

**Decision Document
for
REISSUANCE OF POA-2007-00372-M4 (RGP-04)
A Regional General Permit for
Suction Dredging**

1 Introduction and Overview

This document discusses the factors considered by the Corps of Engineers (Corps) during the reissuance process for this Regional General Permit (RGP-04) (POA-2007-00372-M2), referred to hereinafter as "RGP." This document contains: (1) the public interest review required by Corps regulations at 33 CFR 320.4(a)(1) and; (2) a discussion of the environmental considerations necessary to comply with the National Environmental Policy Act. This evaluation of the RGP includes a discussion of compliance with applicable laws, consideration of public comments, an alternatives analysis, and a general assessment of individual and cumulative impacts, including the general potential effects on each of the public interest factors specified in 33 CFR 320.4(a).

1.1 Text of the Regional General Permit

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

Permittee: The General Public

Permit No. Regional General Permit-04, Suction Dredging (POA-2007-372-M4)

Issuing Office: U.S. Army Corps of Engineers, Alaska District

Issuance Date: May 04, 2021

Expiration Date: May 31, 2026

NOTE: The term "navigable waters", as used in this permit refers to Navigable Waters of the United States that are subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), which are subject to the ebb and flow of the tide, and fall under the jurisdiction of the United States Army Corps of Engineers, Alaska District. The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the Alaska District of the Corps of Engineers, Regulatory Program having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

AUTHORITY

Under RGP-04, the General Public are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) to perform certain work in Navigable Waters of the United States as described further herein.

AUTHORIZED ACTIVITIES

RGP-04 authorizes the operation of limited suction dredges in navigable waters which are subject to the ebb and flow of the tides, for the purpose of mining metals, strictly in accordance with the limitations, terms and conditions of the RGP-04.

PROJECT LOCATION (Only Tidal waters under our authority)

The geographic and jurisdictional limits of the RGP-04 includes the navigable waters in

Alaska within specific geographic limits described below. The Rivers and Harbors Act of 1899 defines Navigable Water 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." With exception of the limitations otherwise specified, the RGP-04 coverage applies to the following waters:

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Ocean and coastal waters: All waters that are subject to the ebb and flow of the tide are navigable. The RGP-04 coverage begins on the Mean High Water Mark (MHW) on the shore reached by the plane of the mean (average) high water, and extends seaward to include all ocean and coastal waters within a zone three geographic (nautical) miles from the MHW.

NOTIFICATION REQUIREMENTS:

- Operations in marine waters at minus 30 feet or less in depth Mean Low Lowest Water (MLLW), are approved for operation without notifying the Corps. Operators will not receive a printed authorization. However, the work still falls under Corps jurisdiction, and operators must comply with the limitations, terms and conditions of the RGP-4.
- Operations in marine waters minus 30 feet or greater in depth MLLW are required to notify the Corps by Preconstruction Notification Form (Attachment 1) available from this office's website at

<https://www.poa.usace.army.mil/Portals/34/docs/regulatory/EngForm60822019Jun.pdf>, and must wait to receive a written Corps verification that the operation qualifies for the RGP-4. The applicant must also provide information about the effect of the project on Endangered Species, Essential Fish Habitat, and Historic Properties.

EXCLUSIONS: This RGP does not cover the following operations:

Suction dredges with intake diameters of more than 10 inches are not permitted under this RGP. Operations using an intake size larger than 10 may be authorized under a standard permit application which is available on this office's website located at <https://www.poa.usace.army.mil/Missions/Regulatory/Permits/>.

- **Habitat:** This RGP does not apply to projects in coral, submerged aquatic vegetation, macro-algae, shellfish beds, or wetlands.

Additionally, this RGP 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, and Marine Sanctuaries.
- **Within the Municipality of Anchorage, or within the Bristol Bay Borough designated commercial fishing, seafood processing, recreational use, and tourism areas on the Naknek River.**
- **Endangered Species:** The RGP does not apply to projects that would adversely affect endangered species or critical habitat as designated under the Endangered Species Act (1973); unless Section 7 consultation is completed. See condition #6 below.
- **Archaeological, cultural, or historic properties:** In cases where the district engineer 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 #7 below.

GENERAL CONDITIONS

1) Permit Expiration.

The RGP-04 expires on April 30, 2026. All activities authorized under the RGP-04 must be concluded by April 30, 2026, unless the District Engineer's discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

2) TIMING WINDOWS: For all operations, the following timing windows are in effect to conserve and protect red king crab and salmon essential fish habitat.

- Red King Crab- No dredging shall be conducted between March 1st and May 31st.
- Salmon- No dredging shall be conducted within 1 nautical mile of the mouth of an anadromous stream or river between June 1st and July 15th.

Exceptions to these time periods require case-specific written approval from the Corps and the National Marine Fisheries Service.

3) Navigation.

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States 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 United States. No claim shall be made against the United States on account of any such removal or alteration.

4) Activities Affecting Structures or Works Built by the United States

If an RGP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre- construction notification. An activity that requires section 408 permission is not authorized by RGP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written RGP verification.

2 Tribal Rights

No RGP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

3 Endangered Species

- a. No activity is authorized under this RGP 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 this RGP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.

- b. Permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity 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 preconstruction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. 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 pre-construction notification. In cases where the applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA 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 United States Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS)

- d. The district engineer may add species-specific permit conditions to this RGP.
- e. Authorization of an activity by this RGP 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 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.
- f. If the permittee has a valid ESA section 10(a) (1) (B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RGP activity, the nonfederal applicant should provide a copy of that ESA section 10(a) (1) (B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a) (1) (B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed RGP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a) (1) (B) permit covers the proposed RGP activity or whether additional ESA section 7 consultation is required.
- g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

4 Historic Properties

- a. In cases where the district engineer determines that the activity may have the potential to cause effects to 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 pre-construction notification to the district engineer if the RGP activity (undertaking) might 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 pre-construction notification must state which historic properties might have the potential to be affected by the proposed RGP activity 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 properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineer will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer 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 in the PCN and these identification efforts, the district engineer shall determine whether the proposed RGP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.
- c. The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity 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.

5 Discovery of Previously Unknown Remains and Artifacts

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, stop all activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

6 Designated Critical Resource Waters

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

7 Pre-Construction Notification

- a. **Timing.** Where required by the terms of the RGP, the prospective permittee must notify the district engineer by submitting a preconstruction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:
 - i. He or she is notified in writing by the district engineer that the activity may proceed under the RGP with any special conditions imposed by the district or division engineer; or

- ii. 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district engineer. However, if the permittee was required to notify the Corps pursuant to general condition 6 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 7 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR

330.4(f)) and/or section 106 of the National Historic

Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under this RGP until the permittee has received written approval from the Corps. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

- b. Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- i. Name, address and telephone numbers of the prospective permittee;
- ii. Location of the proposed activity in latitude and longitude at the center of the proposed work area;
- iii. A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, and other waters expected to result from the RGP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other nationwide permit(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity

will be no more than minimal and to determine the need or other mitigation measures. For single and complete projects, the PCN must include the quantity of anticipated losses of aquatic sites. Sketches should be provided when necessary to show that the activity complies with the terms of the RGP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

- iv. If any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For RGP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
 - v. If the RGP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property.
- c. Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an RGP PCN and must include all of the applicable information required in paragraphs (b) (i) through (v) of this general condition. A letter containing the required information may also be used. Applicants may submit electronic files of PCNs and supporting materials to regpagemaster@usace.army.mil.
- d. Agency Coordination:
- vi. The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the RGP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
 - vii. When agency coordination is required, the district engineer will provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality

agency, the Environmental Protection Agency (EPA), and, if appropriate, the NMFS) in a timely manner. These agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the RGP, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered.

- viii. The district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- ix. Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

INSPECTION: You must allow the Corps 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 RGP.

In the event that work is being or has been performed in noncompliance with this RGP, 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 RGP.

Any operator found in non-compliance with this RGP may not be issued another RGP 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:

Application Requirement: Required for all operators floating a device in water depths deeper than minus 30 feet MLLW.

The operator must complete a Department of the Army permit application (ENG FORM 4345) [available at a Corps office or at our website:
<https://www.poa.usace.army.mil/Missions/Regulatory/>

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 datums
- Latitude and Longitude of the project area

The application and accompanying drawings must have sufficient detail for the application to be considered complete. 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 RGP, or that an individual permit is required.

Authorization Process: All operations proposed for authorization under this RGP 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 RGP 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 sends the applicant a RGP verification letter, or based upon review, the Corps notifies the applicant that a RGP is not appropriate for the proposed operations and special conditions can be added to the RGP letter to mitigate impacts and bring a project into compliance with this RGP.

- 6) Permittee should retain all original authorizations in a safe location, and a duplicate copy at the operation site in possession of the operator for review by visiting agencies.

FURTHER INFORMATION:

1. **Congressional Authorities.** Authorization to undertake the work described above is subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). Any activities associated the work described that require authorization under Section 404 of the Clean Water Act (33 U.S.C. 1344) must be authorized separately through nationwide or individual permits.
2. **Limits of this authorization.**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorization 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.
3. **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.
4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the applicant.

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

- a. The permittee fails to comply with the terms and conditions of this permit.
- b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- 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 the suspension, modification, and revocation procedures contained in 33 CFR 325.7 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 your permit and for the initiation of legal action where appropriate.

6. Reevaluation this RGP. This office may also reevaluate its decision to issue the RGP-03 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: 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 the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

This General Permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

FOR THE DISTRICT COMMANDER:

Shane McCoy

Date

Chief, South Section

Regulatory Division

Alaska District Corps of Engineers

7.1 Statutory Authority

Under RGP-04, the General Public are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) to perform certain work in Navigable Waters of the United States which are subject to the ebb and flow of the tide.

7.2 General

Regional General Permits (RGPs) are a type of general permit issued on a regional basis to authorize certain activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. RGPs must comply with the related laws cited in 33 CFR 320.3. Specifically, evaluation of this RGP considers compliance with each of the following laws as applicable: Section 401, 402, and 404 of the Clean Water Act, Section 307(c) of the Coastal Zone Management Act of 1972, as amended, Section 302 of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, the National Environmental Policy Act of 1969, the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act of 1980, the National Historic Preservation Act of 1966, the Interstate Land Sales Full Disclosure Act of 1968, the Endangered Species Act of 1973, the Magnuson-Stevens Fishery Conservation and Management Act of 1996, as amended; the Bald and Golden Eagle Protection Act of 1940, the Migratory Bird Treaty Act of 1918, and the Alaska National Interest Lands Conservation Act of 1980, as applicable. In addition, compliance of the RGP with other Federal requirements, such as Executive Orders and Federal Regulations addressing issues such as floodplains, essential fish habitat, and critical resource waters are considered.

Activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment cannot be authorized by RGP's. Individual review of each activity proposed for authorization by the RGP would be performed through the pre-construction notification to the Corps and would be required for verification that an activity complies with the RGP.

7.3 Avoidance and Minimization of impacts to waters of the U.S. (WOTUS):

This Regional General Permit (RGP) does not authorize the discharge of dredged or fill material into jurisdictional waters under the Navigable Waters Protection Rule.

7.4 Proposed Mitigation and discussion:

Under this RGP, compensatory mitigation will not be required as there is no discharge of dredged or fill material into WOTUS and no permanent loss of function associated with those waters.

7.5 Applicable History: This is the fourth issuance of this RGP. Historically, suction dredge activities authorized under the RGP have occurred in high energy hydraulic environments, such as nearshore areas or in streams, so that any accumulation of material or surface irregularities were obliterated within a season of normal flow or tidal influence. Thus, suction dredge activities have been regarded as having minimal adverse effects when performed separately.

Suction Dredging as a method of gold recovery started in the late 1980's and has expanded in popularity. The area around Nome has been highly utilized for suction dredging since at least the late 1980s and is the main area within Alaska where suction dredging for the purposes of the recovery of precious metals occurs most often. Between 2013 and 2018 there were approximately 285 actions performed under this RGP and an estimated 1.08 million cubic yards of dredged material; however, the Alaska Department of Natural Resources (ADNR) Permits to Mine in Alaska (APMA) database does not include acreage of impacts. There were several outliers in the data, with several smaller dredging operations identifying cubic yards (CY) of material dredged per season higher than large dredging operations. There is also a gap in data on the APMA database; 60 ADNR permitted actions do not include any reported impacts. The majority of all impacts listed on the APMA database were located in the immediate vicinity of Nome in the east and west recreational mining areas. The top 20 identified operation accounts for 48% of the total reported volume of material dredged and is all located in Norton Sound between Nome and Cape Darby.

7.6 Terms and Conditions

NOTIFICATION REQUIREMENTS:

- Operations in marine waters at minus 30 feet or less in depth Mean Low Lowest Water (MLLW), are approved for operation without notifying the Corps. Operators will not receive a printed authorization. However, the work still falls under Corps jurisdiction, and operators must comply with the limitations, terms and conditions of the RGP-04.
- Operations in marine waters minus 30 feet or greater in depth MLLW are required to notify the Corps by Preconstruction Notification Form (Attachment X), and must wait to receive a written Corps verification that the operation qualifies for the RGP-04. The applicant must also provide information about the effect of the project on Endangered Species, Essential Fish Habitat, and Historic Properties.

EXCLUSIONS: This RGP does not cover the following operations:

Suction dredges with intake diameters of more than 10 inches are not permitted under this RGP. Operations using an intake size larger than 10 may be authorized under a standard permit application which is available on this office's website located at <https://www.poa.usace.army.mil/Missions/Regulatory/Permits/>.

- Habitat: This RGP does not apply to projects in coral, submerged aquatic vegetation, macro-algae, shellfish beds, or wetlands.

Additionally, this RGP 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, and Marine Sanctuaries.
- Within the Municipality of Anchorage, or within the Bristol Bay Borough designated commercial fishing, seafood processing, recreational use, and tourism areas on the Naknek River.
- Endangered Species: The RGP does not apply to projects that would adversely affect endangered species or critical habitat as designated under the Endangered Species Act (1973); unless Section 7 consultation is completed. See condition #6 below.
- Archaeological, cultural, or historic properties: In cases where the district engineer 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 #7 below.

GENERAL CONDITIONS

1) Permit Expiration.

The RGP-04 expires on April 30, 2026. All activities authorized under the RGP-04 must be concluded by April 30, 2026, unless the District Engineer's discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

- 2) **TIMING WINDOWS:** For all operations, the following timing windows are in effect to conserve and protect red king crab and salmon essential fish habitat.
- Red King Crab- No dredging shall be conducted between March 1st and May 31st.
 - Salmon- No dredging shall be conducted within 1 nautical mile of the mouth of an anadromous stream or river between June 1st and July 15th.

Exceptions to these time periods require case-specific written approval from the Corps and the National Marine Fisheries Service.

3) **Navigation.**

- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States 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 United States. No claim shall be made against the United States on account of any such removal or alteration.

4) **Activities Affecting Structures or Works Built by the United States**

If an RGP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. An activity that requires section 408 permission is not authorized by RGP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written RGP verification.

5) **Tribal Rights**

No RGP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

6) Endangered Species

- a. No activity is authorized under this RGP 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 this RGP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.

- b. Permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity 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 pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. 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 pre-construction notification. In cases where the applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species or critical habitat, or until ESA 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 United States

Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS)

- d.) the district engineer may add species-specific permit conditions to this RGP.
- e. Authorization of an activity by this RGP 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 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.
- f. If the permittee has a valid ESA section 10(a) (1) (B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RGP activity, the non-federal applicant should provide a copy of that ESA section 10(a) (1) (B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a) (1) (B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed RGP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a) (1) (B) permit covers the proposed RGP activity or whether additional ESA section 7 consultation is required.
- g. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> or [http:// www.fws.gov/ipac](http://www.fws.gov/ipac) and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

7) Historic Properties

- a. In cases where the district engineer determines that the activity may have the potential to cause effects to 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 pre-construction notification to the district engineer if the RGP activity (undertaking) might 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 pre-construction notification must state which historic properties might have the potential to be affected by the proposed RGP activity 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 properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineer will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer 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 in the PCN and these identification efforts, the district engineer shall determine whether the proposed RGP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the applicant has identified historic properties on which the activity might have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

- c. The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity 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.

8) Discovery of Previously Unknown Remains and Artifacts

If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, stop all activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

9) Designated Critical Resource Waters

Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

10) Pre-Construction Notification

- a. Timing. Where required by the terms of the RGP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request

additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- i. He or she is notified in writing by the district engineer that the activity may proceed under the RGP with any special conditions imposed by the district or division engineer; or
 - ii. 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district engineer. However, if the permittee was required to notify the Corps pursuant to general condition 6 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 7 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under this RGP until the permittee has received written approval from the Corps. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).
- b. Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:
- i. Name, address and telephone numbers of the prospective permittee;
 - ii. Location of the proposed activity in latitude and longitude at the center of the proposed work area;
 - iii. A description of the proposed activity; the activity's purpose;

direct and indirect adverse environmental effects the activity would cause, and other waters expected to result from the RGP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other nationwide permit(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need or other mitigation measures. For single and complete projects, the PCN must include the quantity of anticipated losses of aquatic sites. Sketches should be provided when necessary to show that the activity complies with the terms of the RGP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

- iv. If any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For RGP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
 - v. If the RGP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property.
- c. Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an RGP PCN and must include all of the applicable information required in

paragraphs (b) (1) through (5) of this general condition. A letter containing the required information may also be used. Applicants may submit electronic files of PCNs and supporting materials to regpagemaster@usace.army.mil.

d. Agency Coordination:

- vi. The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the RGP and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.
- vii. When agency coordination is required, the district engineer will provide (*e.g.*, via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, the Environmental Protection Agency (EPA), and, if appropriate, the NMFS) in a timely manner. These agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the RGP, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered.
- viii. The district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
- ix. Applicants are encouraged to provide the Corps with either

electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

8 Review Process

The analysis in this document and the coordination that was undertaken prior to the reissuance of this RGP fulfill the requirements under the National Environmental Policy Act (NEPA) and the Fish and Wildlife Coordination Act (FWCA).

The state must grant or waive a Clean Water Act Section 401 water quality certification (WQC) for this RGP prior to a final Corps permit decision. A Section 401 WC was waived for this RGP on May 31, 2019; pursuant to this general certification, specific activities authorized under the RGP would not be subject to Section 401 on a case-by-case review.

RGP's that authorize activities within, or affecting land or water uses within a state that has a federally approved coastal zone management program (CZM), must also be certified as consistent with the state's program. By operation of Alaska State law, the federally approved CZM program expired July 1, 2011, resulting in a withdrawal from participating in the Coastal Zone Management Act's (CZMA) National Coastal Management Program. The CZMA is therefore not applicable to this reissuance of this RGP.

8.1 Scope of Analysis

The determination of the scope of analysis for the Corps federal action is guided by the Corps NEPA implementation regulations 33 CFR 325, Appendix B.

The scope of analysis includes the specific activity requiring a Department of the Army permit. Other portions of the entire project are not included because the Corps does not have sufficient control and responsibility to warrant federal review.

The scope of analysis would include the entire RGP as the dredging activities occur in navigable waters of the U.S.

The scope of analysis for this RGP includes the impacts, alternatives and project benefits resulting from the Action Area identified above.

8.2 Purpose and Need:

The purpose and need for issuance of this RGP is to allow for the recovery of precious metals and semi-precious stones while providing a more effective administration of the Rivers and Harbors Act of 1899 without creating an undue burden on the public. Issuance of the proposed suction dredge RGP would continue to meet the needs of the regulated mining community while reducing the workload of the Corps to evaluate Individual Permit (IP) applications for minor mining projects. RGP-04 was used to authorize approximately 285 activities since 2013 according to the Alaska Department of Natural Resources mining website, which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.

8.3 Water Dependency Determination

This activity is not water dependent.

8.4 Public Comment and Response

A Public Notice (PN) describing the RGP was issued (mailed/Emailed) and posted on the Corps website (<http://www.poa.usace.army.mil/Missions/Regulatory/Special-Public-Notices/>) on April 10, 2019. The PN expired on May 10, 2019.

Table 1 – Comments Received			
Agency and/or Person provided with Public Notice:	Response received? Y/N	Date Received:	Comments/Issues Raised, Applicant's Response and Corps Evaluation:
U.S. Environmental Protection Agency (EPA)	N		
U.S. Fish and Wildlife Service (USFWS)	Y	29 May 2019	See below for discussion.
U.S. Coast Guard (USCG)	N		
National Marine Fisheries Service (NMFS)	Y	6 May 2019	NMFS has received the RGP 2017-00372-M2 for Mining Operations. The notice includes mitigation as: 1) no dredging timing window from March 1 - May 31; and 2) 1 nautical mile area restriction near an anadromous stream or river mouths. These conservation measures conserve and protect crab and salmon EFH. No further EFH consultation is necessary for this action.
Federally Recognized Tribes	N		
Alaska Department of Fish and Game (ADF&G)	N		
Alaska Department of	N		

Table 1 – Comments Received			
Agency and/or Person provided with Public Notice:	Response received? Y/N	Date Received:	Comments/Issues Raised, Applicant's Response and Corps Evaluation:
National Resources (ADNR)			
AKDNR, Office of History and Archeology (OHA)	N		
Alaska Department of Environmental Conservation (ADEC)	N		
Local Agencies	N		
Individuals	Y	10 May 2019	See below for discussion.

Additional Discussion of Comments:

Individual – On May 10, 2019, Mr. Ahmasuk commented on concerns related to Endangered Species Act (ESA), Essential Fish Habitat (EFH), and climate change. The Corps has conducted a review for EFH and received concurrence with our determinations of effect with the required mitigation measures in place to protect EFH species. Mr. Ahmasuk was concerned about bearded and ringed seals using the area to hone their fishing skills as pups and to utilize the beach for resting.

United States Fish and Wildlife Service (USFWS) – On May 29, 2019, USFWS commented that they do not object to the modifications to the RGP if they exclude estuarine waters and associated special aquatic sites. On June 5, 2019, a teleconference was held with Robert Henszey (Planning and Consultation Branch Chief, Fairbanks USFWS Office) and Amal Ajmi to discuss the proposed RGP. USFWS was under the impression the Corps was regulating this activity under Section 404 of the Clean Water Act (CWA). After explaining the Corps was only regulating the dredging under Section 10 of the Rivers and Harbors Act of 1899 and that Alaska Department of Conservation was regulating the discharge of effluent material under Section 402 of the CWA Mr. Henszey withdrew the request.

A Special Public Notice (SPN) describing the RGP was issued (mailed/Emailed) and posted on the Corps website (<http://www.poa.usace.army.mil/Missions/Regulatory/Special-Public-Notices/>) on November 12, 2020. The SPN expired on November 27 2020. This SPN was to address the changes which would limit this RGP to suction dredging activities only, and limit the nozzle intake size to 10 inches or less.

Table 2 – Comments Received			
Agency and/or Person provided with Public Notice:	Response received? Y/N	Date Received:	Comments/Issues Raised, Applicant's Response and Corps Evaluation:
U.S. Environmental Protection Agency (EPA)	N		
U.S. Fish and Wildlife Service (USFWS)	Y	29 May 2019	USFWS had no objections to the proposed changes.
U.S. Coast Guard (USCG)	N		
National Marine Fisheries Service (NMFS)	N		
Federally Recognized Tribes	N		
Alaska Department of Fish and Game (ADF&G)	N		
Alaska Department of National Resources (ADNR)	N		
AKDNR, Office of History and Archeology (OHA)	N		
Alaska Department of	N		

Table 2 – Comments Received			
Agency and/or Person provided with Public Notice:	Response received? Y/N	Date Received:	Comments/Issues Raised, Applicant's Response and Corps Evaluation:
Environmental Conservation (ADEC)			
Local Agencies	N		
Individuals	N		

8.4.1 Corps Evaluation of Comments:

The analysis area was reviewed for EFH, ESA, and ESA critical habitat. The majority of the area is already highly traveled by boats; the proposed reissuance of the RGP would not change the ambient conditions that have occurred for decades. It has been determined by the Corps that due to the types of motors typically used in this process that there would be no effect to ESA listed species which would include bearded seal (*Erignathus barbatus*), ringed seals (*Pusa hispida*), and polar bears (*Ursus Maritimus*), and the western distinct population segment (DPS) of Steller sea lion (*Eumetopias jubatus*) Steller's eider (*Polysticta stelleri*), spectacled eider (*Somateria fischeri*), Pacific walrus (*Odobenus rosmarus divergens*), the Cook Inlet DPS of beluga whale (*Delphinapterus leucas*), humpback whale (*Megaptera novaeangliae*), Fin whale (*Balaenoptera physalus*), north Pacific right whale (*Eubalaena japonica*), northern sea otter (*Enhydra lutris kenyoni*), or the designated, or proposed critical habitat for these species.

8.5 RGP changes Subsequent to the Public Notice

N/A

9 Alternatives

This evaluation includes an analysis of alternatives based on the requirements of NEPA. The alternatives discussed below are based on an analysis of the potential environmental impacts and impacts to the Corps, federal, tribal, and state resources agencies, the general public, and prospective permittees. Since the consideration of off-site alternatives under the 404(b)(1) guidelines does not apply to Section 10 of the Rivers and Harbors Act projects that do not include a discharge of dredged or fill material, the alternatives analysis discussed below consists of a general NEPA alternatives analysis for the RGP.

9.1 Alternative 1: No Action:

Under this alternative, the RGP would not be reissued. The no-action alternative would not achieve one of the goals of the Corps Permit Program, which is to reduce the regulatory burden on applicants for activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Nor would it result in the applicant's purpose and need

If this RGP, is not available, additional resources would be required for the Corps to evaluate these minor activities through the IP process, and for the public, federal agencies, tribal entities, and state resource agencies to review and comment on the public notices for these activities. Another important benefit of the proposed RGP that would not be achieved through the "no action" alternative is the incentive for project proponents to design their project so that those activities meet the terms and conditions of the RGP. The Corps believes that RGP's significantly reduces adverse effects to the aquatic environment because most applicants modify their projects to comply with the RGP's and avoid delays and costs typically associated with the IP process.

9.2 Alternative 2: Issuance of the RGP

This alternative is preferred because it meets the needs of the regulated community while reducing the workload of the Corps in evaluating permit applications for minor suction dredge mining projects. This would allow the Corps to spend more time and effort evaluating applications for larger projects of greater potential impact, and to ensure permit compliance. During the public evaluation process for the RGP, the Corps analyzed alternatives in design, location, and timing to minimize impacts to the environment and public interests to the maximum extent practicable. The proposed RGP would include restrictions and special conditions to minimize impacts.

10 Affected Environment

The RGP applies to all marine navigable waters within the entire State of Alaska, except for the Municipality of Anchorage and **within the Bristol Bay Borough designated commercial fishing, seafood processing, recreational use, and tourism areas on the Naknek River**, provided projects comply with all conditions of the proposed RGP. Also, the proposed RGP would not apply to projects in eelgrass beds, seagrass beds, kelp beds, vegetated shallows, shellfish beds, mudflats, or wetlands. The areas the permit is to be used in will be highly dynamic and high energy hydraulic environments.

10.1 Environmental Consequences

This document contains a general assessment of the foreseeable effects of the individual activities authorized by this RGP and the anticipated cumulative effects of those activities. In the assessment of these individual and cumulative effects, the terms and limits of the RGP, and the RGP general conditions are considered. For actions deeper than minus 30 feet (-30') MLLW the individual permitting action

decision document will address how each permitted action would affect the individual and cumulative effects in each watershed.

The following evaluation comprises the NEPA analysis, the public interest review specified in 33 CFR 320.4(a)(1) and (2).

The issuance of an RGP is based on a general assessment of the effects on public interest and environmental factors that are likely to occur as a result of using this RGP to authorize activities in waters of the United States. As such, this assessment must be speculative or predictive in general terms. Since this RGP authorize activities across Navigable Waters in the State of Alaska, projects eligible for RGP authorization may occur in a wide variety of environmental settings. Therefore, it is difficult to predict all of the indirect impacts that may be associated with each activity authorized by an RGP. Factors may be relevant, but the adverse effects on the aquatic environment are negligible, such as the impacts of a boat ramp on water level fluctuations or flood hazards. Only the reasonably foreseeable direct, indirect, and cumulative effects are included in the environmental assessment for this RGP. The district engineer would impose, as necessary, additional conditions on the RGP authorization or exercise discretionary authority to address locally important factors or to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects. In any case, adverse effects will be mitigated by the terms, conditions, and additional provisions of the RGP.

10.2 General Evaluation Criteria

This document contains a general assessment of the foreseeable effects of the individual activities authorized by the RGP and the anticipated cumulative effects of those activities. In the assessment of these individual and cumulative effects, the terms and limits of the RGP and the RGP General Conditions (GC) are considered.

The following evaluation comprises the NEPA analysis, the public interest review specified in 33 CFR 320.4(a)(1) and (2).

The reissuance of an RGP is based on a broad assessment of the effects on public interest and environmental factors that are likely to occur as a result of using this RGP to authorize activities in marine waters.

The indication that a factor is not relevant to the RGP does not necessarily mean that the RGP would never have an effect on that factor, but that it is a factor not readily identified with the authorized activity. Factors may be relevant, but the adverse effects on the aquatic environment would be negligible, such as the activity resulting in changes in natural Bathymetry. The activity would result in changes to bathymetry but the natural action of the high energy environment where these activities are taking place would result in the return to natural bathymetry within a short period of time. Only the reasonably foreseeable direct or indirect effects are included in the environmental assessment for this RGP. The DE would impose, as necessary, additional conditions or to ensure the authorized activity results in nor more than minimal individual and cumulative adverse effects

on the aquatic environment. In any case, adverse effects would be controlled by the terms, GC, and additional provisions of the RGP.

10.3 Impact Analysis

It has been determined that projects shallower than -30' MLLW would have minimal in nature due to the highly dynamics and high energy hydraulic nature of near shore areas. A case-by-case impact analysis would occur on projects deeper than -30' MLLW to ensure that the specific activities would have minimal individual and cumulative adverse effects on the aquatic environment. If the district engineer determines that after avoidance and the adverse effects of a particular project are more than minimal after the conditions for mitigation of impacts, then the discretionary authority would be asserted, and the applicant would be notified that another form of DA authorization, Letter of Permission (LOP) or IP, is required.

When making the minimal adverse environmental effects determinations for project deeper than -30' MLLW, the district engineer would consider the direct and indirect effects caused by the RGP activity. The district engineer would also consider site-specific factors, such as the environmental setting in the vicinity of the RGP activity, the type(s) of resource(s) that will be affected by the RGP activity, the functions provided by the aquatic resource that would be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resources functions would be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (e.g. temporary or permanent), the importance of the aquatic resource functions to the region (e.g. watershed or ecoregion), and mitigation required by the district engineer. The district engineer may add case-by-case special conditions to the RGP authorization to address site-specific environmental concerns.

10.4 Cumulative Analysis

A more detailed history of suction dredge activities is in Section 1.6 – Applicable History.

Suction dredge activities authorized under the RGP have occurred in high energy hydraulic environments, such as nearshore areas or in streams, so that any accumulation of material or surface irregularities were redistributed within a year of normal flow or tidal influence and winter storm activity. Thus, suction dredge activities have been regarded as having minimal adverse effects when performed separately. The Corps recognizes, however, that in the future there is the potential, in any location for an increase in indirect adverse impacts to the aquatic environment. Such a scenario could include an increase in the number of smaller operations within any given area, changes in technology or mining methods, and/or development of one or more larger mining operations, within any given area. Any of these scenarios could have the potential to disturb larger areas of underwater habitat with the potential for adverse cumulative or indirect impacts. Substantive cumulative or indirect impacts from larger-sized operations would be

evaluated within the parameters of an IP, whereas impacts from smaller operations would likely be addressed under the conditioning of a future RGP.

When considering the overall impacts that will result from this RGP, in context with the overall impacts from similar past, present, and reasonably foreseeable future projects, their cumulative impacts are not considered to be significantly adverse. It is likely we will receive similar projects in the future, which will go through a comparable review process.

11 Public Interest Review

11.1 Public Interest Review Factors (33 CFR 320.4(a)(1))

Table 2: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
1. Conservation:				X		
2. Economics: There would be a net benefit to the local, state, and national economy from the mining for precious metals associated with this permit.					X	
3. Aesthetics:	X					
4. General Environmental Concerns:				X		
5. Wetlands: This permit does not authorize dredging or work in wetlands.						X
6. Historic Properties: Special Condition 9 restrict the use of the Regional General Permit (RGP) from areas with historic resources and requires individuals to notify the Corps of Engineers and State Historic Preservation Office should 106 resources be found. See Section 1.7 Terms and Conditions – General Condition 7 Historic Properties			X			
7. Fish and Wildlife Values: Mitigation measures were included thru timing windows in order to protect fish and wildlife. Include a brief discussion on ESA please and the Special and General Conditions. Section 1.7 Terms and Conditions – General Condition 2 Timing Windows.			X			
8. Flood Hazards: The activities associated with this RGP are not located within a floodplain.						X
9. Floodplain Values: The activities associated with this RGP are not located within a floodplain						X
10. Land Use: The areas being mined under this RGP are state-owned tidelands and the miners are required to obtain leases from Alaska Department of Natural Resources (AKDNR).				X		

Table 2: Public Interest Factors	Effects					
	None	Detrimental	Neutral (mitigated)	Negligible	Beneficial	Not Applicable
11. Navigation: The RGP includes special conditions to protect navigation.			X			
12. Shoreline Erosion and Accretion: The activities authorized by this RGP would have no effect on erosion or accretion of shorelines.	X					
13. Recreation:				X		
14. Water Supply and Conservation: This permit would not affect waters supplies or water conservation.						X
15. Water Quality: The impacts to water quality will be localized and limited and is expected to be negligible.				X		
16. Energy Needs: This RGP would have no effect on energy needs.						X
17. Safety: The permittee would be required to follow all United States Coast Guard safety requirements for operation that structures and boats in marine waters.				X		
18. Food and Fiber Production: This RGP has no food or fiber production associated with it.						X
19. Mineral Needs: There is a high demand for precious metals.					X	
20. Consideration of Property Ownership: The areas being mined under this RGP are state-owned tidelands and the miners are required to obtain leases from AKDNR.	X					
21. Needs and Welfare of the People: This RGP provides jobs and an economic benefit to the local and state economy. The people are also in need of the precious metals associated with this RGP.					X	

Additional discussion of effects on factors above: N/A

11.2 Additional Public Interest Review Factors (33 CFR 320.4(a)(2))

11.2.1 Relative extent of the public and private need for the proposed structure or work:

This RGP authorizes the used of suction dredging structures in navigable waters that have no more than minimal individual and cumulative adverse environmental effects. These activities satisfy public and private needs for Public benefits include employment opportunities and a potential increase in the state tax base through lease sales and mining net income tax. The need for this RGP is based upon the number of these activities that occur annually with no more than minimal individual and cumulative adverse environmental effects.

11.2.2 Were there any unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work?

There are no unresolved conflicts associated with this RGP. Consideration of off-site alternatives locations is not required for activities that are authorized under RGPs. Regional General Permits authorize activities that have no more than minimal individual and cumulative adverse effects on the environment and the overall public interest. The district engineer will exercise discretionary authority and require an individual permit if the proposed activity will result in more than minimal adverse environmental effects on the project site. The consideration of off-site alternatives can be required during the individual permit process.

11.2.3 The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work is likely to have on the public and private uses to which the area is suited:

As described in Section 1.6 – Applicable History the area around Nome has been highly utilized for suction dredging since at least the late 1980s and is the main area within Alaska where suction dredging for the purposes of the recovery of precious metals occurs. The area is highly dynamic due to wave action during the spring thru fall and sheet ice during the winter months. Due to these dynamic and high current areas, the impacts to water quality are expected to be minimal and localized. The nature of the substrates in the areas likely authorized under this RGP are constantly renewed which allows the miners to continue to mine the same areas each year which has provided a fairly constant stream of revenue for both private operators and local and state revenues.

12 Compliance with Other Laws, Policies, and Requirements

12.1 Determination of Section 7 of the Endangered Species Act (ESA)

Effects determination and rationale: This RGP has been conditioned to not allow any activity that would directly or indirectly effect ESA listed species without appropriate consultation. See Section 1.7 Terms and Conditions – General Condition 6 – Endangered Species.

12.2 Effects determination and rationale: Magnuson-Stevens Fishery Conservation and Management Act, Essential Fish Habitat (EFH)

Effects determination and rationale: This RGP has been conditioned to not allow any activity that would directly or indirectly effect EFH. See Section 1.7 Terms and Conditions – General Condition 2 – Timing

12.3 Section 106 of the National Historic Preservation Act (Section 106)

For most projects to be authorized under this RGP, the permit area would only include the project area and not any of those activities outside of WOTUS because all three tests identified in 33 CFR 325, Appendix c(g)(1) would not have been met.

For a limited number of projects, the permit area would include those areas comprising WOTUS that would be directly affected by the proposed work or structures as well as activities outside of WOTUS because all three tests identified in 33 CFR 325, Appendix c(g)(1) have been met.

This RGP has been conditioned to not allow any activity that would directly or indirectly effect Section 106 NHPA resources. See Section 1.7 Terms and Conditions – General Condition 7 Historic Properties above.

12.4 Tribal Trust Responsibilities

The RGP was coordinated with all Native Alaskan federally recognized tribal organizations during the public notice comment period. Each permit verification request would be review for compliance with the terms and conditions of the RGP and to ensure it does not negatively affect federal tribal trust responsibilities. See Section 1.7 Terms and Conditions – General Condition 5 – Tribal Rights above.

12.5 Coastal Zone Management Act (CZMA)

By operation of Alaska State law, the federally approve CZM program expired July 1, 2011, resulting in a withdrawal from participating in the Coastal Zone Management Act's (CZMA) National Coastal Management Program. The CZMA is there not applicable within the State of Alaska.

12.6 Wild and Scenic Rivers Act

The proposed GP would not authorize activities within these areas without the prior approval from the appropriate land manager. Any impacts that may result from suction dredging would be negligible or specific special conditions would be placed in the proposed RGP verification to minimize impacts.

12.7 Water Quality Certification under Section 401 of the Clean Water Act

On April 29, 2021 the AKDEC granted a Water Quality Certification pursuant to Section 401 of the CWA and the Alaska State Water Quality Standards (18 AAC 70).

12.8 Other as needed:

N/A

13 Determinations

13.1 Executive Orders

13.1.1 EO 13175, Consultation with Indian Tribes, Alaskan Natives, and Native Hawaiians: This action has no substantial effect on one or more Indian tribes, Alaska or Hawaiian natives.

13.1.2 EO 11988, Floodplain Management:

Alternatives to location within the floodplain, minimization, and compensatory mitigation of the effects were considered above.

13.1.3 EO 12998, Environmental Justice:

In accordance with Title III of the Civil Right Act of 1964 and Executive Order

12898, it has been determined that the project would not directly or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin nor would it have a disproportionate effect on minority or low-income communities.

13.1.4 EO 13112, Invasive Species:

There are no invasive species issues involved in proposed projects under this RGP.

13.1.5 EO 13212 and EO 13302, Energy Supply Availability:

The proposal is not one that will increase the production, transmission, or conservation of energy, or strengthen pipeline safety.

13.1.6 EO 13547, Stewardship of the Ocean, Our Coast, and the Great Lakes:

The Corps has determined, based on the information in this document, that the project would not adversely affect America's stewardship of the ocean, coasts, or Great Lakes.

13.2 Section 404(b)(1) Guidelines Compliance

This RGP does not authorize the discharge of dredge or fill material. Any discharges associated with activities permitted under this RGP are regulated by the State of Alaska under Section 402. , with the inclusion of appropriate and practicable conditions necessary to minimize adverse effects on affected aquatic ecosystems, the activities authorized by this RGP would result in minimal individual and cumulative adverse effects on the aquatic environment.

13.3 Effects on Corps Civil Works Projects (33 USC 408)

This RGP has been coordinated with USACE Alaska District Operations and GC# 5 was added to ensure there would be no effect to any 408 projects.

13.4 Section 176(c) of the Clean Air Act General Conformity Rule Review

This RGP has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities authorized by the RGP would not exceed de minimis levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons, a conformity determination is not required for the RGP.

13.5 Findings of No Significant Impacts

Based on the information in this document, the Corps has determined that the issuance of this RGP would not have significant impacts on the quality of the human environment. Therefore, the preparation of an Environmental Impact Statement is not required.

13.6 Public Interest Determination

In accordance with the requirements of 33 CFR 320.4, the Corps has determined, based on the information in this document that the issuance of this RGP is not contrary to the public interest.

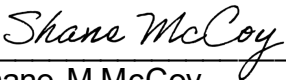
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Date: April 29, 2021

APPROVED BY:



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Date: May 04, 2021