

## **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 4, 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:

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 (MHWM) 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 MHWM.

### **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.

#### **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) (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](mailto: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).

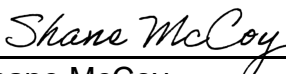
c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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  
Chief, South Section  
Regulatory Division  
Alaska District Corps of Engineers

May 04, 2021  
\_\_\_\_\_  
Date