



**US Army Corps  
Of Engineers**®  
Walla Walla District  
201 North Third Avenue  
Walla Walla, WA 99362-1876

# Public Notice: Intent to Authorize

## Modification of the Regional General Permit –Benthic Barriers to Regional General Permit –Management of Aquatic Invasive Species

DATE ISSUED: March 5, 2013

30-Day Notice

COMMENTS DUE DATE: April 4, 2013

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The Walla Walla District of the U.S. Army Corps of Engineers is evaluating the scope of the described action and is proposing to modify the Regional General Permit Benthic Barriers (RGP-BB) to authorize additional treatment methods to control aquatic invasive species in certain waters of the United States (U.S.), within the State of Idaho.

The Draft Regional Permit is attached to this notice and is also available on-line at our website at <http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision/PublicNotices.aspx> .

**PURPOSE:** To improve efficiencies and expedite permit processing for activities that has minimal individual and cumulative impacts on the aquatic environment and reduce associated costs of permitting.

**ACTIVITIES:** The following activities would be authorized under the RGP-Invasive Species provided they meet the required terms and conditions of the permit:

- *The discharge of fill material, structures and/or work associated with the placement of temporary benthic (bottom) barriers, mechanical harvesting, raking, pulling by hand, and divers using vacuum suction to control growth of invasive, noxious aquatic vegetation as designated by the Idaho State Department of Agriculture and usually associated with docks and swimming areas for safety and navigation purposes.*
- *The discharge fill material, structures and/or work associated with the placement of temporary benthic (bottom) barriers and or divers utilizing vacuum suction to control the spread of non-native bivalves and gastropods as designated by the Idaho State Department of Agriculture in areas identified with infestations.*

Separate approval for these activities may be required from the State of Idaho Department of Lands (IDL) and/or the State of Idaho Department of Water Resources (IDWR).

## **REQUIRED NOTIFICATION AND APPROVAL PROCEDURES:**

1. Individuals proposing to place benthic barriers in cooperation with Idaho Department of Agriculture, and the removal of vegetation by hand or raking under 500 square feet would NOT be required to provide notification to the Corps of Engineers.
2. Individuals, agencies or commercial entities proposing to place benthic barriers who are not in an Idaho Department of Agriculture sponsored program, or the use of mechanical harvesting, raking or pulling vegetation by hand and/or divers utilizing vacuum suction in areas exceeding 500 square feet would notify the Corps of Engineers by mail or by e-mail of the proposed activity.

The notification shall include name, address, GPS location, and square footage of treatment area, treatment period, and a list of vegetation or invasive species that is targeted for removal. Applicants must receive authorization from the Corps of Engineers prior to conducting the activity Project must also be compliant with all General Conditions, listed below.

3. Individuals, agencies or commercial entities proposing to place benthic barriers or other forms of invasive species treatments that exceed 5 acres of continuous coverage or do not meet the conditions of the RGP-Invasive Species must apply to and receive authorization from the Corps of Engineers prior to conducting the activity. Applicants are required to utilize the Joint Application for Permits process. Applications can be found on-line at <http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision/JointApplicationforPermit.aspx>

## **PROPOSED CONDITIONS TO MANAGE VEGETATION:**

1. The placement of no more than 500 square feet of benthic barriers **is authorized** for each riparian property owner for the control of invasive, noxious aquatic vegetation, unless this criterion is waived in writing by the District Engineer.
2. Agencies or commercial entities proposing the use of benthic barriers, mechanical harvesting, divers with suction vacuums or any combination shall not exceed 5 acres at a given location for the control of invasive, noxious aquatic vegetation, unless this criterion is waived in writing by the District Engineer.
3. Invasive, noxious aquatic vegetation will be verified by a qualified individual, prior to barrier installation.
4. Barriers shall be placed below the high water mark and below the surface of waters to the maximum depth of invasive aquatic noxious vegetation (typically 12-15 feet, but may be deeper in water bodies with greater clarity that allow deeper penetration of sunlight).
5. Barriers with gas permeable fabric may be anchored with PVC frames, sand bags or other means that will not impact water quality degrade and can be safely removed at the end of the treatment period.
6. Divers or permittees will place and move the barriers onto the densest populations of vegetation. The barriers will typically remain in place for 6 to 10 weeks to prevent substantial build up of sediment and must be removed at the end of each season, or not later than October 31st of each year.

7. The installations will be checked periodically throughout the treatment window to assure that barriers remain in the designated areas of treatment.
8. Equipment or materials shall be thoroughly cleaned before being transferred between water bodies to eliminate the spread of invasive, noxious vegetation.
9. The applicant must provide a GPS location for the proposed bottom barriers in the application.
10. All construction waste (i.e. PVC pipe and fittings, geotextile fabric, etc.) and vegetation removed must be disposed in an appropriate upland location, such that it will not reenter waters of the U.S.
11. Activities not specifically authorized by this Regional General Permit require a separate Department of the Army Permit.
12. To comply with Section 7 of the Endangered Species Act (ESA), the Corps will initiate consultation on a programmatic level with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) for those actions which may affect listed species or their designated critical habitat. Any additional terms and conditions which come out of that consultation will become part of the final Regional General Permit.
13. Use of bottom barriers authorized under Regional General Permit may not interfere with navigation.
14. The permittee shall obtain the legal right to use and occupy the affected submerged land.

#### **PROPOSED CONDITIONS TO MANAGE BI-VALVE OR GASTROPOD INFESTATIONS**

1. Placement of no more than 4 acres of continuous barrier is authorized by each agency or commercial operation at a given location, unless this criterion is waived in writing by the District Engineer.
2. Bi-valve or gastropod identification and extent of infestation will be verified by a qualified individual, prior to barrier installation.
3. Divers or permittees will place the barriers onto the lakebed to the extent necessary to cover an infestation up to 5 acres. The barriers will remain in place for prescribed treatment periods based on species biology.
4. Bi-valve or gastropod barriers shall be constructed with non-gas permeable barriers or other proven barrier material and held in place with frames, sand bags or other means that will not impact water quality, degrade and can be safely removed at the end of the treatment period.
5. Equipment or materials shall be thoroughly cleaned before being transferred between water bodies to eliminate spread of non-native invasive species.
6. The applicant must provide a GPS location for the proposed bottom barriers in the application.
7. All construction waste (i.e. fabric, and anchoring materials, etc.), vegetation, bi-valve and or gastropod remains must be disposed in an appropriate upland location, such that it will not re-enter waters of the U.S.

8. Activities not specifically authorized by this Regional General Permit require a separate Department of the Army Permit.
9. To comply with Section 7 of the ESA, the Corps will initiate consultation on a programmatic level with the USFWS and NMFS for those actions which may affect listed species or their designated critical habitat. Any additional terms and conditions which come out of that consultation will become part of the final Regional General Permit.
10. Use of bottom barriers authorized under Regional General Permit may not interfere with navigation.
11. The permittee shall obtain the legal right to use and occupy the affected submerged land.

**GEOGRAPHIC AREA:** All waters of the U.S., within the State of Idaho, except the waters listed as exclusion areas.

**EXCLUSION AREAS:** Certain geographic areas within these waters are excluded from the current RGP. The reason to exclude certain areas is to protect aquatic flora and fauna which may be listed as threatened or endangered under the ESA. The proposed exclusion areas are listed in Table 1 within the body of the permit along with a map depicting their location. A separate Department of Army Permit is required for work in these areas.

**REGULATORY AUTHORITY:** Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) requires a Department of the Army permit for work or structures waterward of the ordinary high water mark in navigable waters of the U.S. or that would affect the course, condition, or capacity of the navigable waters. Section 404 of the Clean Water Act (33 CFR 1344) requires a Department of the Army permit for the discharge of dredged or fill material into waters of the U.S.

**BACKGROUND:** Regional General Permits are Department of the Army permits issued on a regional basis for categories of activities that:

- *Are substantially similar in nature and cause only minimal individual and cumulative environmental impacts;*
- *Would avoid unnecessary duplication of regulatory control exercised by another Federal, State, or local agency.*

**WATER QUALITY CERTIFICATION:** This will also serve as public notice that Idaho Department of Environmental Quality (IDEQ) is evaluating whether to certify that the discharges of dredged and fill material proposed for this project will not violate existing water quality standards. A Department of the Army permit will not be issued until water quality certification has been issued or waived by the IDEQ, as required by Section 401 of the Clean Water Act. If water quality certification is not issued, waived or denied within 60 days of this public notice date, and an extension of this period is not granted to the IDEQ, Water Quality Certification will be considered waived.

Additionally, within (30) days of this public notice, any person may provide written comments to IDEQ and/or request in writing that IDEQ provide them notice of their preliminary 401 certification decision. Comments concerning certification for this project should be mailed to: Idaho Department of Environmental Quality, 2100 Ironwood Parkway, Coeur d'Alene, Idaho, 83814.

**CULTURAL RESOURCES:** Coordination is being conducted with the Office of the Idaho State Historic Preservation Officer (SHPO) to determine if these activities may affect site(s) that is/are listed on the National Register of Historic Places, or a site(s) that may be eligible for listing on the Register.

**TRIBAL CONSULTATION:** The Walla Walla District fully supports tribal self-governance and government-to-government relations between federally recognized Tribes and the Federal Government. Coordination is being conducted with the following tribes Kootenai Tribe of Idaho, Coeur d'Alene Tribe, Kalispel Tribe of Indians, Spokane Tribe of Indians, Confederated Salish Kootenai Tribes of the Flathead Reservation, Nez Perce Tribe, Confederated Tribes of the Colville Reservation, Shoshone- Bannock Tribes, Shoshone-Paiute Tribes, Fort McDermitt Reservation, Confederated Tribes of the Warm Springs Nation, Confederated Tribes of the Umatilla Reservation, Wanapum Tribe, Yakama Nation, and Northwest Band of the Shoshone.

**ENDANGERED SPECIES:** Coordination is being conducted with the USFWS and the NMFS to determine if this activity would have any effect on Bull Trout, Kootenai River White Sturgeon, Snake River Fall Chinook Salmon, Snake River Spring/Summer Chinook Salmon, Snake River Sockeye Salmon or Snake River Basin Steelhead designated as endangered or threatened under the ESA, or their critical habitat.

**EVALUATION:** The decision to issue the General Permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision reflects the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal, was balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal was considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. In addition, our evaluation included application of the EPA Guidelines (40 CFR 230.7) as required by Section 404(b) (1) of the Clean Water Act.

For further information about the Department of the Army Walla Walla District Regulatory Program, please visit <http://www.nww.usace.army.mil/BusinessWithUs/RegulatoryDivision.aspx> or call telephone (509) 527-7150.

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

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

**COMMENT AND REVIEW PERIOD:** Interested parties are invited to provide their comments on the proposed activity, which will become a part of the record and will be considered in the decision.

**Please mail all comments to:**

Ms. Beth Reinhart  
U.S. Army Corps of Engineers  
Coeur d'Alene Regulatory Office  
2065 W. Riverstone Drive, Ste. 201  
Coeur d'Alene, ID 83814

Comments should be received not later than **April 4, 2013** to receive consideration.



*for:* David B. Barrows  
Chief, Regulatory Division

Enclosure(s)