

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting General Permit Verification

1.0 Introduction and overview: Information about the proposal subject to one or more of the Corps regulatory authorities is provided in Section 1, detailed evaluation of the activity is found in Sections 2 through 4 and findings are documented in Section 5 of this memorandum. Further, summary information about the activity including the administrative history of actions taken during project evaluation is attached (ORM2 summary) and incorporated into this memorandum.

1.1 Applicant name: City of Angoon

1.2 Activity location: The project site is located within Section 31, T. 50 S., R. 68 E., Copper River Meridian; USGS Quad Map Sitka B-2; Latitude 57.493889° N., Longitude -134.565278° W.; Angoon Borough, in Angoon, Alaska.

1.3 Description of activity requiring verification: The proposed project would reconstruct a portion of the Angoon Harbor. Demolition includes removal and disposal of the following:

Float A (8'x352'/2.4m x 107.3m),
Float B 8'x151' (2.4m x 46.0 m),
(3) 4'x48' (1.2 m x 14.6 m) finger floats,
(4) 4'x36' (1.2m x 11.0m) finger floats,
(2) 3'x20' (0.9m x 6.1m) finger floats,
(12) 4'x24' (1.2m x 7.3m) finger floats,
(1) 6'x61' (1.8 m x 9.5 m) gangway,
(35) 12" timber piles
330 square foot section of the approach dock (30.7 m2).

New infrastructure includes replacing the following:

Float A 10' x 350' (3.1m x 106.7m),
Float B 10'x160' (3.1 m x 48.8 m),
(2) 6'x48' (1.8m x 14.6m) finger floats,
(5) 4'x36' (1.2 m x 11.0 m) finger floats,
(6) 4'x32' (1.2m x 9.8m) finger floats,
(1) gangway landing float 20'x20' (6.1m x 6.1m),
(1)16'x12' (4.8m x 3.7m) approach dock extension
(35) 16" (41 cm) diameter steel pipe piles.

Based on existing pile information it is possible piles will be able to be installed without drilled rock sockets, however, because there is bedrock in the area it is possible some or all of the piles may require drilled rock sockets dependent on the actual conditions encountered during construction. Piles may be removed with a crane in a dead pull, or a vibratory hammer may be used if necessary. Vibratory hammers will be the primary means of pile installation. Impact hammers will be

used to proof the piles and may also be used if material is encountered that it is too dense to penetrate with a vibratory hammer.

1.4 Permit authority: Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403)

1.5 Applicable permit: Nationwide Permit (NWP) 3, Maintenance

1.6 Activity requires written waiver? No

2.0 Evaluation of the Pre-Construction Notification

2.1 Direct and indirect effects caused by the GP activity: The direct affects include the removal and replacement of existing structures associated with the harbor docks. This includes pile driving activities that would create sound disturbance within the water. Indirect impacts include the temporary disuse of those structures, causing less boat traffic in the area until the project would be complete.

2.2 Site specific factors: The proposed project would occur in near shore in tidal waters of Favorite Bay. The site is already developed consisting of the aging harbor structures that need replaced. The harbor is used to moor marine vessels, of various sizes, for private and commercial use.

2.3 Coordination

2.3.1 Was the PCN coordinated with other agencies? Yes

2.3.2 Was the PCN coordinated with other business lines of the Corps? No

2.4 Mitigation

2.4.1 Provide brief description of how the activity has been designed on-site to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site: To minimize the risk of harm to listed marine species from pile driving, the City of Angoon and their contractor agrees to implement the following mitigation measures: Applicant is proposing to comply with all ESA mitigation measures. See USACE Informal Consult letter dated November 26, 2019 for the proposed measures.

2.4.2 Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level? No

Provide rationale: No mitigation is required because the activity consists of construction of a structure that would not adversely impact aquatic resources.

3.0 Compliance with Other Laws, Policies and Requirements

3.1 **Section 7(a)(2) of the Endangered Species Act (ESA)**

- 3.1.1 ESA action area: The action area is distinct from and larger than the project footprint because some elements of the project may affect listed species some distance from the project footprint. The action area, therefore, extends out to a point where no measurable effects from the project are expected to occur.

For this project, the action area includes the area within which project-related noise could be detected by humpback whales and Steller sea lions at levels ≥ 120 dB_{rms} re 1 μ Pa for continuous noise (vibratory pile driving/removal and drilling) and ≥ 160 dB_{rms} re 1 μ Pa for impulsive noises (impact pile driving). Thresholds for continuous noise, resulting from drilling/vibratory pile driving, govern the action area as it results in the largest zone of influence compared to other work components including impact pile driving. Due to the project location, and presence of land masses, the action area extends 1.12 miles (1.8 km) from the project site.

- 3.1.2 Has another federal agency been identified as the lead agency for complying with Section 7 of the ESA with the Corps designated as a cooperating agency and has that consultation been completed? No

- 3.1.3 Are there listed species or designated critical habitat that may be present or in the vicinity of the Corps' action area? Yes Humpback Whale (*Megaptera novaeangliae*) and Steller Sea Lion (*Eumatopia jubatus*) (Western DPS)

Effect determination(s), including no effect, for all known species/habitat, and basis for determination(s): The described activity may affect, but is not likely to adversely affect as few listed species are likely to be present in the area due to shallow water, developed area, and timing windows, 2) the project incorporates monitoring and mitigation measures with exclusion zones, and operating at reduced energy which minimize the risk of exposure.

- 3.1.4 Consultation with either the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service was initiated and completed as required, for any determinations other than "no effect" (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation). NMFS concurred on January 14, 2020. Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 7(a) (2) of the ESA. The documentation of the consultation is incorporated by reference.

3.2 **Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Stevens Act), Essential Fish Habitat (EFH)**

- 3.2.1 Has another federal agency been identified as the lead agency for complying with the EFH provisions of the Magnuson-Stevens Act with the Corps designated as a cooperating agency and has that consultation been completed? No

- 3.2.2 Did the proposed project require review under the Magnuson-Stevens Act? Yes

- 3.2.3 If yes, EFH species or complexes considered: Coho Salmon (*Oncorhynchus kisutch*), Chum Salmon (*Oncorhynchus keta*), and Pink Salmon (*Oncorhynchus gorbuscha*).

Effect determination and basis for that determination: The described activity would not adversely affect EFH in the project area because the proposed work would not increase the surface area of overwater structures, the effects of pile driving would be temporary, have minimal ground disturbance, and would not result in the loss or modification of EFH.

- 3.2.4 Based on review of the above information, the Corps has concluded that it has fulfilled its responsibilities under the EFH provisions of the Magnuson-Stevens Act.

3.3 **Section 106 of the National Historic Preservation Act (Section 106)**

- 3.3.1 Section 106 permit area: The permit area includes only those areas comprising waters of the United States that will be directly affected by the proposed work or structures. Activities outside of waters of the U.S. are not included because all three tests identified in 33 CFR 325, Appendix C(g)(1) have not been met.

Final description of the permit area: The proposed project does not include an activity outside of waters of the United States affected by the proposed work and/or structures, therefore, we have defined our scope of analysis under Appendix C of 33 CFR 325 (permit area) to be the footprint of the proposed dock replacement.

- 3.3.2 Has another federal agency been identified as the lead federal agency for complying with Section 106 of the National Historic Preservation Act with the Corps designated as a cooperating agency and has that consultation been completed?
No

- 3.3.3 Known historic properties? No

Effect determination and basis for that determination: No Historic Properties Affected (No Effect) determination for the proposed project as the proposed work would occur within tidal waters, have minimal ground disturbing activities, and no historic sites are located within the permit area.

- 3.3.4 Consultation was initiated and completed with the appropriate agencies, tribes and/or other parties for any determinations other than “no potential to cause effects.” (see the attached ORM2 Summary sheet for begin date, end date and closure method of the consultation) SHPO concurred on December 16, 2019. Based on a review of the information above, the Corps has determined that it has fulfilled its responsibilities under Section 106 of the NHPA. Compliance documentation incorporated by reference.

3.4 **Tribal Trust Responsibilities**

3.4.1 Was government-to-government consultation conducted with Federally-recognized Tribe(s)? No

3.4.2 Other Tribal including any discussion of Tribal Treaty rights? N/A

3.5 Section 401 of the Clean Water Act – Water Quality Certification (WQC)

3.5.1 Is a Section 401 WQC required, and if so, has the certification been issued, waived or presumed? A general WQC has been issued for this permit.

3.6 Coastal Zone Management Act (CZMA)

3.6.1 Coastal Zone Management Consistency under Section 307c of the Coastal Zone Management Act (CZMA): By operation of Alaska State law, the federally approved Alaska Coastal Management Program expired on July 1, 2011, resulting in a withdrawal from participation in the Coastal Zone Management Act's (CZMA) National Coastal Management Program. The CZMA Federal consistency provision, section 307, no longer applies in Alaska. Federal Register Notice published July 7, 2011, Volume 76 N. 130, page 39857.

3.7 Wild and Scenic Rivers Act

3.7.1 Is the project located in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system? No

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

3.8.1 Does the applicant also require permission under Section 14 of the Rivers and Harbors Act (33 USC 408) because the activity, in whole or in part, would alter, occupy, or use a Corps Civil Works project? No, there are no Corps Civil Works project(s) in or near the vicinity of the proposal.

3.9 **Other (as needed):** N/A

4.0 Special and Regional Conditions

4.1 Are special conditions required to ensure minimal effects, protect the public interest and/or ensure compliance of the activity with any of the laws above? Yes

4.2 Required special condition(s)

Special condition: Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the U.S.

Rationale: Protection of navigation and the general public's right of navigation on the water surface is a primary concern of the federal government. This condition is required by regulation (33 CFR 320.4(o)(3)).

You must install and maintain, at your expense, any safety lights and signals prescribed by the U.S. Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802, (907) 463-2272.

Rationale: The facility must be lighted to prevent navigation hazards and this condition is required by regulation (33 CFR 320.4(o)(3)).

The permittee understands and agrees that, if future operations by the U.S. require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

Rationale: This condition is required by regulation to protect free navigation and the interests of the United States in existing or future federal projects (33 CFR320 4(o)(3) and HQ memorandum).

The permittee shall comply with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service letter of concurrence (dated November 15, 2019), including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify the Corps, the U.S. Fish and Wildlife Office, and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law.

Rationale: This condition is required to reduce the likelihood of adverse impacts to species protected under the Endangered Species Act and to comply with the Act (Section 7 of the ESA and 40 CFR 230.30).

5.0 Determination

5.1 Waiver request conclusion, if required or select N/A: N/A

- 5.2 The activity will result in no more than minimal individual and cumulative adverse effects on the aquatic environment and will not be contrary to the public interest, provided the permittee complies with the special conditions identified above.
- 5.3 This activity, as described, complies with all terms and conditions of the permit identified in Section 1.5.

PREPARED BY:



Delana Wilks
Regulatory Specialist

Date: January 15, 2020

APPROVED BY:

Benjamin N. Soiseth
Chief, Southeast Section

Date: _____