



Fact Sheet

The U.S. Environmental Protection Agency (EPA)

Proposes to Modify a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:

Offshore Seafood Processors in Alaska

Public Comment Start Date: 3/1/2021

Public Comment Expiration Date: 3/31/2021

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EPA proposes to modify the NPDES Permit for the facilities referenced above. The draft Permit places conditions on the discharge of pollutants from Seafood Processors (“vessels”) in Alaska discharging at least 3 nautical miles or greater from the shoreline or closure line to waters of the United States. In order to ensure protection of water quality and human health, the Permit places limits on the types and amounts of pollutants that can be discharged from vessels.

Pursuant to 40 CFR 122.62 only the conditions subject to modification are reopened for public comment. Thus, EPA is only accepting comments on the modified permit provision that authorizes vessels to seasonally discharge within 1 NM of spectacled eider wintering critical habitat.

State Certification

Section 401 of the Act, 33 USC § 1341, requires EPA to seek a certification from the State that the conditions of the General Permit are stringent enough to comply with State water quality standards. Since this Permit authorizes discharges to Federal waters, 401 certification is not required from Alaska.

Public Comment

Persons wishing to comment or request a public hearing on the proposed modification may do so in writing by the expiration date of the public comment period. A request for a public hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for public hearings must be in writing and should be submitted to EPA as described below.

By the expiration date of the public comment period, all written comments and requests must be submitted to goodman.sally@epa.gov. If you are unable to submit comments via email, please call 206-553-0782.

After the public notice period expires, and all comments have been considered, EPA's Regional Director for the Water Division will make a final decision regarding permit modification. Pursuant to Section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1), any interested person may appeal the permit in the Ninth Circuit Court of Appeals within 120 days following notice of EPA's final decision for the permit.

Documents are Available for Review

Because of COVID-19 response, there is no public access to the Region 10 EPA building at this time. Therefore, we cannot make hard copies available for viewing at our offices. For technical questions regarding the permit or fact sheet, contact Sally Goodman at the phone number or email listed above. Services can be made available to persons with disabilities by contacting Audrey Washington at (206) 553-0523.

The modified draft NPDES permit and related documents can be downloaded from the Region 10 NPDES website at:

<https://www.epa.gov/npdes-permits/npdes-general-permit-offshore-seafood-processors-alaska>.

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Acronyms

ADEC	Alaska Department of Environmental Quality
AI	Aleutian Islands
AML	Average Monthly Limit
BE	Biological Evaluation
BMP	Best Management Practices
BOD5	Biochemical oxygen demand, five-day
BS	Bering Sea
BSAI	Bering Sea/Aleutian Islands
CCC	Criteria Continuous Concentration
CFR	Code of Federal Regulations
CV	Coefficient of Variation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DO	Dissolved oxygen
EEZ	Exclusive economic zone
EFH	Essential Fish Habitat
ELG	Effluent Limit Guideline
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
GOA	Gulf of Alaska
lbs/day	Pounds per day
mg/L	Milligrams per liter
ml	milliliters
ML	Minimum Level
µg/L	Micrograms per liter
mgd	Million gallons per day

Fact Sheet NPDES Permit #AKG524000

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MDL	Maximum Daily Limit
ML	Minimum Level
MLLW	Mean lower low water
MSD	Marine sanitation device
NLAA	Not likely to adversely affect
NMFS	United States National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
ODCE	Ocean Discharge Criteria Evaluation
OWW	Office of Water and Watersheds
O&M	Operations and maintenance
POTW	Publicly owned treatment works
QAP	Quality assurance plan
RP	Reasonable Potential
s.u.	Standard Units
TMDL	Total Maximum Daily Load
TSS	Total suspended solids
USFWS	U.S. Fish and Wildlife Service
USCG	United States Coast Guard
WQBEL	Water quality-based effluent limit

I. Facilities Information

The General Permit authorizes discharges of seafood processing waste from facilities (also referred to as “vessels”) that (1) discharge at least 3 nautical miles (NM) or greater from the Alaska shore as delineated by mean lower low water (MLLW) or a closure line and (2), which engage in the processing of fresh, frozen, canned, smoked, salted or pickled seafood, the processing of mince, or the processing of meal, paste and other secondary by-products. Types of vessels with coverage under this Permit include catcher processors and motherships. There are currently 73 permitted vessels under the General Permit. The Permit does not authorize the discharge of pollutants from any shore-based facilities, nor any pollutants from vessels transporting seafood processing waste solely for the purpose of dumping materials into ocean waters. Shore-based facilities and vessels discharging inside of the 3 NM buffer from the Alaskan shoreline are operating in State Waters and are separately permitted by the Alaska Department of Environmental Conservation (ADEC).

II. Permit History

The most recent NPDES permit for the Offshore Seafood Processors in Alaska was reissued on June 17, 2019, became effective on July 17, 2019, and expires on July 16, 2023. Section III.B. of the Permit includes areas excluded from authorization under the General Permit. These areas include waters within 1 NM of designated critical habitat for the Steller’s eider or spectacled eider, including nesting, molting and wintering units.

III. Modification Request

On September 12, 2019, EPA received a letter from the Freezer Longline Coalition (FLC) requesting clarification on the discharge prohibition within 1 NM of spectacled eider critical habitat and providing information related to fish migration in the Bering Sea. EPA subsequently met with FLC on October 3, 2019. FLC reported that within the past two fishing seasons, sea ice in the Bering Sea had not reached as far south, formed later in the year, and persisted for a shorter duration, and that as a result, a large percentage of the Pacific cod population in the Bering Sea have migrated further north than previously found/harvested, including areas near and within spectacled eider wintering habitat (Unit 5). Under the current, effective Permit, discharges to Unit 5 are not authorized. On March 30, 2020, pursuant to 40 CFR 124.5, FLC requested that EPA modify the Permit to allow for seasonal discharge within 1 NM of Unit 5 between June 10 and December 31. This timing corresponds with the fleet’s “B Season”. According to FLC, a permit modification is “necessary to ensure the continued commercial viability of its members in the face of changing fish migration patterns and ice coverage in the Bering Sea.” (FLC 2020)

Under 40 CFR 122.62(a)(2), EPA has tentatively decided to modify the Permit to allow for discharge within 1 NM of Unit 5 during the fleet’s B season. In accordance with 124.5(c)(1), EPA has prepared a modified draft permit and, under 40 CFR 124.5(c)(2), only those conditions to be modified shall be reopened when a new draft permit is prepared. Under 50 CFR Part 402, EPA is reopening consultation with USFWS and has revised the previously-submitted and concurred-upon Biological Evaluation (BE) to account for the proposed permit modification allowing for seasonal discharge within 1 NM of spectacled eider wintering habitat Unit 5. The revisions to the BE include updated analyses of potential effects of EPA’s

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action (discharges from seafood processing facilities) on spectacled eiders and their critical habitat. The analyses are limited to those impacts that may occur if vessels are seasonally permitted to discharge within 1 NM of the Wintering Area (Unit 5). Discharge prohibition buffers of 1 NM would remain in effect for all other designated spectacled eider critical habitat areas described in 50 CFR Part 17, 66 FR 9145 (02/06/2001), and from January 1 through June 9 within 1 NM of Unit 5.

While FLC raised the issue of Pacific cod migrating into more northern reaches of the Bering Sea (and a desire to harvest those cod) as a primary motivation in their permit modification request, a permit modification allowing seasonal discharge within 1 NM of Unit 5 would apply to all vessels covered under EPA's General Permit, which include both hook and line ("longline") and trawl catcher processors, and would not be conditioned upon targeted species (i.e., any vessel covered under the Permit could, depending on their allowances under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), target cod or non-cod species within 1 NM of Unit 5). However, based on the BSAI FMP, hook and line catcher processor vessels have been allocated the greatest percentage of the total allowable catch (TAC) (minus the Community Development Quote (CDQ) program quota) for Pacific cod across the entire BSAI Management Area: 48.7 % of TAC-CDQ, or 61,667 metric tons (NPFMC 2018). Also, according to FLC, "The longline fishery is primarily a Pacific cod single-species directed fishery" (FLC 2010). Further, according to Section 3.5.2.1.11 and Figure 3-12 in the BSAI FMP, and as described in 50 CFR Part 679, the area between St. Matthew and St. Lawrence Islands is designated as the Northern Bering Sea Research Area. Within this area, bottom trawl operations (such as those that target Pacific cod) are "prohibited, except as allowed through exempted fishing permits under 50 CFR 679.6 that are consistent with a Council approved research plan to examine the effects of nonpelagic trawling on the management of crab species, marine mammals, ESA-listed species, and subsistence needs for Western Alaska communities" (NPFMC 2018, p. 38). As shown in Section 3.5.2.1.9 and Figure 3-10 of the FMP, and described in 50 CFR Part 679, the area surrounding St. Lawrence Island is designated as the St. Lawrence Island Habitat Conservation Area, in which the use of nonpelagic trawl gear is also prohibited. However, it is possible that pelagic trawl vessels would target non-cod species with 1 NM of Unit 5, most likely pollock.

The At-Sea Processors Association, which represents trawl catcher processor vessels, has indicated that up to 12 pelagic trawlers: a) would be allowed under the BSAI FMP to target pelagic species within 1 NM of Unit 5 assuming EPA's Permit is modified and b) have not historically targeted pollock in the more northern reaches of the Bering Sea, but could depending on pollock migration patterns. The At-Sea Processors Association further indicated that their members' "B season" spans June 10th to November 1st, however, vessels are usually off fishing grounds by mid-October, which coincides with the earliest timeframe that eiders are expected to move into Unit 5. For these reasons, BE analyses of effects of the permitted discharge on spectacled eider and their critical habitat assume that the majority of discharged fish waste within 1 NM of Unit 5 seasonally would be from freezer longline catcher processor vessels targeting and processing Pacific cod specifically.

IV. Tentative Determination

Region 10 has tentatively decided to modify the Permit to allow for discharges within 1 NM of spectacled eider critical habitat Wintering Area Unit 5 between June 10 through December 31. The regulations at 40 CFR 122.62 allow NPDES permits to be modified for cause. In this case, the cause for modification is new information not available at the time of the permit issuance (40 CFR 122.62(a)(2)). Therefore, this Permit is being modified in accordance with the requirements of 40 CFR 124.5. When a permit is modified, only the conditions subject to modification are reopened. All other conditions of the Permit will remain unchanged.

Section III.B.6 of the current, in-effect Permit states:

“This Permit does not authorize the discharge of pollutants into the protected water resources, special areas, and certain waters that overlap with NMFS-designated critical habitat areas, as listed below...

Waters within one (1) nautical mile of designated critical habitat for the Steller’s eider or spectacled eider, including nesting, molting and wintering units. During breeding season (May through August) Steller’s and spectacled eider nesting critical habitat units are located on the Yukon-Kuskokwim Delta and North Slope. Molting habitat (July through October) for Steller’s eiders includes Izembek Lagoon, Nelson Lagoon and Seal Islands. Molting habitat for spectacled eider includes Ledyard Bay and Norton Sound. Wintering habitat (October through March) for Steller’s eider includes Nelson Lagoon, Izembek Lagoon, Cold Bay, Chignik Lagoon and several other locations along the Aleutian Islands. Wintering habitat for spectacled eider is in the Bering Sea between St. Lawrence and St. Matthews Islands.”

The modified draft permit retains the provision excluding discharge within 1 NM of Steller’s eider critical habitat (Section III.B.6), and includes the following new language concerning spectacled eider critical habitat (Section III.B.7):

“Waters within one (1) nautical mile of designated critical habitat for the spectacled eider, including nesting, molting and wintering units with the seasonal exception for Wintering Unit 5 noted below. During breeding season (May through August) spectacled eider nesting critical habitat is located on the Yukon-Kuskokwim Delta and North Slope. Molting habitat for spectacled eider includes Ledyard Bay and Norton Sound. Wintering habitat (October through March) for spectacled eider is in the Bering Sea between St. Lawrence and St. Matthews Islands. **Seasonal exception for Wintering Unit 5: From June 10 through December 31, discharge is permitted within 1 NM of spectacled eider critical habitat in Wintering Unit 5. Discharge is not permitted within 1 NM of Unit 5 from January 1 through June 9.**”

V. Endangered Species Act Consultation

The Endangered Species Act requires federal agencies to consult with National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species. For the purpose of this permit modification, EPA did not have to re-engage in consultation with NOAA Fisheries because the permit modification does not affect any NOAA Fisheries species.

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On September 21, 2018, USFWS concurred with EPA's determination that the proposed reissuance of the Permit may affect, but is not likely to adversely affect, the federally threatened spectacled eider or their designated critical habitat. USFWS cited the following reasons as a basis for concurrence: eiders prefer nearshore areas where interactions with commercial fishing vessels and their gear are unlikely; and the proposed Permit included a condition prohibiting discharge within 1 NM of spectacled eider critical habitat (USFWS 2018). Subsequently, EPA revised draft permit conditions after a re-evaluation of the grinding requirement as discussed in Section 2.3.5 of the BE. EPA reinitiated consultation with USFWS, and on June 4, 2019, USFWS similarly concurred with EPA's not likely to adversely affect determination for spectacled eider and their critical habitat.

Because the Permit modification would allow for seasonal discharges within spectacled eider wintering critical habitat, EPA conducted new analyses to account for potential impacts to the species and their critical habitat, revised the previously submitted Biological Evaluation, and on July 9, 2020, requested formal consultation with USFWS.

EPA analyses considered a March 26, 2020 NMFS report of an incident of spectacled eider take that occurred on October 10, 2019 (NMFS 2020). Twenty-two (22) spectacled eiders were killed as the result of striking a vessel in the hook-and-line groundfish fishery of the BSAI Management Area, near 64° N and several miles westward of 170° W, just north of St. Lawrence Island in NMFS reporting area 524. The event occurred when a vessel was transiting and not during fishing activities.

While previous consultation between EPA and USFWS and anecdotal evidence from vessel operators generally points towards a low likelihood of spectacled eider-vessel encounters and direct bird-vessel interactions/strikes, the October 2019 take incident reveals that the potential exists. While it is not the permitted discharge itself that results in such interactions (the October take incident occurred when the vessel was not actively fishing or discharging), vessels may not otherwise be in the area *but for* EPA's discharge permit (and NMFS' Fishery Management Plan (FMP)). Despite the lack of expected serious impacts to spectacled eiders and their critical habitat resulting from the proposed modification, because of the increased potential for take within Unit 5 from June 1 through December 31, the EPA has determined that EPA's proposed action is **likely to adversely affect spectacled eiders**. See *EPA's Revised Biological Evaluation for the General NPDES Permit for Offshore Seafood Processors within Federal Waters off the Coast of Alaska* for the complete effects analyses (US EPA 2020).

EPA further acknowledges a parallel consultation between USFWS and NMFS regarding the Groundfish BSAI FMP, by which NOAA manages the BSAI fishery within the U.S. exclusive economic zone. However, EPA has only re-opened consultation with USFWS, the agency with primary responsibility for terrestrial and freshwater organisms, including spectacled eider. USFWS concurred on the EPA's determination that the Permit actions are likely to adversely affect species listed under the Endangered Species Act or designated critical habitat. The draft Biological Opinion, shared on November 10, 2020, includes mitigations to minimize take and impact on species and habitat:

- *The EPA will require permittees to prepare a Best Management Practices Plans to prevent or minimize the generation and discharge of wastes and pollutants from the facility to the waters of the U.S.*

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- *The EPA will not authorize discharges to receiving waters that have been identified as protected water resources, critical habitats, and special areas, including waters in proximity to living substrates such as submerged aquatic vegetation, kelp, and eelgrass in shallow coastal waters, generally less than 60 feet (18.3 meters) in depth. Areas within 1 nautical mile of federally designated critical habitat for spectacled eiders and Steller's eiders will not be included in the EPA discharge permits with exception of allowing seasonal discharge in the spectacled eider critical habitat from June 10 to December 31, in Unit 5.*
- *The EPA will require vessels to be moving while discharging seafood waste to increase the dispersal rate.*
- *The EPA will require daily sea surface monitoring to document compliance with marine water quality and to estimate the occurrence and number of ESA--listed species and their interactions with seafood discharge.*
- *The EPA will use information gathered from visual monitoring in their evaluation during the next permit cycle.*

These mitigations were already included in the existing Permit and no additional mitigations were added as permit conditions as part of this permit modification.

VI. Tribal Consultation

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA staff and Region 10 Tribal Coordinators engaged with coastal Alaskan tribes that could be interested in the General Permit prior to its reissuance. No tribes requested formal consultation with EPA. EPA will similarly engage Alaskan tribes regarding the proposed modification.

VII. References

Fisheries of the Exclusive Economic Zone Off Alaska. 50 CFR, Part 679.

Freezer Longline Coalition, FLC. 2010. *About Us*.

<http://www.freezerlonglinecoalition.com/about.html#:~:text=The%20longline%20fishery%20is%20primarily,fully%20reliant%20on%20Pacific%20cod.&text=Pacific%20cod%20is%20targeted%20by,longline%2C%20pot%2C%20and%20jig>.

Freezer Longline Coalition, FLC. 2020. *Request for Modification of National Pollutant Discharge Elimination System Permit No. AKG524000*.

North Pacific Fishery Management Council, NPFMC. 2018. *Fisheries Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area*. Available at: <https://www.npfmc.org/wp-content/PDFdocuments/fmp/BSAI/BSAIfmp.pdf>.

U.S. Environmental Protection Agency, EPA. 2020. *Biological Evaluation for the General NPDES Permit for Offshore Seafood Processors within Federal Waters off the Coast of Alaska, Revised July 2020*. <https://www.epa.gov/npdes-permits/npdes-general-permit-offshore-seafood-processors-alaska>.

U.S. National Marine Fisheries Service, NMFS. 2020. *IB 20-26: NMFS Reports a Vessel-Strike Mortality Event of 22 Spectacled Eiders in the Bering Sea and Aleutian Islands*. Available: <https://www.fisheries.noaa.gov/bulletin/ib-20-26-nmfs-reports-vessel-strike-mortality-event-22-spectacled-eiders-bering-sea>.