply with all of the terms and conditions contained herein, you will need to apply for a standard Department of the Army (DA) permit. You may fill out this form and sign below for a Standard Permit (SP) review, you will still need to complete a DA application which can be found on line at www.poa.usace.army.mil. 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 Division at (907) 753-2712, or toll free in Alaska at (800) 478-2712 or email regpagemaster@usace.army.mil.

Required State Authorizations Needed to Qualify for the GP:

Aquatic Farm Permit Operation Number: _____ Effective date _____

Aquatic Farm Lease Number: _____ Effective date _____

Alaska Department of Natural Resources, Department of Coastal and Oceanic Management

Final Consistency Determination (FCD) Number AK Issue date _____

[Note: FCD also required in order for a DA SP to be finalized]

Name (print): _____

Organization Name (print) _____

Address of requestor: _____

Telephone Number: (____) _____, Email address _____

Description of work: _____

USE SEPARATE SHEETS IF MORE INFORMATION IS NEEDED TO BE PROVIDED]

If you are applying for different locations which were authorized by the state you need to provide a location and plans for each site. Continue with Location information on additional sheets if needed.

Location Information: Section _____, Township _____, Range _____
Nearest Town: _____, Latitude _____, Longitude _____

Location Information: Section _____, Township _____, Range _____
Nearest Town: _____, Latitude _____, Longitude _____

Location Information: Section _____, Township _____, Range _____
Nearest Town: _____, Latitude _____, Longitude _____

General Permit review requested

I have read the general permit and have determined that my project will comply with all terms and conditions contained therein. I, the undersigned, desire authorization under GP 2006-1035, for aquatic farm structures.

Signature _____ Date _____
PRINT NAME _____

Standard Permit review requested: I have read the general permit and have determined that my project **will not** comply with all terms and conditions contained therein. I, the undersigned, request my application for placement of aquatic farm structures, be processed under DA SP processing procedures,

Signature _____ Date _____
PRINT NAME _____

[Nationwide 48 has been revoked in Alaska and is being replaced with this GP or an SP authorization.]