

Response to Comments on the AK Offshore Seafood Processors General Permit

Introduction

On September 26, 2008, the Environmental Protection Agency (EPA) issued a notice of proposed reissuance of a National Pollutant Discharge Elimination System (NPDES) general permit for offshore seafood processors in Alaska (General Permit). These facilities discharge seafood processing waste into offshore waters in the State of Alaska. The permit that was issued for public comment proposed to authorize discharges that would occur from 0.5 nautical miles (NM) seaward. The public review and comment period ended on December 10, 2008.

On October 31, 2008, EPA approved Alaska's application to administer the NPDES program. As such, the Alaska Department of Environmental Conservation (ADEC) became the permitting authority for discharges of seafood processing waste from 0.5 NM to 3 NM from the shoreline or closure line. On June 1, 2009, EPA received a letter from ADEC stating that, instead of issuing a joint permit with EPA, ADEC intended on issuing a separate NPDES general permit(s) for discharges between 0.5 NM and 3 NM. Therefore, this final General Permit only authorizes discharges of seafood processing waste into waters located 3 NM or greater from the shore line or closure line. This response to comments document refers to waters located greater than 3 NM from shore line or closure line as "federal waters" and waters located 0-3 NM from the shore line or closure line as "state waters."

In addition, many of the provisions in the draft permit cited Alaska State Water Quality Standards. Since this final general permit only covers discharges into federal waters, the provisions now cite to CWA Section 304(a) marine water quality criteria. This criteria is similar to or the same as Alaska State Water Quality Standards so the permit provisions themselves did not change significantly. EPA used the CWA Section 304(a) marine water quality criteria because, in conducting the Ocean Discharge Criteria Evaluation, EPA determined that the use of this criteria ensured that the discharge would not cause unreasonable degradation of the marine environment if applied at the end-of-pipe. *See* 40 CFR § 125.122.

Authorization to Discharge At-Sea

When the General Permit was issued for public comment, it authorized discharges from offshore seafood processors and at-sea discharges from barges. EPA has determined that the at-sea discharges to federal waters do not fall within the authority of the NPDES program. The NPDES program governs the addition of pollutants into navigable waters, the contiguous zone, and the ocean from point sources. However, with regard to discharges into the contiguous zone and oceans, discharges from vessels or other floating craft being used as a means of transportation are not regulated under the NPDES program because they are not point sources. The Ocean Dumping Act provides the authority for these types of discharges.

The purpose of the Ocean Dumping Act is "to regulate the transportation by any person of material from the United States ... when ... the transportation is for the purpose of dumping the

material into ocean waters.” 33 U.S.C. § 1401(c). Since the barges who conduct at-sea discharges transport seafood waste for the purpose of dumping the waste into ocean waters, the discharge of this waste is regulated under the Ocean Dumping Act. Therefore, the final General Permit does not authorize at-sea discharges.

Comments were received from the following:

Alan Ismond, Aqua Terra Consultants
Charles McEldowney, Seward Fisheries, Icicle Seafoods, Inc.
Patrick Wilson, Petersburg Fisheries, a Division of Icicle Seafoods, Inc.
Kenny Down, Freezer Longline Coalition
Lori Swanson, Groundfish Forum
Stephanie Madsen, At-Sea Processors Association
Mary Boggs, Deep Sea Fisheries (Sanko Fisheries, Pavlof Fisheries, and Gulf Mist, Inc.):
Mike Clutter, Icicle Seafoods, Inc.
Ryan Hatton, Snopac Products, Inc.
Marleanna Soto, Resource Development Council for Alaska, Inc.
Tim Jewell , Enviro-Tech Diving Inc.
B. Sachau
Teresa Jordan
Beth Pokorny, Egegik, Icicle Seafoods

The following summarizes the significant comments received and responds to each of them.

Alan Ismond, Aqua Terra Consultants:

C1. Section IV.C.7.e (Process Flow Diagram or Schematic) of the draft permit refers to “the treatment plant.” Clarification should be provided whether this refers to a schematic showing the influent, fish processing operations, treatment unit operations (grinding, pumping, chlorination / dechlorination, desalination, sanitary treatment, etc.), effluent, bypasses, and back up systems for process and domestic water and wastewater treatment and conveyance.

R1. The process flow diagram/schematic should consist of a line drawing of the treatment system on the processor with a water balance that shows influent, fish processing operations, treatment unit operations (grinding, pumping, chlorination/dechlorination, desalination, sanitary treatment, etc.), effluent, bypasses and backup systems for process and domestic water and wastewater treatment/conveyance. This provision was included pursuant to 40 CFR §§ 122.21(g)(2) and (g)(3).

The permit has been updated to reference 40 CFR §§ 122.21(g)(2) and (g)(3). The regulations state:

(g)(2) *Line drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar

processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(g)(3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms...

C2. The draft permit requires water balances showing “all treatment units”. Does this refer to all unit operations that consume and / or discharge water or wastewater?

R2. Yes, specifically, 40 CFR § 122.21(g)(2) states “[a] line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units....” Please also see response to C1.

C3. Section IV.C.10 (Submittals with the Notice of Intent (NOI)) of the draft permit refers to “near-shore vessels” and “near-shore processors.” Section V.B refers to “Near-Shore seafood processors.” Is there a difference between “vessels” and “processors”? Should the permit only refer to “processors”?

R3. The draft permit and fact sheet used vessels and processors interchangeable. The final permit uses the term “processor”.

C4. Section V.B.1.1 (State Authorized Zone of Deposit (ZOD)) of the draft permit states in the second paragraph “In decided whether to authorize...” The permit should be revised to state “In deciding whether to authorize...”

R4. This appears to be a typo; however, since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C5. Section V.C.1.m (State Authorized Mixing Zone) of the draft permit has this section labeled as “m”, and should be revised to “k”.

R5. This appears to be a typo; however, since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C6. Section VI.D.1 (Sea Surface Visual Monitoring Requirements) of the draft permit states that all permittees must conduct sea surface monitoring. This is contradicted in Section VI.D.4 –

Schedule, which states that only a near-shore permittee must conduct monitoring. The draft permit should be revised as required.

R6. Thank you for pointing this out. Section VI.D. has been renumbered to Section VI.C. All processors must conduct sea surface monitoring. As such, Section VI.C.4 has been changed accordingly.

C7. Section X.17 and X.21 (Definitions) of the draft GP states in Definition #17 that showers are a part of “Domestic wastes” and definition #21 includes showers as part of “Gray water”. Which is correct?

R7. To clarify the terms used in the permit, the term “domestic waste” has been removed from the permit. The terms sanitary waste and gray water will continue to be used, and are defined in Section X of the final permit.

Charles McEldowney, Seward Fisheries, Icicle Seafoods, Inc.:

C8. This comment pertains to Sections I.A., IV.C.5.c, and V.C. This permit is set up so that any shore based processor that wants to send seafood waste out to sea to be discharged in conjunction with using a shore-based outfall pipe will need to have two permits. Going through the entire permit process to set up an at-sea discharge seems confusing, redundant and onerous. There should be a provision for a shore based processor to have the at sea discharge portion of the Off-shore Permit to be a part of their shore based permit through a single NOI process. The proper discharge site charts and maps and other related information could be included in the one NOI process. This would eliminate the need to go through two individual NOI / permit authorization by the same facility. It would also eliminate any confusion created by have two permits with two permit numbers.

R8. As discussed on page 1, at-sea discharges are not authorized through this permit. Instead, seafood processors who want to conduct an at-sea discharge should obtain authorization under the Ocean Dumping Act. As this permit provision also concerns discharges within state waters, ADEC will address this comment.

C9. This comment pertains to Section IV.B.2 of the draft Permit. A permittee who did file an NOI prior to July 27, 2006 would have submitted that NOI with the intent of having their current permit and all waivers and/ or amendments to that NOI-permit to apply in full. This new draft permit may mean that a single facility might have to have two different permits: One Off-shore to cover that At-Sea Discharge portion and one Shore-based to cover their outfall. Does the one NOI that was submitted prior to July 27, 2006 apply to both the permit systems?

R9. As discussed on page 1, at-sea discharges are not authorized through this permit. Instead, seafood processors who want to conduct an at-sea discharge should obtain authorization under the Ocean Dumping Act. The NOI that was submitted prior to July 27, 2006 served, in part, to allow the facility to retain coverage under the old administratively extended permit. This NOI

will be used for authorization under this current permit; however, EPA may need to request additional information before authorization is granted. ADEC will address this comment for purposes of discharges within state waters which includes discharges from shore-based facilities.

C10. Throughout the permit the standard for grind size is “0.5 inch or smaller in any dimension.” In working with this standard it seems odd that a sphere of seafood waste that is 0.5 inch in diameter is an authorized discharge while a string of intestinal lining that has the cross sectional diameter of a hair yet is an inch long would be an unauthorized discharge. Commenter suggests that the authorized grind size be a piece of seafood waste that fits through a ½ inch mesh. Or pieces which can be formed into a ½ inch cubic box. Commenter also requests information related to the science which was used to determine that a 0.5 inch piece of seafood waste is less harmful to the environment than any other specific size.

R10. The federal regulation at 40 CFR § 122.44(a) requires NPDES permits to incorporate technology based effluent limitations and standards promulgated under section 301 and 306 of the CWA. Technology based effluent limitations and performance standards have been established by the EPA for remote seafood processors in Alaska, and were developed based on the demonstrated performance of a reasonable level of treatment that is within the economic means of the industry. See 40 CFR Part 408. The ½ inch grind size, in all dimensions, is a technology-based effluent limit and the discharge must meet this limit at all times. The development documents for 40 CFR Part 408 were published in the 1970’s and 1980’s and may be found at: <http://nepis.epa.gov/EPA/html/Pubs/pubtitleOAR.htm> EPA document number 440175041a.

EPA cannot change a technology-based requirement through a permit. What the commenter is suggesting would require a change to the national effluent limitations guidelines. If the commenter would like to pursue a change in the effluent limitation guideline they can send their request to the Office of Science and Technology at EPA Headquarters.

C11. In Section II.A.1.a of the draft permit, it is noted that the calcareous shells and tests as well as prohibited by-catch are exempted from the grinder size limitation. This provision is good and should stay in the permit.

R11. Comment noted.

C12. In Sections II.A.1.b and V.B.1.a., near shore processors are limited to 3.3 million pounds of discharge annually. There should be some provisions added so that a near shore vessel that discharges in energetic waters with appropriate amount of flushing or that have a depth of greater than 120 feet are not restricted by the 3.3 million pound limitation. The appropriate amount of flushing would have to be defined.

R12. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C13. Section IV.C.7.b (NOI Requirements) of the draft permit requires that the permittee state their projected or estimated amount of discharge for each species on a daily basis and then makes that amount the maximum that they are allowed to discharge. It seems that this would promote permittees to estimate on the very high side of their capacities so they do not exceed the limit that they are setting for themselves. If the permittee has a change in his process or gets a vastly different species composition than expected in a given day it would seem he could be in violation of the permit for that day. Is this truly the intent of the writers of this permit?

R13. This permit provision is now numbered Section IV.C.6.b. The intent of this permit condition is to obtain information concerning the maximum amount of seafood waste that will or can be discharged. If the amount of seafood to be processed changes, then the NOI should be amended and resubmitted. The “type” of seafood waste helps regulators categorize the discharge make-up composition.

C14. Section IV.C.7.b also requires permittees to submit the projected maximum quantity of seafood waste residues by species. Is this intended to mean that all five species of salmon waste has to be projected for each day of the season? Permittee suggests that salmon should be lumped together as one species. If a plant could process 300,000 round pounds a day of salmon he could list 75,000 of waste for reds and 120,000 of waste for chums. It looks like he is saying he could discharge 195,000 pounds of waste a day. In reality he will discharge one or the other or some combination of the two. Plus some amount of silver and king and pink waste. This requirement could be clarified if this provision was re-written so that it is clear that the maximum discharge is not related to species or a daily amount but it is only related to the total volume of discharge for the year.

R14. This section is now numbered Section IV.C.5.b. To clarify what information should be submitted, Section IV.C.5.b of the final permit has been modified to say: “the name and quantity (in pounds) of the raw product(s) by species or family.”

C15. With regard to Section IV.C.9, refueling information should be left to other regulation formats.

R15. This provision is now numbered Section IV.C.8. It is necessary for EPA to know if a vessel has refueling capabilities. If refueling is available it must be evaluated in the Best Management Practices (BMP) Plan. No change was made based on this comment.

C16. The commenter interprets Section V.A.1.e of the draft permit as follows:
Not meeting the grind size does not fit into “a.” because it does not endanger health or the environment. It does exceed a limitation of the permit in that it is over the 0.5 inch size limit but it does not seem to be a “*Bypass of Treatment Facilities*” so it does not appear that “b.” applies as it is written.

I do not understand the wording in VIII.G enough to determine if the permittee is required to comply with this provision if the 0.5 inch grind is not met.

I am also unclear if one piece of seafood waste, out of a large sample, which is greater than 0.5 inches in only one dimension, would be a reportable non-compliance.

I suggest the permit states whether temporarily exceeding grinder size by some portion of a sample needs to be reported within 24 hours or if it is ok to just include a summary in the annual report as stated: in V.A.1.e., page 15, *a summary submitted with the annual report (Part VI.B.2.b.)*.

R16. The draft permit was incorrect. Section V.A.1.e is now numbered Section V.A.5. The reference to Section VII.G in Section V.A.5 has been corrected and changed to Section VII.H (Other Noncompliance Reporting). Also please see response to C10 concerning the ½ inch grind size.

C17. The definition of a single location in Section VI.C.1 of the draft permit should be changed to “a single location refers a vessel anchored and processing within a circular area with a radius equal to 0.5 NM.” In other words, days of anchorage in which no seafood is discharged should not count towards the 7 days in that location.

R17. Since this permit provision concerns a discharge within state waters, it has been removed from the permit and ADEC will address this comment.

C18. With regard to Sections VI.C.4 and VI.C.7.c, a vessel anchored in waters greater than 120' in depth should be exempt from seafloor monitoring.

R18. Since this permit provision concerns a discharge within state waters, it has been removed from the permit and ADEC will address this comment.

C19. A vessel that is anchored in *Hydrodynamically energetic waters* (i.e., Section II.A.1.a.), should also be exempt from sea floor monitoring. *Hydrodynamically energetic waters* would also need to be defined.

R19. Since this permit provision concerns a discharge within state waters, ADEC will address this comment. EPA uses the term hydrodynamically energetic waters to mean waters with vigorous wave action and quick flushing time to ensure wastes are dispersed quickly without buildup.

C20. Section VI.D.4 specifies that near shore processors have to do sea surface monitoring daily. It does not state that the off shore and at sea processors have to do the sea surface monitoring daily. Yet in other areas of the permit (i.e., Sections V.A.4, V.B.4, V.C.4, and VI.D.1) it appears that all processors have to do the sea surface monitoring. This needs clarified.

R20. Please see response to C6.

C21. Section II.A.1.b states that near shore processors are limited to 3.3 million pounds of discharge annually. There has not been this type of limitation in the past and it could mean that vessels would have to move even if there is no waste build up in an area. Moving operations can be dangerous due to tides, currents and weather. It can also cause a loss of production time. The NPDES permit should not impede commerce unnecessarily. If there is no justified reason to believe that the environment is being adversely effected by a 3.3 million pound discharge then there should be no reason to have this limit in place. There may be a limited number of safe anchorages in an area. Having vessels move into marginal safe areas unnecessarily may endanger lives, property and the environment.

R21. Since this permit provision concerns a discharge within state waters, it has been removed from the permit and ADEC will address this comment.

C22. With regard to Sections IV.C.7.d and IV.C.7.e, the commenter would like to have a better understanding of the intent of a water balance sheet which includes all the disinfectants, daily flows, etc. It is a big undertaking to develop a balance sheet that had any kind of real meaning. All of these things vary greatly from day to day with the amount of production or lack of production. Any type of average daily calculation would not have any meaningful use.

Vessels often flush a fish tank for a day by running sea water in and out through the sea chest. That would have to account for in a “full plan of water balance.” Commenter is not sure how that information could be accurately tracked and does not understand the value of this information.

R22. Please see response to C1.

C23. With regard to Section VI.A.5.b(3), during the various meal plant processes water and/or steam may be added directly to the material and or removed from the material through spinning , hot rotary disc contact, air evaporation and other water removal methods. Each of these processes is dependent on temperature, pressures, humidity, and contact time amongst other variable conditions. Having an exact account of the water vapor balance can be highly subjective.

Knowing how much water is used for the cleaning of fish to a headed and gutted product is unreasonable. A processor cannot meter every water portal in every process on the ship or in a processing plant. A plant can estimate the total gallons of water used in a year, after the first year that it is required to keep such a record.

R23. This section is now numbered Section VI.A.5.b.3. The permit requires an estimate of the water used and water lost. Through previous best management practices (BMP) plans, each processor should have an idea of how much water they use and how much pollution is being discharged. If a processor does not have accurate numbers, the amount should be estimated for the first year. EPA has not changed this provision.

C24. With regard to Section V.A.1.m and Section VI.E, if in the event of an emergency, a shore based plant may desire to discharge at sea through the at-sea portion of the permit system. As this permit is written it would seem that a tender hauling ground up waste off shore would have to meet the requirements of the INFLUENT / EFFLUENT monitoring. The tender may only transport waste for a few days while the shore based plant is correcting their initial problem. Tenders temporarily hauling waste to an at sea site as a back up to normal shore based operations should not be required to conduct the INFLUENT / EFFLUENT monitoring portion of this permit.

R24. As explained on page 1, authorization for at-sea discharges has been removed from the permit because these discharges are regulated under the Ocean Dumping Act.

C25. Commenter is concerned that the shore-based processors did not have a chance to review the at-sea portion of the draft permit. As such, precedent will be set by this permit that will affect the outcome of the shore-based permit.

R25. Please see response to C24.

Patrick Wilson, Petersburg Fisheries, a Division of Icicle Seafoods, Inc.:

C26. The permit verbiage is very redundant, repeating many, many of the same requirements and information over and over thus adding to the size, more fluff and confusion.

R26. Comment noted.

C27. With regard to Section I.A.1.a and Section V.1.e, it is impossible to meet the 0.5 inch grind requirement all the time. Allowance should be made for some sort of percentage outside of that specification and/or waste should be measured by the cube (volume) and not length.

R27. Please see response to C10.

C28. With regard to Section II.A.1.b, where does the 3.3 million pound limit come from for each single location? The focus should be on the deposit/impact left behind, if 30 million pounds discharged leaves no deposit or issues then it is not a problem, if 1,000,000 pounds leave a huge deposit that causes issues then it may be a problem depending on the situation

R28. Since this permit provision concerns a discharge within state waters, it has been removed from the permit and ADEC will address this comment.

C29. With regard to Section IV.A.5, shouldn't this mailing address be Juneau ADEC?

R29. ADEC will address this comment.

C30. With regard to Section V.A.1.h, incidental foam within or outside a mixing zone must be allowed as long as it dissipates and is not an issue. It is impossible to prevent this from occurring or drifting out of the 100' mixing zone in a strong current situation.

R30. With regard to this offshore permit, EPA has not authorized a mixing zone. As such, CWA section 304(a) criteria must be met at the end of pipe. ADEC will address this comment with respect to mixing zones inside state waters.

C31. With regard to Section V.A.1.i, it is dangerous to take photos of the discharge because the discharges occur in a high boat traffic location when in season and in use. A photo prior to or after season should be suitable and if there is a pile or build up, it will still be there.

R31. This section is now numbered Section V.A.15. The pictures that are required under this section are to be taken from the vessel looking down to the area of the outfall. This type of picture should not cause a safety hazard. As such, EPA has not changed this provision.

C32. With regard to Section V.A.1.m, influent/effluent monitoring is not practical as waste transport water is contaminated by city runoff, adjacent boat harbors and industry in many cases. Why is this added to the permit?

R32. This section is now numbered Section V.A.16. Effluent monitoring has been added to the permit to determine whether there are metals in the discharges from the facilities to the receiving waters and, if present, at what concentration the metals are found. Influent monitoring has been added to check for possible contamination due to the influent versus contamination due to processing. This provision does not require the processor to sample the receiving water.

C33. With regard to Section V.B.1.k., the mixing zone of 100 feet is not appropriate in a strong tidal area as tides, wind and waves transport the waste stream outside of the mixing zone. The mixing zone should exceed 300+.

R33. With regard to this offshore permit, EPA has not authorized a mixing zone. As such, CWA section 304(a) criteria must be met at the end of pipe. ADEC will address this comment with respect to mixing zones inside state waters.

C34. With regard to Section V.1.b.3., why is water vapor volume that is escaping to the atmosphere now included in the BMP Plan as a requirement? Why must it be calculated and reported in the annual report? Commenter suggests removing this part.

R34. The permit does not contain a Section V.1.b.3. EPA assumes that the commenter is referring to Section VI.A.5.b.3 of the Permit. Water vapor is included to help processors identify what and how much they are actually discharging into the receiving waters. See also response to comment C23.

C35. With regard to Section VI.B., the address should be changed to ADEC's Juneau address.

R35. ADEC will address this comment.

C36. With regard to Section VI.C.3, the assumption is made that there is a waste pile to measure. It should not be assumed that there will be a waste pile.

R36. Since this provision concerns a discharge within state waters, it has been removed from the permit, and ADEC will address this comment.

C37. With regard to Section VI.B.5, the annual report submission date should be changed to March 1st.

R37. The final permit requires the permittee to submit the annual report by February 14th. The commenter did not provide any justification for changing this submission date. EPA feels that this is an adequate amount of time because it gives the permittee 45 days to complete the annual report and submit it, which should be enough time to document the discharges from the previous year.

C38. With regard to Section VI.C.5., the burden of diving safety at the outfall is up to the contractor doing the dive survey. The commenter is not aware of, trained for, or knows of diving precautions that must be taken. Remove the permittee as being responsible for meeting OSHA safety and scuba rules for diving surveys. How can this be part of a permit?

R38. Since this provision concerns a discharge within state waters, it has been removed from the permit, and ADEC will address this comment in their response to comments document.

Kenny Down, Freezer Longline Coalition:

C39. Commenter suggests that the permit be divided by offshore (*i.e.*, federal waters) and near shore (*i.e.*, state waters). Commenter believes that the current draft permit overly complicates the permit by including vessels that do not operate within state waters. These vessel types are in many instances very different; operations and conditions beyond three miles present a different set of environmentally sensitive concerns and should not fall under the same set of regulations. Operators that choose to operate in both federal and state waters would file an NOI for each near-shore and off-shore permit and abide by both permits.

R39. As discussed on page 1, this permit only covers discharges to federal waters. ADEC will issue a permit(s) that covers discharges within state waters.

C40. Commenter feels that Sections V.A.1.c, V.B.1.c, and V.C.1.c are unnecessary as the requirement is already quite clear that all fish processing waste needs to be routed through a waste conveyance system. Adding language for scuppers and floor drains could be confusing and our members have great concerns about the wisdom and especially the safety of this type of requirement. Having the EPA enter into the requirements that could affect ships safety and

stability should be done so with much more consultation and a very precautionary approach. As this section is unnecessary it should be removed entirely. Commenter attached a letter from Doug Wolfe of Elliot Bay Design Group (EBDG). EBDG's letter expresses agreement that these permit sections are potentially dangerous with regard to ship safety and stability.

R40. Sections V.B.1.c and V.C.1.c are no longer part of this permit as they pertain to discharges into state waters. Section V.A.1.c of the permit is now numbered Section V.A.3. Section V.A.3 of the permit has been revised to state: "A permittee must route all seafood processing waste in scuppers and floor drains through a waste conveyance system to the waste treatment system prior to discharge, unless the permittee provides documentation to EPA that this would cause safety and/or stability impediments for the vessel. If safety and/or stability impediments would occur, the permittee must submit a plan, to EPA, detailing BMPs that will be used to deter seafood processing wastes from entering scuppers and floor drains."

C41. With regard to Section V.C.1.f, the commenter agrees with the addition to the permit of the authorization for discharges at the surface for off-shore seafood processors. With vessel weather and rolling conditions this is clearly, from an operational standpoint, a positive addition.

R41. Comment noted. Section V.C.1.f is no longer part of this permit as it pertains to discharges into state waters. However, this comment is also relevant to renumbered Section V.A.6.

C42. With regard to Sections V.C.1.j. and V.C.1.k, (residues and mixing zones), these sections are not fully accounting for a vessel processing and moving along at 2-11 knots. A vessel moving through the water at a high rate of speed while processing, such as may be the case when a vessel is leaving an area after fishing could technically violate section J or section k of section V. As there is a requirement for visual monitoring (page 33 of the draft permit) and record keeping (page 33-34 of the draft permit) these sections and the interactions between them needs further thought and work with industry to structure in a way that will allow the intent of the permit to be met with clarity for the person(s) doing the actual on-board monitoring and record keeping and allow processing activities to go forward.

R42. Mixing zones are only allowed in state waters and will be addressed by ADEC. Mixing zones are not authorized under this general permit. As a result, the effluent limitations in Section V.A. of the general permit must be met at the end-of-pipe. Please see page 1 for a discussion of the use of CWA Section 304(a) criteria.

C43. With regard to Section VI.D. (Sea Surface Visual Monitoring Requirements), this type of record keeping (page 33-34 of the draft permit) needs further thought and work with industry to structure it in a way that will allow the intent of the permit to be met with clarity for the person(s) doing the actual on-board monitoring and record keeping and allow processing activities to go forward. This also goes to our original contention that the permit should treat vessels operating solely in federal waters with separate regulations. Again vessels operating in

federal waters beyond 3 NM should not be required to meet State of Alaska water quality standards.

R43. As explained on page 1 and in response to C39, this permit only covers discharges to federal waters. Section VI.D has been renumbered to Section VI.C. Section VI.C (Sea Surface Visual Monitoring) remains in the permit pursuant to EPA's authority under Section 308 of the CWA. As explained on page 1, CWA Section 304(a) marine water quality criteria have been applied in this permit. Example monitoring forms can be found on the EPA website.

C44. With regard to Section VI.E (Influent/Effluent Monitoring Requirement), the commenter feels that this requirement is overreaching and a burden on the industry in an area that does not have sufficient evidence to support this type of requirement. While we understand the need in some industries to apply Section 308 of the CWA and federal regulation 40 CFR § 122.44(i), the off-shore seafood processing industry conducting operations and discharging seafood waste into open ocean should not require influent and effluent monitoring for substances such as those listed on tables 1, 2, & 3. There is no identified source on board our vessels in any capacity to remotely identify as a hazard to the environment we operate in. Also the attempt to identify adherence to Alaska WQS's on vessels operating in federal waters more than 3 NM from shore should not be the intent or unintentional outcome of this permit.

R44. This section is now numbered Section VI.D. The metals monitoring has been included in the permit pursuant to CWA Section 308 which applies to all industries and locations. EPA has included this monitoring because of high metals reported in samples taken by some seafood processors discharging in Alaska and around the country. As explained on page 1, CWA Section 304(a) criteria have been applied in this permit. Ammonia monitoring has been removed from the permit, please see response to C45.

C45. With regard to Section VI.E.4.b (Monitoring Requirements for Refrigerator Condenser Water), while only a few vessels in our fleet are using ammonia this regulation seems to be addressing some misunderstanding. Quarterly testing of the condenser water is not likely to find an ammonia leak. Even a minor leak in the condenser tube that has allowed some ammonia to escape the system and enter into the cooling water outfall would be quickly detected on board by the loss of ammonia, the smell of ammonia around the outfall, the loud sound (crackling) that occurs when ammonia is in the presence of water and a loss of efficiency at the condenser. A much better way to get the intent is to require these types of ammonia leaks to be reported in the annual report. Why unnecessarily burden industry with further record keeping and sampling when the proposed testing is not likely to provide useful data to EPA or industry.

R45. EPA agrees that monitoring for ammonia is not the best way to get the information that is sought. This section is now numbered Section VI.E.4.b. The permit has been modified at Section VI.B.2.j as follows: "Report total pounds of ammonia or Freon used and summarize any occurrences of leaks or breaks in the refrigerator condenser system."

Lori Swanson, Groundfish Forum and Stephanie Madsen, At-Sea Processors Association (GF/APA):

C46. EPA has delegated NPDES permitting authority for seafood processing to ADEC. Because of this delegation, EPA no longer has authority to issue general permits for seafood processing discharges into Alaska state waters (within 3 miles). As such, the Proposed NPDES Permit should be limited to discharges of seafood processing wastes that occur outside state waters. ADEC should be responsible for developing and issuing NPDES permits for seafood processing activities within Alaska state waters.

R46. Please see response to C39.

C47. The Proposed NPDES Permit inappropriately blurs the federal and state jurisdictional authorities and potentially creates confusion for the regulated community. For example, certain provisions within the Proposed NPDES Permit (i.e., state-authorized mixing zone and visual monitoring requirements) require the permit holder to comply with Alaska Water Quality Standards even though the discharges occur outside state waters.

R47. State authorized mixing zones are only allowed within State waters. Mixing zones are not authorized in federal waters. Visual monitoring is still required to ensure compliance with the effluent limits and requirements listed in the permit under Section V. Since the final permit only authorizes discharges into federal waters, the permit now recognizes that processors that discharge into federal waters must meet the requirements of the Ocean Discharge Criteria Evaluation, including CWA 304(a) criteria. The permit conditions, however, did not change significantly because state water quality standards and Section 304(a) criteria are virtually identical.

C48. Other provisions that require reporting to ADEC appear to apply to activities outside state waters, even though the state lacks any regulatory authority over such discharges. If adopted, application of these proposed permit provisions to activities outside state waters will result in an unlawful delegation of EPA permitting and enforcement authority to a state agency which lacks regulatory authority over such activities.

R48. Please see response to C39.

C49. The draft Permit must be revised to reflect its application to activities that occur outside state waters and must delete all references to the Alaska Water Quality Standards and ADEC reporting requirements.

R49. The permit has been revised to delete all reference to Alaska Water Quality Standards, and only references CWA section 304(a) criteria. See response to C42 and page 1 of this response to comments document.

C50. EPA's reliance on Alaska Water Quality Standards for discharges that occur outside state waters creates an unnecessary burden on offshore seafood processors. The processors that

operate outside three miles are, in many instances, very different from vessels that operate within three miles. These vessels operate in conditions that present a different set of environmental concerns and operational challenges. It is simply inappropriate to lump these types of seafood processing operations together with nearshore processors.

R50. Please see page 1 for an explanation of the application of CWA Section 304(a) criteria.

C51. The impacts of seafood processing outside three miles are significantly less than those operating within Alaska state waters. EPA recognized this distinction in 2001 when it stated: “The size and duration of deposits depends upon the amount and type of offal discharged, the mobility of the source, and the depth and hydrodynamic characteristics of the receiving water. At one end of the continuum, seafood processing waste residues may be discharged from stationary sources as small volumes into moderate currents or large volumes into high currents and from mobile sources as large volumes into deep waters, producing deposits that persist for periods of hours to weeks. At the other end of the continuum, stationary discharges of tens of millions of pounds of offal into low current waters can produce waste piles that cover acres of sea floor, rise twenty feet or more above the sea floor, and persist for years to decades. EPA, with the concurrence of ADEC, implements and administers an NPDES permitting strategy that covers the majority of Alaskan seafood processors which produces small, short-term deposits under general permits featuring technology-based limits for remote Alaskan locations and ambient monitoring of the sea surface, shoreline and sea floor.

As noted above, the General Permit will authorize discharges from 80 on-shore, 20 nearshore, and 150 mobile off-shore facilities. Based on the data and technical literature available, EPA believes that (1) 80% of the permittees have no persistent deposits associated with their discharges (40 on-shore, 10 near-shore, and 150 mobile off-shore facilities), (2) 16% of the permittees have persistent deposits of less than one-half acre (30 on-shore and 10 near-shore facilities), and (3) 3% of the permittees have persistent deposits of between one-half acre and one acre (7 on-shore facilities).”

EPA’s Responses to Comments, Requests, Recommendations, Conditions, and Stipulations Pertaining to the Re-Issuance of General NPDES Permit AK-G52-0000 for Alaskan Seafood Processors at para. 32 (2001). As such, GF/APA requests that the draft permit be limited to discharges that occur outside state waters and that the draft permit delete any Alaska Water Quality Standard compliance and ADEC reporting requirements.

R51. Please see response to C39.

C52. Section II.A.1.a states “[t]otal pounds of by-catch and prohibited species discharged, and location must be reported in Annual Discharge Report per VI.B.2.f and in accordance with Alaska State statute 46.03.100.”

GF/APA is very concerned about the lack of specificity required for compliance with respect to this new requirement. As currently drafted, GF/APA believes that it would be very difficult, if

not impossible, for mobile seafood processors to comply with the technical requirements of this provision.

GF/APA proposes that total pounds of by-catch and prohibited species discharged and location be collected and reported on a once-per-day basis. GF/APA proposes that the general location of the discharge be described with a daily latitude and longitude description.

R52. EPA agrees that total pounds of by-catch and prohibited species discharged and location of the discharge can be reported on a once per day basis, with a daily latitude and longitude description in degrees, minutes, and seconds. This change is reflected in Section VI.B.2.e of the permit.

C53. Section III.A.6 of the draft permit does not authorize the discharge of pollutants into spectacled eider critical habitat during certain times of the year. GF/APA believes that the proposed restrictions on discharges within critical habitat appear to be overbroad. These restrictions appear to go beyond what is necessary to avoid impacting spectacled eider critical habitat. The Draft Biological Evaluation for the Proposed NPDES Permit states that the risk that critical habitat may undergo adverse modification due to direct or indirect effects of offshore seafood processing is minimal because discharges are expected to occur further than one nautical mile from shore. Draft Biological Evaluation for the General NPDES Permit for Offshore Seafood Processors in Alaska, at 76 (September 2008). Impacts are further minimized by both the constant movement of offshore seafood processors and their discharges occurring in areas of high tidal activity that will allow for dilution and dispersion of the seafood discharge. *Id.* at 75 (“the location of offshore seafood processor vessels 1 nm or more from shore in high tidal areas should dilute and disperse the seafood processing waste fairly quickly creating less of an attraction for spectacled eiders.”). Based upon these findings, a blanket restriction of discharges within spectacled eider designated critical habitat appears to be overbroad and not warranted.

R53. Thank you for pointing out the typo in the biological evaluation (BE). The BE has been corrected to state:

“However, habitat that may undergo adverse modification due to direct effects of the offshore seafood processor permit due to organic waste discharge potentially altering the benthic community, used as a prey resource for the spectacled eiders, should be minimal as discharges are expected to occur further than 1 nm from critical habitat areas.”

The Permit does not authorize discharges into critical habitat areas; however, if a processor wants to discharge in a critical habitat area they can apply for an individual permit. This will allow the permitting authority to tailor an individual permit with specific conditions that will protect the critical habitat area.

C54. Section IV.A.2 of the draft permit states that EPA may require any discharger applying for coverage by a general permit to apply for an individual permit. The Proposed NPDES Permit states the factors that EPA will rely on in deciding whether to require an individual permit. The

third factor listed states, “a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.” Id.

GF/APA notes that the American Fisheries Act (AFA) restricts the modifications that may be made to vessels, which in turn limits the types of technology that our at-sea processors may utilize. The AFA, passed by the Congress in 1998, contains strict limits on the ability for GF/APA vessel owners to rebuild or upgrade their vessels due to the Act’s clear limits on vessel size and horsepower. The AFA’s size limitations do not allow platform changes that would allow the addition of machinery and personnel to accommodate new processes in waste management. For example, some GF/APA vessels cannot be modified to allow for the addition of fish meal plants or for the addition of capacity to enable the production of fish oil. Both fish meal and fish oil production would provide more efficient seafood waste reduction. This restriction may prevent at-sea processors from using demonstrated technology which may become available to processors in other fisheries. GF/APA requests that the EPA clarify that availability encompasses both actual availability and legal availability.

R54. Section IV.A.2 of the draft permit was included pursuant to 40 CFR § 122.28(b)(3) and cannot be changed to incorporate exceptions. If an individual permit was required for any of the listed reasons, the size restriction should be brought up at that point and incorporated into the individual permit.

C55. Section IV.C.6.e of the draft permit states that a NOI must include projected production data based upon historical operations and design capacity. The draft permit includes processing locations as the type of production data that must be included within the NOI. These processing locations must be reported in either latitude and longitude or ADF&G area(s). GF/APA requests that the processing location data include Federal Reporting areas as identified by the National Marine Fisheries Service (NMFS).

R55. EPA agrees that Federal reporting areas identified by NMFS should be included in this permit provision. This section has been renumbered Section IV.C.5.e. The permit now reads: “e. processing location(s). Locations should be identified by latitude and longitude or by NMFS federal reporting areas, including a map identifying where the discharges will occur in the reporting area,”

C56. Section IV.C.7.e of the Proposed NPDES Permit (NOI Process Flow Diagram or Schematic) requires that the NOI include a Process Flow Diagram or Schematic. Proposed NPDES Permit at 13. The Proposed NPDES Permit is unclear about the level of detail which would be required for the diagram or schematic.

R56. Please see response to C1.

C57. Section V.A.1.c (Scupper and Floor Drain Waste) is problematic from the standpoint of personnel safety and vessel stability. A waste conveyance system which would capture all the water on deck and pump it overboard after chopping or filtration is patently impossible as the

volume of a boarding wave on deck could easily fill the cargo holds. The necessity to rapidly discharge the water from boarding seas cannot be overstated.

In addition, commenter states that the installation of one-half inch mesh screens at scuppers would be problematic. The obvious problem with screens is that in cold, windy weather, freezing spray will quickly accrete on the mesh, effectively closing the scupper and preventing water on deck from draining overboard.

Commenter states that literal compliance with this requirement may conflict with Coast Guard requirements pertaining to scuppers. Commenter requests that the requirement be eliminated from the final permit. Commenter suggests that best management practices (BMPs) be required to avoid discharges of seafood processing waste through scuppers.

R57. Please see response to C40.

C58. Commenter requests that Section V.A.1.i of the Proposed NPDES Permit (Nuisance Discharge) be eliminated. Commenter is extremely concerned about this new proposed prohibition because it is extremely ambiguous. It is unclear as to what types of activities would result in violations of the Final NPDES Permit.

Additionally, this prohibition appears to be unnecessary. As stated above, EPA has previously recognized that the impacts of seafood processing discharges from mobile sources have limited short term effects on fish and wildlife. See EPA's Responses to Comments, Requests, Recommendations, Conditions, and Stipulations Pertaining to the Re-Issuance of general NPDES Permit AK-G52-0000 for Alaskan Seafood Processors at para. 32-33. In addition, other agencies, such as the U.S. Fish and Wildlife Service, have been studying interactions between fishing gear and seabirds. At a minimum, commenter requests that this provision be revised to require the permit holder to develop and implement best management practice to avoid creating such attractive nuisance situations.

R58. This section is now numbered Section V.A.9. Section V.A.9 prohibits the creation of an attractive nuisance situation and further explains that this type of situation is created when fish and/or wildlife are attracted to an area in a manner that creates a threat to fish or wildlife as well as human health and safety. An example of an attractive nuisance is the creation of a large mat of seafood waste that then attracts birds and wildlife. This provision was included in past permits for near shore and shorebased facilities and was expanded to encompass all facilities in this permit cycle.

C59. Section V.A.1.k of the Proposed NPDES Permit (Mixing Zone) contains a new definition of the allowed mixing zone to aid in the dispersion of discharged seafood waste. In adopting the proposed definition, the Proposed NPDES Permit states that the mixing zone of 100 feet from the discharge point actually follows the vessel as it moves during processing operation. Proposed NPDES Permit at 16. The proposed definition allows for a mixing zone but defines that mixing zone in a way that would defeat the purpose of a mixing zone and allow for almost instant

violations. The mixing zone would not be effective because the waste discharged in each location would exit the mixing zone as the vessel moves. In order for the mixing zone to operate effectively, the definition in the Proposed NPDES Permit should be changed to define the mixing zone to be “100 feet from the point where the discharged material enters the water.” That revised definition will allow the mixing zone to operate properly even when the vessel has moved onto a different location.

R59. Please see response to C33.

C60. Section VI.B.2.d of the Proposed NPDES Permit (Annual Report Discharge Track Location) requires the permittee to submit an annual report which contains map(s) of the discharge track(s) of the vessel. The commenter believes that it would be extremely difficult to comply with this requirement to submit maps of discharge tracks. Additionally, providing such detailed information would reveal the proprietary fishing strategies of the vessel. The Commenter believes that this information is of little use to EPA because the information in the annual report concerns discharges that have already occurred. The Commenter requests that this requirement be replaced with a requirement to submit a daily discharge coordinate in the annual report.

R60. EPA agrees with the Commenter and has determined that this provision will be changed to reflect that only one daily coordinate (degree, minutes and seconds) is required for the annual report. The permit has been updated to incorporate this change.

C61. The commenter does not understand why EPA has included the sea surface visual monitoring requirement in the Proposed NPDES Permit (Section VI.D). This type of monitoring is being conducted by the existing observer program operating pursuant to NMFS regulations. This monitoring requirement is redundant and should not be included within the Final NPDES Permit. It is also unclear whether this provision applies to offshore seafood processors.

R61. The permit has been amended to clarify that all dischargers must conduct sea surface monitoring. Please see response to C6. Daily monitoring is to be done to ensure the permittee is complying with the effluent limitations and requirements of the permit. If the same daily visual monitoring is already being done for another program, then a copy of the results would satisfy this requirement, as long as the monitoring itself is conducted and reported in accordance with the NPDES permit requirements.

C62. The commenter requests that the quarterly monitoring requirement in Section VI.E.4 of the Proposed NPDES Permit be clarified to recognize that the permittee is not required to monitor during those quarters when the permittee is not operating and discharging.

R62. Section VI.E.4 has been renumbered Section VI.D.1. Section VI.D.1 of the permit has been revised to say “During the term of this Permit all permittees must conduct influent and effluent monitoring, in all quarters in which discharge occurs.”

C63. Sections VI.E.4.a and VI.E.4.c of the Proposed NPDES Permit requires quarterly monitoring for Ammonia, Arsenic, Copper, Cadmium, Lead, Mercury, Nickel, Selenium, Silver, and Zinc. EPA has indicated that these new monitoring requirements are a consequence of “spot” checks conducted at seafood plants in Alaska and other locations throughout the United States that revealed unexpectedly high levels of the above-listed metals. Unfortunately, it is not possible for GF/APA to evaluate and comment upon EPA’s determination. Through a Freedom of Information Act (FOIA) request, industry representatives have previously requested that they be provided with the “spot” check data that EPA has relied upon in concluding that high levels of the above-listed metals are present. *See* Pacific Seafood Processors Association October 30, 2008 FOIA Request regarding General Permit for Offshore Seafood Processing Facilities in Alaska. EPA has failed to provide this data. The commenter questions the need for such monitoring because, unlike other industries, seafood processing inputs are restricted to processing water and raw seafood.

GF/APA questions the need for such monitoring. The commenter believes it is highly unlikely that the above-listed metals will be discharged as a result of seafood processing. The only potential source besides processing water and raw seafood for introduction of the above-listed metals would be from the processing equipment. Nevertheless, it is extremely unlikely that this equipment could be a source for the above-listed metals.

The commenter has determined that the excessive costs of the proposed testing to the seafood processing industry would be prohibitive. Including de-salinization of the sample matrix, each test can cost as much as \$1,500. By requiring ten tests on a quarterly basis, each facility could incur additional expenses up to \$60,000/year. A company with ten vessels would incur annual expenses of more than half a million dollars and, industry-wide, the expenses will be tens of millions of dollars over the life of the permit. As indicated by these estimates, this provision will have a significant impact on a substantial number of affected processors.

Further, the GF/APA is concerned that there is no indication that the EPA has conducted any type of cost-benefit analysis for the new testing requirement. The GF/APA notes that the EPA has committed to operating in accordance with the Regulatory Flexibility Act’s requirements when issuing general permits under the Clean Water Act. *See, e.g.*, 73 Fed. Reg. 58,587, 58,589 (Oct. 7, 2008). While EPA included a finding of no significant economic impact on a substantial number of small entities in the Fact Sheet accompanying the Proposed NPDES Permit, EPA did not provide any factual basis justifying that conclusion. Fact Sheet at 32. Based on the information available, the GF/APA does not believe that this conclusion is justified and requests that EPA conduct an economic analysis regarding the inclusion of the proposed monitoring requirements.

R63. With regard to the basis for the metals monitoring, please see response to C44. With regard to the FOIA request, EPA responded to this request in December 2008. With regard to the Regulatory Flexibility Act, since this permit will not affect more than 100 small businesses, EPA concluded that this permit will not have a significant economic impact on a substantial

number of small entities. Therefore, they are not legally subject to the Regulatory Flexibility Act.

C64. The commenter requests that, in lieu of the proposed monitoring requirements in Sections VI.E.4.a and VI.E.4.c, EPA conduct a focused study at all or a representative number of the seafood processing facilities that exhibited a higher than expected sample of the above-listed metals during EPA's "spot" checks. The commenter believes such a study, designed to specifically determine the source of these metals, would seem to be a more logical method of producing such information. The study could be designed to consider all possible sources of any of the above-listed metals between influent and effluent including product, process chemicals, and machinery. Further, this type of study would be far more likely to produce useable data in contrast to the testing requirements proposed in the Proposed NPDES Permit. In contrast, the monitoring requirements of the Proposed NPDES Permit at best will only raise questions and will not be useful in any sort of critical analysis.

R64. EPA has determined that it is appropriate to retain the monitoring provisions in the permit. EPA has the authority to require permittees such as seafood processors to conduct monitoring pursuant to its authority under Section 308 of the CWA. Please see response to C44.

C65. If EPA determines that the metals monitoring is essential, EPA should revise Sections IV.E.4.a and VI.E.4.c to eliminate the quarterly monitoring through the life of the permit and replace it with reduced monitoring if the initial testing demonstrates that specified pollutants are not present. For example, the Final NPDES Permit could require initial one-time or quarterly testing in the first or second year of the permit. If this initial testing demonstrates that the specified pollutants are not present, the Final NPDES Permit should eliminate the costly and unnecessary requirement to conduct quarterly testing. Additional testing could be required at a specific operation where there was a significant differential in the levels of influent and effluent.

R65. EPA agrees to include a reduction in the metals monitoring program for those pollutants that show that there is no exceedances of the marine water quality criteria. Section V.A.16 of the permit has been changed as follows:

16. Influent / Effluent Monitoring. The permittee must take quarterly influent and effluent samples, while seafood processing is occurring, for all the parameters listed in Part VI. E. Quarterly is defined as a calendar quarter (Jan.-Mar., Apr.-Jun., Jul.-Sep., and Oct.-Dec.). If no discharge occurs in one or more quarters the permittee must write "No Discharge" on the annual report for those quarters.

Monitoring must begin in the third quarter after receiving authorization to discharge. For example, if a processor is authorized in February (the first quarter), monitoring must be conducted in the third quarter (July-Sept) of that same year. If the processor does not discharge in the third quarter after receiving authorization, then monitoring must start in the first quarter the processor begins discharging again.

Each processor must conduct, at a minimum, quarterly monitoring for at least two years. If after the two year minimum monitoring is completed, the processor shows no exceedances of CWA 304(a) criteria for Marine waters (listed in VI.D), then monitoring may cease. If after two years there have been exceedances of the criteria for marine waters, then monitoring must continue for those parameters where exceedances have occurred. Monitoring must continue until no exceedances occur for two consecutive years, in which processing occurs.

If a permittee satisfies the paragraph above, then the permittee must submit a letter to the Director of the Office of Water and Watersheds, requesting that monitoring cease for all or a portion of the parameters. This letter must include a summary of the sampling data for each parameter that the permittee proposes to cease monitoring. A permittee must continue monitoring until it receives a letter from EPA approving its request.

C66. Section VI.E.4.b of the Proposed NPDES Permit requires monitoring of ammonia for discharges of refrigerator condenser water. This monitoring requirement appears to be based upon an inaccurate assumption that all seafood processors rely upon ammonia for refrigeration. However, the commenter notes that most of its members rely upon freon for refrigeration.

If a permittee only relies upon freon for refrigeration, then the permittee should not be required to monitor for ammonia. The commenter requests that the ammonia monitoring requirement be limited to those permittees who rely upon ammonia for refrigeration.

R66. Please see response to C45.

C67. Section VIII.H (Toxic Pollutants—Lack of Reopener) represents a significant revision from the existing general permit which provides that the EPA can reopen the permit to incorporate those standards or prohibitions. The commenter is concerned that the permit creates potential liability for compliance with new standards even though the permit has not been modified to incorporate new standards. The commenter requests that the Final NPDES Permit adopt the approach from the existing general permit by having new effluent standards addressed through a reopener provision within the Final NPDES Permit.

R67. Pursuant to 40 CFR Part 122, reopener clauses in permits are only authorized in certain situations. See 40 CFR § 122.44(c). Section VIII.H is boilerplate permit language that comes from 40 CFR § 122.41(a). However, it should be noted that if a toxic effluent standard or prohibition is promulgated under Section 307(a) of the CWA, EPA is required to institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See 40 CFR § 122.44(b)(1). Therefore, if a new toxic effluent standard or prohibition is promulgated, the permittee is required to comply with that provision even if the permit has not yet been modified; however, EPA, at the same time, is required to institute modification proceedings to incorporate the new standard into the permit.

Mary Boggs, Deep Sea Fisheries (Sanko Fisheries, Pavlof Fisheries, and Gulf Mist, Inc.):

C68. Commenter believes that splitting the permit into off-shore and near-shore complicates the permit unnecessarily. The majority of the processing has been done offshore and within 3 miles on non-stationary vessels, the processing waste (ground fish) is well dispersed as the vessel is in constant motion.

R68. Please see response to C39.

C69. With regard to Section V.C.1.c, the current permit already specifies that fish processing waste must be routed through a waste conveyance system. Adding requirements about scuppers and floor drains is confusing and required changes may cause safety and stability issues. EPA should not force requirements that could potentially affect vessel's stability.

R69. Please see response to C40.

C70. With regard to Section VI.E. of the draft permit, this requirement seems overreaching and burdensome on the industry in an area that does not have sufficient evidence to support this type of requirement. Processing and discharging seafood waste into the open ocean should not require influent and effluent monitoring.

R70. Please see response to C44.

C71. With regard to Section VI.E.b, quarterly testing of the condenser water is not likely to find an ammonia leak. Minor leaks are found by smelling the leak and repairing it.

R71. Please see response to C45.

From Mike Clutter at Icicle Seafoods Inc.:

C72. Section V.B.e of the draft permit states that permittees must report any failure to meet grind size in accordance with Part VII.G. which requires telephone notification within 24 hours. Is this correct?

R72. Please see response to C16.

C73. The statement in Section V.B.f. which authorizes the discharge at least minus 60' depth is inconsistent with an earlier statement that precluded discharges into areas less than 60' MLLW, with inadequate flushing. Is this an oversight particularly in the case of locations in Bristol Bay where the depth is in the minus 30 – 40' MLLW range but with extremely good flushing due to the swift current?

R73. Since this permit provision concerns a discharge within state waters, it has been removed from the permit and ADEC will address this comment.

C74. In response to a question at the October 15th Public Information Meeting in Anchorage we were informed that coverage by two permits will be required for vessels operating at locations less than 0.5 nm from shore as well as locations more than 0.5 nm from shore. Four of our processing vessels operate routinely on an annual basis both inside and outside the 0.5 nm line.

This permit is already much more complex than the current General permit and we haven't even seen the onshore version of this permit. What are the benefits that justify further complicating an already more intricate compliance process by now requiring two annual reports, two BMP plans, two NOI's and other related details that have yet to be discovered?

R74. As discussed on page 1, ADEC sent a letter to EPA stating that it planned on issuing its own permit(s) that would deal with discharges within 3 miles. As such, ADEC will address this comment.

C75. Does EPA/ADEC have any scientific data to support the ecological or environmental significance of the 0.5 nm distance from shore or was it chosen arbitrarily? This is a significant economic burden on vessels required to operate under both permits. Splitting the General Seafood Permit into two sectors and the Offshore permit into three subsectors has created economic advantages and disadvantages as the case may be. Seafood companies have each chosen their mix of operating scenarios and platforms based on criteria known only to them. Was it the intent of EPA/ADEC to upset or distort the natural and proprietary nature of this process by creating inequities based on operating platform types?

R75. This permit covers offshore seafood processing discharges in federal waters. Discharges within state waters will be addressed by ADEC.

C76. Shore plants wanting to maintain the flexibility of discharging offshore as a matter of emergency (this happened to our Seward plant when their meal plant had a breakdown during a salmon season) would be required to have coverage under this permit in addition to the Onshore NPDES General Permit. Is there a net gain that justifies further complicating the compliance process by requiring two annual reports, two BMP plans and two NOI processes etc? Since this is used only in case of need there will be many years when discharging at sea isn't necessary.

R76. With regard to at-sea discharges, please see response to C8. With regard to discharges that occur within state waters, ADEC will address this comment.

C77. What happens when a facility like our Seward plant applies for this permit but then doesn't need to send any waste out to sea - Does it need to abide by all the permit requirements of the Off Shore permit or only those related to at-sea discharges? Must a permittee submit an annual report in a year when it doesn't discharge offshore?

How do we do an NOI for Seward's possible discharge here? If meal plant breaks we might discharge 300,000 lbs/ day at sea.

R77. With regard to at-sea discharges, please see response to C8. With regard to discharges that occur within state waters, ADEC will address this comment.

C78. Section III of the draft permit prohibits the discharge of pollutants in specified excluded areas. According to the Fact Sheet, facilities wishing to operate in excluded areas must apply for an individual permit. This is an extremely complex and far reaching requirement, made more so by the lack of an all encompassing set of detailed maps. Only recently we've become aware through the surfacing of other mapping and chart resources that many of our traditional processing areas throughout the state and particularly in Western Alaska are in proximity to the Alaska Maritime NWR.

How will this be handled in the likelihood of the permit becoming effective in midseason? Is EPA suggesting that affected facilities stop operations until Individual Permits can be issued? This will have an immense cost to the industry in forgone processing opportunities not to mention the adverse economic impact to local communities, harvesters, vendors, individual seafood employees and the myriad other entities who rely on these resources. Moving to other sites is not feasible as traditional processing sites have evolved for many reasons and alternate sites are few. Traveling greater distances to suitable sites further away from these areas presents a hardship in terms of fuel consumption, freshness of product etc.

R78. The analysis done for this permit was based on the fact that discharges would not be occurring within the excluded areas. These areas are excluded because they warrant more specific and restrictive requirements. Please also see response to C53. Because most excluded areas occur in State waters, ADEC will also address this comment.

C79. Commenter is concerned that an individual permit will not be issued in a timely manner especially in the context of the new State of Alaska Primacy for the NPDES permits. What is the expected time frame for the task of rectifying that situation which will certainly take precedence over subsequent permit requests? It is very unlikely the State of Alaska anticipated this added permitting and enforcement burden.

R79. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C80. Requiring these Individual Permits greatly complicates what promises to be an already complicated compliance environment in terms of NPDES issues alone. We have vessels whose typical annual operations will require them to have an Onshore General NPDES General Permit, an Offshore NPDES General Permit and now an Individual Permit (or permits) for operations in excluded areas not to mention the imminent Vessel General Permit.

R80. As explained in response to C53, the excluded areas require additional analysis and potentially more restrictive requirements than what can be authorized under a general permit. It is more appropriate to include these additional requirements in an individual permit for a specific processor. Moreover, by allowing processors to discharge in these excluded areas through the

granting of waivers (as allowed under the expired permit), the general public is unable to comment on whether a specific processor should be allowed to discharge in a specific excluded area.

C81. Using an Individual Permit in this way is not a good option! This process takes 12 – 24 months. There must be some way within the purview of the permit that would adequately ensure the conservation of the concerned areas without dramatically complicating the compliance efforts of industry and regulators. Instead of considering them ‘excluded areas’ we suggest they be termed as Areas-of-Concern with their own subset of requirements. We would welcome the opportunity to work with EPA to develop a mutually satisfactory outcome to this otherwise onerous and cumbersome aspect of the draft permit.

R81. As stated in response to C53 and C80, more restrictive permit provisions for excluded areas are more appropriate for individual permits or watershed based permits. For discharges that occur within state waters, ADEC will address this comment.

C82. The many unexpected subtleties and requirements of this permit demand more extensive analysis. The second informational meeting for Seattle based stakeholders was only nine working days before comments must be received by EPA. Sufficient time was not allowed for all stakeholders to adequately contemplate the intricacies of this permit.

R82. The initial public comment period was 45 days and after receiving requests for an extension it was extended an additional 30 days. No requests were received to further extend the public comment period.

C83. It is probable that substantial elements of this permit will be included in the upcoming onshore permit. That being the case, stakeholders covered under that permit may be deprived of a valid opportunity to comment on issues that have effectively been decided with eventual issuance of this offshore permit before the onshore permit even comes up for public comment.

R83. ADEC is the permitting authority for discharges within state waters. The public will have an opportunity to comment on any draft shore-based permit issued by ADEC and will have the opportunity to appeal such a permit.

C84. With regard to Section V.A.1.e, what constitutes a “Failure to meet the 0.5 inch grind size limit”? How does EPA/ADEC apply the rule? This creates confusion regarding non-compliance reporting depending on how a failure is interpreted. Does EPA/ADEC have scientific data to show grinding to 0.5” is ecologically more beneficial than grinding to 0.75” or 1.0”? How can by-catch be discarded whole if there is a problem with a small percentage of our waste stream being greater than 0.5” and even then, almost always in only one dimension? More to the point: Is there any data or analysis showing statistical significance in the difference between 100% achievement of the 0.5” grind size criteria and say 95% achievement and if so, relative to what standard or goal?

R84. Please see response to C10 with regard to compliance with the 0.5 inch grind requirement.

There are some exceptions to the 0.5 inch grind requirement for by-catch with regard to certain types of shells as well as a prohibited by-catch provision. The prohibited by-catch provision is in the permit pursuant to 50 CFR § 679.21(b)(2)(ii).

“(2) Prohibited species catch restrictions. The operator of each vessel engaged in directed fishing for groundfish in the GOA or BSAI must:

(i) Minimize its catch of prohibited species.

(ii) After allowing for sampling by an observer, if an observer is aboard, sort its catch immediately after retrieval of the gear and, except as provided below, return all prohibited species or parts thereof to the sea immediately, **with a minimum of injury**, regardless of its condition...”

C85. Discussion at the 10/15/08 Public Information Meeting in Anchorage indicated that a small percentage of particles exceeding the specification is not a problem. The industry must have a clear understanding of what constitutes a small percentage and it’s in the best interest of EPA and ADEC to provide clear guidelines that streamline compliance efforts of the permittees. Specifying a range of values (percentages) that are considered de minimis would clear up the uncertainty. Freed from ongoing interpretation of what constitutes a “Failure to meet the 0.5 inch grind size limit”, inspectors and permittees can concentrate efforts on more important compliance issues.

R85. Please see response to C10.

C86. The commenter believes it would be simpler and result in no loss of effectiveness to simply require that a facility maintain properly operating equipment that is designed to grind a high percentage of the seafood wastes to 0.5” in any dimension. The 0.5 inch grind requirement is a technology based effluent limit. We suggest it be kept within the realm of technology and achieve desired oversight through monitoring and reporting on the technology itself. Such control could be realized by stipulating minimum specifications of BAT (best available technology) and/or provide acceptable examples of BAT, by requiring submittal of maintenance logs, and other demonstrations that said equipment continually operates to manufacturer specifications.

R86. See response to C10.

C87. With regard to the requirement to conduct seafloor monitoring, the river currents in Bristol Bay especially in combination with tides and wind are exceedingly effective in dispersing any seafood wastes. The sea floor is a very fluid mixture of mud, sand and silt, and is in a constant state of flux except for brief intervals at tide changes. The likelihood of any persistent or contiguous deposits forming in this environment is effectively nonexistent therefore the need for

seafloor monitoring is also non-existent. This is a new requirement. Does EPA/ADEC have scientific data on which this unprecedented requirement was based?

We consulted with Tim Jewell of Envirotech Diving. Tim has made dives in some Bristol Bay rivers but within very limited constraints and only for brief repairs on vessels that were drifting thus completely cancelling out the effects of the current. It was explained to me that visibility is so poor that any aspect of seafloor monitoring requiring a visual perspective is not possible. Because of the current it is impossible to free swim and hold a course which is necessary for laying out transects necessary for assessing the outlines of a ZOD etc

Safety Issues Because of the poor visibility the swift currents and extreme tides it is extremely unlikely that anyone would attempt to perform seafloor monitoring even if it were necessary or physically possible.

R87. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C88. Seafloor Monitoring at depths greater than 120 feet:

Dive Surveys With regard to seafloor monitoring at depths greater than 120 feet, decompression time is required. Thus, dive contractors begin charging for dive time plus the associated decompression time. Because time at depth is limited contractors must increase the number of divers in order to accomplish the same amount of work previously done by one and each of these must comply with the decompression requirements. Additionally, in order to comply with OSHA regulations, contractors must deploy some form of decompression apparatus. This equipment is complex, very bulky and heavy requiring a larger (and more expensive) support vessel. The requirements of deep dive surveys in combination with often adverse weather conditions and remoteness of many seafood processing locations combine in ways that greatly increase the cost of seafloor monitoring. Bearing in mind that seafloor monitoring at depths beyond 120' has previously been considered inconsequential, is there scientific data indicating that information gained through such surveys is justified by the significantly increased costs?

R88. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C89. Changing Positions as an alternative to seafloor monitoring:

In response to a question at the October 15th Public Information Meeting it was suggested that we simply move our vessel at least one (1) nautical mile every seven days in order to avoid the requirement for seafloor monitoring. This is problematic for several reasons. The foreign freight vessels necessary for our processing vessels to have alongside in order to operate require an Alaskan Marine Pilot for any change in position. Processor vessels and freighters are very large and prudence dictates that movement of these large vessels, especially in areas subject to extreme winds and tides, be kept to a minimum from the common sense perspective of limiting the opportunity for accidents to happen.

Moreover, some locales where we operate simply don't have enough area with the combination of depth, good holding bottom and protection from the wind that is desired for safe operations. A good example is Clark's Point in the Nushagak River in Bristol Bay. That leaves no alternative except to leave the vicinity which deprives fishing fleets of their markets etc.

R89. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C90. With regard to Section IV.C, must the NOI be revised if the owner's Duly Authorized Representative changes or for changes in minor administrative details such as a change of phone or fax number.

R90. The NOI must be revised if the owner's Duly Authorized Representative changes or for changes in minor administrative details such as a change of phone or fax number. Without the changes to the NOI the permitting authority does not know who to get a hold of (owner's Duly Authorized Representative) or how to get a hold of them (change of phone or fax number).

C91. With regard to Section IV.C.4, a vessel might move several times in a given season depending on weather, tide, proximity to resource, or to address safety issues and this can't be predicted. The only way to comply is to list every location used historically. There are times when we may not know whether a vessel will process at a particular location until as little as 30 days prior to use or we may not process at that location at all. The need for weather induced changing of anchorages or other vessels moving in to the position are just two reasons a vessel is unlikely to anchor in exactly the same position each year. Furthermore, it is common for combinations of tide, river current and wind to cause positions to change dramatically during a season.

R91. If this comment is directed toward Section IV.C.4.c for offshore vessels, EPA requires a general area map that identifies where discharges occur. This allows EPA to track where pollutants are going to be discharged. This section has been renumbered Section IV.C.5.e.

If this comment is directed toward Section Section IV.C.4.b for near shore vessels, than this permit provision concerns discharges within state waters, and has been removed from the permit. Since ADEC is the permitting authority for discharges within state waters, ADEC will respond to this comment.

C92. What does EPA/ADEC mean by "Hydrodynamically energetic waters with higher capacity of dilution and dispersion". (Page 6 top). How is this defined? Also if the waters have a high capacity for dispersion, doesn't this make the 100 ft mixing zone requirement hard to meet?

R92. In regard to mixing zones please see response to C33. With regard to the definition of "hydrodynamically energetic waters," please see response to C19.

C93. Section V.A.1.h, states that the discharge of foam is prohibited but the second sentence of that section then states that incidental foam "... must be minimized to the extent practicable as described in the best management practices plan...". This infers that some foam and scum from transfer water is allowed but an inference is not appropriate as it leaves too much open to interpretation. It should be stated clearly. Also is it better to have some foam or pollute the waters by use of a de-foaming chemical to minimize it?

R93. Section V.A.1.h has been renumbered Section V.A.8. Section V.A.8. has been changed to read "A permittee must not discharge any other wastewaters that contain pollutants listed below in V.A.9. – 14. The incidental foam and scum produced by discharge of seafood catch transfer water must be minimized to the extent practicable as described in the BMP Plan"

For discharges within state waters, ADEC will also respond to this comment.

C94. With regard to Section V.A.1.m, the cost of this additional sampling will be significant. Does EPA/ADEC have any scientific data to suggest seafood discharges pose a problem relative to heavy metals? Also, do we know if this kind of sampling is possible from remote areas or Alaska?

R94. Please see response to C44. Sampling is possible for remote areas of Alaska as the samples can have long holding times.

C95. With regard to Section V.B.1.a, what is the basis for the 3.3 million pound limit in any one area? Is there data indicating a problem necessitating this requirement? The 3.3 million lbs discharge limit is new and could pose some issues; in a place like Bristol Bay if a processor gets close to the limit there are many considerations involved with figuring out where to anchor next and more than a few are related to vessel safety.

R95. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C96. With regard to Section V.B.1.f, the 60 ft depth isn't possible in Bristol Bay and maybe some areas in Togiak. Typically we anchor barges in the safest spot considering tide, current, holding bottom and shelter from winds.

R96. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C97. With regard to Section V.B.1.1, how will ADEC determine the size of the ZOD? Do they have any science to support this process? Will an operator be expected to provide a lot of (costly) information or studies to ADEC in order to get a ZOD? What has prompted ADEC to change this part of the permit? Does EPA have any new information to show it is necessary or is this change more or less arbitrary?

R97. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C98. Section V.B.1.o, sounds ominous. What criteria could lead to requiring this additional sampling? There must be clearly stated, objective criteria so permittees have some means of avoiding what is likely to be very expensive monitoring.

R98. Since Section V.B.1.o pertained to discharges within state waters, it has been removed from the permit. Pursuant to 40 CFR § 122.44(d), however, all NPDES permits are required to comply with CWA Section 304(a) criteria. Since state water quality standards do not apply to the discharges into federal waters, this permit must comply with the Ocean Discharge Criteria Evaluation and Section 304(a) marine water quality criteria. If EPA determines that CWA Section 304(a) criteria are not being met, the agency may issue information requests pursuant to Section 308 of the CWA. Moreover, if EPA determines that it is appropriate, it may modify the permit to include additional monitoring requirements. For discharges within State waters, ADEC will further address this comment.

C99. How specific does the BMP plan need to be in terms of the “materials accounting” part? Some of the processes have a fair amount of variation based on such factors as fish condition, market requirements, atmospheric conditions (in the case of meal production).

R99. All of the topics mentioned above should be discussed in the BMP plan. The BMP plan should be a very detailed document about your process and how you can avoid discharging pollutants. It is best to discuss the variations in the plan and discuss what you would do in each case.

C100. With regard to Section VI.D., we cannot and should not speculate on the cause of death of any of these animals unless we actually see it happen.

R100. This section has been changed to section VI.C. The general cause of death can sometimes be determined and, if it can be determined, it should be reported. If the probable cause of death cannot be determined, then that can be noted in the monitoring report.

C101. With regard to Section VII.H, what are the “toxic pollutants”?

R101. “Toxic pollutants” are listed in 40 CFR § 401.15.

Ryan Hatton, Snopac Products, Inc.:

C102. Section II.A.1.b of the draft permit states that processors operating between 0.5 and 1.0 NM cannot discharge more than 3.3 million pounds of ground waste residues.

In reviewing the Ocean Discharge Criteria Evaluation (ODCE) Summary section 3.4 on page 3-19, the modeling results, including the margin of safety, indicate that floating processors would

comply with the once acre ZOD requirement if they discharged 3.3 million pounds of ground waste residue at depths greater than 50 feet. However, the summary also states that processors discharging at 50 foot depths could discharge 6.7 million pounds of ground waste residue and also meet the required one acre ZOD. The draft GP should be revised to include both of these limits in Section II.A.1.b of the GP (the allowance for discharges in less than 60 feet of water is discussed in comment #4).

R102. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C103. The draft GP should also be revised to include provisions in the permit to address permittees that comply with the approved discharge locations and the discharge limit for seafood processing waste residues but still exceed the approved ZOD based on a seafloor survey. This should not be considered a permit exceedance or violation, and should only require follow up action if the permittee intends to process in the same area the following year.

R103. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment. It should be noted, however, that if the approved ZOD is exceeded, this would be considered a permit violation.

C104. With regard to Section II.A.4, the previous GP allowed domestic gray water as an authorized “other wastewater” that could be discharged. The current draft GP does not include domestic gray water. The permit should be revised as follows:

“Other wastewater generated in the seafood processing operation, including, [domestic gray water *omitted and should be added here*], seafood catch transfer water, live tank water, refrigerated seawater, cooking water, boiler water, cooling water, refrigeration condensate, freshwater pressure relief water, clean-up water, and scrubber water.”

R104. EPA agrees and has added gray water as an “authorized discharge.” Please see also response to C7.

C105. With regard to Section III (Excluded Areas), the previous GP had provisions for waivers which permitted the Agencies to review and authorize excluded discharge areas on a site specific basis. Trampler requirements, fishing conditions, anchor depths, safety considerations, and weather may necessitate fishing in unauthorized areas where operations would not adversely impact the environment. The proposed draft GP has no waiver provisions and will require the permittee to apply for an Individual Permit (IP). ADEC can take up to 180 days to issue the IP. It is also assumed that the IP would be tied to one discharge latitude and longitude. Given market dynamics and changing fisheries, it can be difficult to predict exact processing locations six months in advance.

R105. Please see response to C53 and C80. Also note that an individual permit could cover multiple discharge areas.

C106. The draft GP should be revised to include a mechanism for reviewing discharges to excluded areas in addition to or instead of applying for an IP. As well, if a permittee elects to apply for an IP, the Agencies should provide for a compliance schedule to allow the permittee to legally discharge under the proposed GP while the IP application is being reviewed by the Agencies.

R106. Please see response to C53 and C80.

C107. With regard to Sections V.A.1.c and V.B.1.c, the draft GP currently states: “A permittee must route all seafood processing waste in scuppers and floor drains through a waste conveyance system to the waste treatment system prior to discharge”, and seafood process waste is defined as “the waste fluids (including Stickwater), organs, flesh, bones and chitinous shells produced in the conversion of aquatic animals from a raw form to a marketable form.”

The conversion process is the butchering operation. Is this the waste / wastewater that is restricted from being discharged through the scuppers and floor drains?

R107. The conversion process includes any changes made to the “seafood.” The definition of “seafood” is “the raw material...to be processed, in the form in which it is received at the processing plant.”

All water or other substances which touch the seafood, or come from the seafood once it is in your possession is process waste/wastewater. Therefore, if any wastewater is generated during the conversion process, this would constitute wastewater that is restricted from being discharged through scuppers and floor drains. For more discussion of the scupper provision please see response to C40.

C108. In Section III.B.1 (At-Risk Water Resources and Waterbodies) of the draft GP, discharges in less than 60 feet of water are permitted if the water body meets the stipulated requirements. On page 18 Section V.B.1.f – “Outfall System”, the provisions for discharging in less than 60 feet of water were omitted. Section V.B.1.f in the draft GP should be revised to include the provisions in Section III.B.1.

R108. Since Section V.b.1.f concerned discharges within state waters, it has been deleted from the permit and ADEC will address this comment. Section III.B.1 remains in the permit unchanged.

C109. Will the State grant a ZOD greater than one acre for one location? Can a permittee have a total ZOD allocation greater than one acre for multiple locations? Is it also correct to assume that the ZOD applies to the total contiguous and non-contiguous waste piles for one location? This should be clarified in this section of the draft GP.

R109. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C110. With regard to Section V.B.4, the proposed draft GP states that seafloor monitoring is required for all near shore discharges at locations where discharges occurred for more than 7 days. Based on the modeling in the ODCE, the draft GP should be revised to delineate the matrix of discharge depths and currents where deposition on the seafloor is a concern and compliance with the one acre ZOD needs to be verified using seafloor monitoring. This would alleviate unnecessary surveys in locations where waste piles would be non-existent or significantly less than one acre given the receiving waters.

R110. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C111. If a permittee discharges to the same location and discharges the same tonnage for two consecutive years, and surveys indicate full compliance with the allocated ZOD, the draft GP should be revised to allow permittees to discontinue monitoring until there is a substantial increase in production level.

R111. Since this permit provision concerns discharges within state waters, it has been removed from the permit and ADEC will address this comment.

C112. With regard to Section V.C., the draft GP should be revised so that at-sea discharges are also permitted 0.5 to 1.0 NM and regulated in the same manner as the Near Shore (0.5 to 1.0 NM and Off Shore discharge (greater than 1 NM) categories. However, the Near Shore and Off Shore criteria that is not applicable for an at-sea discharge vessel (e.g. no need to monitor grinders if barging pre-ground waste, no need to monitor influent water if none is present, etc.) should be dropped.

R112. With regard to discharges into federal waters, please see response to C8. With regard to discharges within state waters, ADEC will address this comment.

C113. With regard to Section VI.C.4, the draft GP requires that the seafloor survey report be submitted by February 14th. The duration of processing seasons and the time required for the survey to be conducted and report completed may not permit meeting this deadline. The draft GP should be revised to allow legitimate submissions after February 14th.

R113. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C114. With regard to Section VI.E, the draft GP requires quarterly sampling for the life of the permit. The draft GP should be revised to allow dropping the monitoring of streams if after two years of monitoring the measured pollutant levels are not of concern. Monitoring would be resumed if there were substantial changes to the operation.

R114. EPA agrees. Please see response to C65.

Marleanna Soto, Resource Development Council for Alaska, Inc. (RDC):

C115. RDC opposes the need for multiple discharge permits governing the same areas of water, and proposes the new permit be specific to federal waters, three or more nautical miles from shore. Alaska's primacy over pollutant discharge elimination systems in Alaska's waters should encompass zero to three miles from shore. Overlapping water jurisdiction results in unnecessary complications and burden on Alaska's fishing industry.

R115. Please see response to C39.

C116. Furthermore, the draft NPDES permit describes new and excessive reporting requirements for influent/effluent monitoring and testing for metals. The At-Sea Processors Association (APA) proposes revisions to these requirements via comment letter (December, 2008) with which RDC concurs.

R116. Please see responses to C44 and C65.

C117. RDC encourages the EPA to remove the revisions regarding scupper blockage and annual reporting of discharge tracking and mapping for safety and proprietary purposes. The purpose of a scupper is vessel safety, and blocking it would jeopardize the vessel stability in high seas.

R117. Please see response to C40.

C118. Mapping and recording of discharge tracks would be overly burdensome and would reveal fishing strategies of each vessel.

R118. Please see response to C60.

Tim Jewell , Enviro-Tech Diving Inc.:

C119. PAGE 31

3. Objective. The seafloor monitoring program must determine the areal extent (reported in square feet and in acres to the nearest tenth) of the deposit of sludge, solid or emulsion. The survey must use a deposition which is 0.5 inch or thicker on the bottom (seafloor) as the minimum detection level. The seafloor monitoring program must also determine the volume and thickness of the deposited seafood processing waste

C. Monitoring must provide at least five representative photos of the area(s) of deposited seafood processing waste recorded from a distance of 2 - 3 feet from the surface of the deposit(s).

Suggested change

- C. Monitoring must provide at least five representative *scaled* photos of the area(s) of deposited seafood processing waste recorded from a distance of 2 - 3 feet from the surface of the deposit(s) using a standard tidal scale.

Reasoning and explanation:

Without a scale in each representative photo there is no way to determine grind size or any scale of what the picture represents. The standard tidal gauge is inexpensive and readily available from numerous sources. It can be readily give a common reference for all parties.

R119. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C120. SECTION C : Seafloor monitoring

4. Schedule and submittal. All permittees required to survey deposited seafood processing waste must develop and implement a seafloor monitoring survey and submit the report no later than February 14th with the annual report. Dive surveys are required at each "single location" the vessel discharges for 7 or more days per calendar year.

Suggested change

The areas inside the Naknek, Egigik, Ugashik, Nushagak, Kivchak river systems as well as Kivchak Bay East of 158°00' 000" should excluded from dive surveys.

Reasoning and explanation:

The tides in this area which range to the 17' in height and currents which can reach 4 knots produce extremely high turbidity and extremely hazardous diving conditions. The turbidity in the water column reduces visibility to zero the majority of the time making any quantitative measure of any seafood processing byproduct nearly impossible. Further given the depth of the water and the speed of the current most discharge well outside the area a diver can reasonably search.

Working dive operations in currents greater that 1.0 knots is exceeding difficult and diving in currents greater than 2.0 knots exposes divers to conditions where diver safety compromised. This area has very short slack water times (no or little current) as well as different tidal currents at different depths in the water column. Conditions may indicate slack water on the surface while the bottom current my still be at a high rate. Current rapidly accelerate after slack water which would make safe recovery of the diver hazardous. I would be **reluctant** to expose any of my personnel to these diving conditions unless it was a lifesaving operation.

R120. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C121. PAGE 32

7. Monitoring report. A permittee must submit a report of the seafloor monitoring survey which describes the methods and results of the survey.

- current directions and speeds at the site during the time of the survey,

Suggested change

- NOAA reported current directions and speeds at the site during the time of the survey

Reasoning and explanation:

Very few divers or associated companies carry current meters to do so is an unreasonable expense since the current data is readily available from other sources

R121. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C122.

- the types and quantities of aquatic life observed adjacent to, on, in, or feeding on the pile must be reported along with representative photos,

Suggested change

- the types and estimate of abundance of aquatic life observed adjacent to, on, in, or feeding on the pile must be reported along with representative photos, and an indication of change from any previous observations.

Reasoning and explanation:

It would be impossible to give an accurate count of marine life on the pile. Most finfish is highly mobile and transitory. As the diver travels along the pile doing measurements he will observe many fish and it is impossible to tell if this is a fish which has fled on his approach or a new fish in the area. General abundance or estimates would be more accurate.

R122. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

C123.

- at least five representative photos of the area(s) of deposited seafood processing waste recorded from a distance of 2 - 3 feet from the surface of the deposit(s),

Suggested change

- Monitoring must provide at least five representative scaled photos of the area(s) of deposited seafood processing waste recorded from a distance of 2 - 3 feet from the surface of the deposit(s) using a standard tidal scale.

Reasoning and explanation:

See previous.

R123. Since ADEC is the permitting authority for discharges within state waters, ADEC will address this comment.

From B. SACHAU:

C124. DENY THIS PERMIT. LETTING THAT SLOP INTO THOSE COLD WATERS IS CERTAINLY NOT GOOD FOR THE ENVIRONMENT.

GET THE SHIPS OUT OF THERE. THEY TAKE ALL OF THE FOOD FROM THE MAMMALS WHO NEED FOOD TO EAT. YOU ARE STARVING THOSE ANIMALS THAT NEED THAT FOOD. STOP ALLOWING MANKIND TO TAKE IT ALL.

R124. This permit regulates the discharge of pollutants into waters of the United States. EPA does not have jurisdiction over fishing regulations. The permit contains provisions to ensure that CWA Section 304(a) criteria are being met.

C125. There should be a complete shut down of all factory processing of seafood at sea. The corruption in this practice is notorious. It is criminal and causing starvation in all marine life. I demand an investigation of what is going on in this area. Certainly the millions made in a few days at sea needs investigation. They are scalping the American public.

R125. EPA does not have the authority to close any seafood processors. EPA has conducted various seafood processor inspections and some of those inspections have resulted in enforcement actions. In terms of the fishing practices of the seafood industry, EPA does not have jurisdiction over this.

From Teresa Jordan:

C126. The following comments are on the Preliminary Finding of No Significant Impact (FONSI) (Please note that the pages are not numbered.):

I concur with the statement that these operations “are more appropriately controlled under a general permit than under individual permits” (top of page 2)

I concur with all of the Areas Excluded from Authorization (5 bullet points, Page 5)

I concur with the 3rd bullet point statement, on Page 6, “Unlike the current permit, the proposed permit does not contain a provision allowing for waivers to discharge into otherwise excluded areas...”

R126. Thank for your comments. Page numbers will be added to the Final FONSI. No other changes were made based on these comments.

C127. The No Action Alternative is not an option since “the current administratively extended general permit for seafood processors in Alaska without any changes to its provisions or requirements” “would be” reissued by EPA (Page 5, ALTERNATIVE 2: NO ACTION ALTERNATIVE paragraph).

R127. Pursuant to 40 CFR § 1502.14(d), as well as EPA’s regulations for implementing the procedural provisions of National Environmental Policy Act (NEPA) at 40 CFR §

6.205(e)(1)(ii), EPA is required to analyze alternatives to the proposed action, including the no action alternative. The no action alternative generally takes one of two forms depending on the proposed federal action in question, and does not preclude EPA from taking administrative action. When the proposed action alternative involves the modification of an ongoing program the no action alternative would be no change to the current program, not the elimination of the program. When the proposed action involves new proposals or projects, the no action alternative is not to proceed with the action. For this federal action, the proposed action alternative is the issuance of the Offshore Seafood Processor General NPDES permit to Seafood processors operating at least 3NM from shore at MLLW. EPA considers this a modification of an existing program (i.e., the current, administratively extended permit). Therefore, the no action alternative is to re-issue the current, administratively extended, General NPDES Permit for Seafood Processors in Alaska without any changes to its provisions or requirements.

C128. Because this general NPDES permit categorizes operations that “Involve same or substantially similar types” (7th bullet point, Page 2), an EIS and a public hearing must be undertaken.

Because this general NPDES permit categorizes operations that “Require the same or similar monitoring requirements” (6th bullet point, Page 2) an EIS, and a public hearing must be undertaken.

R128. An environmental impact statement (EIS) is not warranted for the proposed action. Pursuant to Section 102(2)(c) of NEPA, the Council on Environmental Quality’s regulations for implementing the procedural provisions of NEPA (40 CFR § 1502), and EPA’s regulations for implementing NEPA (40 CFR § 6), EISs are required for proposed federal actions that “significantly affect the quality of the human environment.” EPA has determined that the proposed action will not result in a significant impact on the human environment and the analysis contained in the EA and summarized in the FONSI support this determination. Therefore, an EIS has not been prepared for the proposed action.

C129. It is stated in the 2nd bullet point, on Page 4, that “Sanitary wastewater...EPA and/or ADEC may require monitoring...” The statement must read “...EPA and ADEC must require monitoring...”

R129. Comment noted. AKG52400 will now only cover those discharges that occur in Federal waters (i.e., outside 3 miles). Therefore, the reference to ADEC will be removed and the statement will read “EPA may require monitoring...” EPA will retain discretion over whether or not to require monitoring of sanitary wastewater.

C130. The 4th bullet point, on Page 6 reads “Unlike the current permit which established a generic 1-acre zone of deposit (ZOD) for facilities operating within 0.5-1 NM from shore, the proposed permit will only allow ADEC to authorize site-specific ZODs for facilities operating within 0.5-1 NM from shore.” The statement must read “...will only allow the EPA and ADEC to authorize site-specific ZODs...” On September 30, 2008, the article “EPA settles with the

City of Anchorage for over \$40,000 for hazardous waste handling violations” was posted on the website <http://yosemite.epa.gov>. The violations involved “Failure to properly treat hazardous wastes” and “Failure to properly label used oil containers”. The DEC’s Division of Spill Prevention and Response’s website lists, under Program Specific Statutes and Regulations, a Prevention and Emergency Response Program. The State of Alaska to date has not begun revising its 2004 Emergency Response Plan—Website information posted as of October 10, 2008--even though the U.S. DHS has implemented since March 22, 2008 the National Response Framework (formerly the National Response Plan). Also, the State of Alaska’s Division of Homeland Security and Emergency Management’s Website has posted on its Home Page (www.ak-prepared.com, as of 10/10/2008) “National threat Level ELEVATED”, while on the Office of Homeland Security’s Website (www.ak-prepared.com/homelandsecurity/, as of 10/10/2008) the Homeland Security Advisory states “Current National Threat Level HIGH”. Contradictory, and misleading.

R130. AKG52400 will now only cover those discharges which occur in Federal waters. Therefore, Alaska State Water Quality Standards, including the authorization of zones’ of deposit (18 AAC 70.210), are not applicable to the proposed permit. The proposed permit will not authorize any zones of deposit and the FONSI will be revised accordingly.

C131. Please note that the City and State information, on Page 6, for submittal of comments to your attention were not included.

R131. Comment noted.

C132. How many businesses, that are currently allowed to operate within the 0.0 to 0.5 NM from shore, are impacted by the 0.5 NM from shore proposal (Unauthorized Facilities, Page 3)?

R132. There are approximately 100 facilities that discharge between 0 – 0.5NM. Since ADEC is the permitting authority for discharges within state waters, ADEC will address the substantive part of this comment.

C133. I disagree with the statement on Page 55841, under Executive Order 12866, that “EPA has determined that this general permit is not a ‘significant regulatory action’ under the terms of Executive Order 12866 and is therefore not subject to OMB review”. On the basis of the information in the Draft General NPDES Permit, the Environmental Assessment (EA), the Draft Biological Evaluation, and the Ocean Discharge Criteria Evaluation, as well as the fact that all comments made and submitted in writing at the two scheduled public meetings are not viewed as public testimony (which legally would be made part of the record at a formal public hearing), OMB review is called for.

R133. The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12866 providing for presidential oversight of the regulatory process pursuant to Section 6 of that order.

C134. Because the Polar Bear’s listing as a threatened species in the Endangered Species Act (ESA) is passed over, or is noted in the documents mentioned under [the comment above]; the State of Alaska has filed a lawsuit against the federal government; the U.S. Department of Interior Secretary limited “the economic effect of the decision with the inclusion of ‘administrative guidance’ that said the listing would not be used to create back-door climate policy outside the normal system of political accountability” (www.adn.com/polarbears/v-printer/story/413710.html, May 22, 2008, “State will sue over polar bear listing, Palin says: SPECIES STATUS: Unreliable data, threat to energy development cited”); the marine mammal is turning to cannibalism (www.usatoday.com, June 13, 2006, “Study: Polar bears may turn to cannibalism”); its “Critical habitat has not been designated” “at this time” (September 2008, Draft Biological Evaluation, Page 37); the fact that “in anticipation of primacy, DEC has been building the Department’s capacity to handle the additional workload and to gain the expertise necessary to implement the NPDES program” (www.dec.state.ak.us/water/npdes/AboutNPDES.htm, as of 10/10/2008); the fact that Alaska did not retaining authority over all NPDES permit waste discharges (www.dec.state.ak.us/water/npdes/background.htm, as of 10/16/2008, “NPDES Primacy”, “The biosolids component is a small component of the NPDES program in Alaska. Alaska will not pursue primacy of this part of the program”); the fact that Governor Sarah Palin “through Administrative Order 238, established the Climate Change Sub-Cabinet” (DEC, April 18, 2008 Press Release, “Climate Change Sub-Cabinet Taps Citizens to Build Climate change Strategy”); and the fact that this Sub-Cabinet “has selected more than 100 Alaskans to help craft the State’s climate change strategy (same DEC Press Release), I formally request that an EIS be undertaken, and that a formal public hearing be scheduled on the proposed General NPDES Permit (Number AKG524000).

R134. As stated in the Biological Evaluation:

In Alaska, polar bears are found in the Chukchi and Beaufort Seas located west and north of Alaska. Critical habitat has not been designated for the polar bear at this time. Arctic sea ice provides a platform for critical life-history functions, including hunting, feeding, travel, and nurturing cubs.

At present, polar bear stocks in Alaska have no direct interaction with commercial fisheries activities (73 FR 28312). Therefore, the offshore seafood processors permit should have no effect on polar bears.

C135. The following comments are in relation to the draft permit:

Page 10 of 50, numbers 4, 5, and 6, are incorrect. The numbers should read “3, 4, and 5.”

Page 23 of 50, letter m is incorrect. The letter should read “k”.

R135. Thank you for pointing these out. The changes have been made on the final permit.

C136. Page 6 of 50, number 3, the second sentence reads “EPA and/or ADEC may require monitoring...” The sentence must read “EPA and ADEC may require monitoring...” Also, add

“(WQS)” after Water Quality Standards. Then, too, include “(USCG)” after the federal agency in the first sentence.

R136. All references to ADEC and Water Quality Standards have been removed from the permit. Because we are referring to a location “The U.S. Coast Guard's Command Center” in that paragraph, USCG was not added.

C137. Page 9 of 50, Section A paragraph, the first sentence reads “An applicant wishing authorization to discharge under this Permit must submit a timely, and complete Notice of Intent (NOI), or equivalent form to EPA and ADEC...” The sentence must read “...submit a timely, complete and accurate Notice of Intent...”

R137. All documents needing a signature under this permit must follow Section IX.E.4 and IV.C.10:

4. Certification. Any person signing a document under this Part must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, *accurate*, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." Emphasis added.

10. Signatory requirements. All permit applications must be signed and dated as follows:

- a. For a corporation: by a principal corporate officer.
- b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
- c. For a municipality, state, tribe, federal or other public agency: by either a principal executive officer or ranking elected official.

C138. Page 10 of 50, number 6 the sentence reads “A permittee must submit its original Notice of Intent to be covered under this general NPDES permit to...” The sentence must read “...submit its legible, accurate, and certified original...”

R138. Please see response to C137. The certification requires the permittee to certify that the information is accurate under penalty of perjury.

C139. Page 11 of 50, number 4.b, second bullet point, the first sentence reads “An NOI must also include a legible area map(s) of all location(s) of the vessel and all outfall(s)”. The sentence must read “An NOI must also include a legible and accurate area map(s) of the location(s)...”

R139. Please see response to C137 and C138.

C140. Page 12 of 50, Section c bullet point, top of page, the sentence reads “A general area map where discharges will occur”. The sentence must read “An official map of the National Oceanic and Atmospheric Administration (NOAA) or the U.S. Geologic Survey (USGS) where discharges will occur”. If the general area map is left intact, then have the sentence read “A legible and accurate general area map...”

R140. Please see response to C137.

C141. Page 14 of 50, number 10, first bullet point, the sentence reads “For near-shore vessels, a legible area map of the location(s) of the vessel and all outfalls”. The sentence must read “...a legible, accurate, and official area map...”

Also, number 10, third bullet point, the sentence reads “For offshore processors, a location map of all discharge areas”. The sentence must read “...a legible, accurate, and official location map of all discharge areas”.

Then to number 11, the sentence reads “Signatory requirements. All permit applications must be signed and dated...” The sentence must read “...All permit applications must be signed, dated, and notarized...”

Finally, number 11.c, for a municipality require that the mayor, or county Board of Supervisors chairperson (which ever title is appropriate in Alaska) be the signatory.

R141. Please see response to C137 and 138. Please note, a notary is not required for NPDES permits under federal regulations

C142. Page 15 of 50, Section d, to the “Logs of this daily inspection...” sentence change “EPA or ADEC” to EPA and ADEC. Section e, to the “Logs of these daily inspections...” sentence change “EPA or ADEC” to EPA and ADEC. Section f, to the “Logs of this check...” sentence change “EPA or ADEC” to EPA and ADEC. Section g, to include U.S. before Coast Guard.

R142. All references to ADEC have been removed from the final permit. U.S. has been added before Coast Guard.

C143. Page 16 of 50, Section k, second paragraph, the “Within the authorized mixing zone...” and “All State of Alaska Water Quality Standards...” sentences include “(WQS)”.

R143. All references to Alaska Water Quality Standards (WQS) have been deleted in the final permit because this permit does not authorize discharges within state waters.

C144. Page 17 of 50, top of page, Section 1, change “four pictures” to twelve (12) in both sentences. Section n, to the “EPA and/or ADEC...” sentence change “EPA and/or ADEC” to EPA and ADEC. Number 2, the sentence reads “with a Best Management Practices Plan...” Include “(BMP)” before Plan.

R144. EPA has decided that four pictures should be taken not twelve. All references to ADEC have been deleted in the final permit. (BMP) has been added before Plan.

C145. Page 18 of 50, Sections d, e, and f, to the sentences with “EPA or ADEC” change “EPA or ADEC” to EPA and ADEC. Section g, include U.S. before “Coast Guard”.

R145. Since the sections on Page 18 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C146. Page 19 of 50, top of page, Section h, include (WQS) after “Water Quality Standards”. Section k, second paragraph, include (WQS) after “Water Quality Standards” in the last two sentences.

R146. Since the sections on Page 19 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C147. Page 20 of 50, top of page, Section 1, include (WQS) after “Water Quality Standards”. Section m, second paragraph, change “four pictures” to twelve (12) in both sentences. Section o, to the sentence “EPA and/or ADEC may require...ensure Water Quality Standards...” change “EPA and/or ADEC” to EPA and ADEC, include (WQS) after “Water Quality Standards”.

R147. Since the sections on Page 20 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C148. Page 21 of 50, number 2, include (BMP) after “Best Management Practices”.

R148. Since the sections on Page 21 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C149. Page 22 of 50, Sections d, e, and f, change “EPA or ADEC” to EPA and ADEC. Section g, include U.S. before “Coast Guard”.

R149. Since the sections on Page 22 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C150. Page 23 of 50, Section k, second paragraph, include (WQS) after “Water Quality Standards” in the last two sentences.

R150. Since the sections on Page 23 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C151. Page 24 of 50, paragraph before Section m, change “four pictures” to twelve (12) pictures in both sentences. Section n, to the “EPA and/or ADEC...” sentence change “EPA and/or ADEC” to EPA and ADEC. Number 2, include (BMP) after “Best Management Practices”. I disagree with Section VI.A.2. bullet point’s statement. The BMP Plan must be submitted with the application, not almost two months after the permittee is authorized to discharge.

R151. Please see response to C143. BMP has been added after Best Management Practices. Each processor must be given time to update their BMP plan once the permit is final, that is why they are given the 60 day window.

C152. Page 26 of 50, Section b, include the words legible and accurate between “any necessary” and “plot plans”. To “maps” include the word official.

R152. Please see response to C137. Not all maps need to be official maps.

C153. Page 27 of 50, number 8(b), the second sentence reads “These records may include the BMP Plan itself, inspection reports, preventative maintenance records, and employee”. Change “may” to shall.

R153. No changes were made based on this comment.

C154. Page 28 of 50, Section d.(3), change “EPA and/or ADEC...” to read EPA and ADEC.

R154. Please see response to C142.

C155. Page 29 of 50, Section d, the sentence reads “Provide area map(s) of the discharge track(s) of the vessel”. Include the words legible, accurate, and official between “Provide” and “area”.

R155. Please see response to comments C137 and C152.

C156. Page 30 of 50, number 3, to the sentence include the information that is included for the NOI on Page 14 of 50. The sentence reads “...must ensure that the annual report is signed...” The sentence must read “signed, dated, and certified”. Number 5, the sentence reads “A permittee must submit its annual report...” The sentence must read “its legible, accurate and complete annual report”.

R156. Please see response to C137 and C138.

C157. Page 31 of 50, Section C.3.c, change “five representative photos” to twelve (12) representative photos.

R157. Since the sections on Page 31 concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C158. Page 33 of 50, number 10, change “EPA and/or ADEC...” to EPA and ADEC.

R158. Please see response to C142.

C159. Page 34 of 50, number 7, change “EPA and/or ADEC...” to EPA and ADEC.

R159. Please see response to C142.

C160. Page 37 of 50, Section B, include the word date between “must sign” and “and certify”.

R160. Please see response to C137.

C161. Page 11 of 50, number 4.a, the sentence reads “An NOI must include...if applicable”. Why “if applicable”? Don’t all facilities and vessels have the name, address, and telephone information? If not, why is this not a requirement?

R161. Some vessels do not have phones and unless they are docked where they can receive mail, they don’t have an address. As a result, EPA did not require the facility to list certain contact information if they are not available/applicable.

C162. Page 11 of 50, number 4.b, second bullet point, second sentence reads “This map must be based upon an official map or bathymetric chart of the National Oceanic and Atmospheric Administration (NOAA) or the U.S. Geological Survey (USGS)...” Which agency map is considered superior in quality? Which agency chart is considered superior in quality? Since the maps in the Draft’s Appendix B are from: 1. The Alaska Dept. of Fish and Game, 2. The Alaska State Division of Parks and Outdoors Recreation, ADNR, 3. The USDA Forest Service, 4. the USFWS, 5. the National Geographic’s TOPO mapping software, and 6. the Garmin MAPSOURCE software this statement needs clarification. By the way, this document was superb.

R162. Since Section 4.b concerned discharges within state waters, they have been removed from the permit and ADEC will address this comment.

C163. Page 12 of 50, Section d, the sentence reads “For all vessels, an NOI must include the U.S. Coast Guard (USCG) vessel number, the type of vessel, and vessel length”. Did USEPA staff mean “must include for the U.S. Coast Guard (USCG)’s attention the vessel number, the type of vessel, and the vessel length” of the operation’s vessel, and not of the U.S. Coast Guard’s monitoring vessel? Surely, more a handful of USCG vessels are patrolling.

R163. Each vessel is given a unique identification number by the USCG. That is the number that is required.

C164. Where in the Draft is the wording to the effect of “Processors need to make sure that they have the necessary spare parts on hand to fix problems with their pollution control equipment” (EPA’s Kim Ogle statement in the 04/10/2008 News Release “Alaskan Seafood processor fined over \$54,000 for Federal Clean Water Act violations”)? I may have missed this information after cross-referencing all of the Draft general ND PES permit documents, other draft general NPDES permit related documents, and many and various Jordan research information such as on ocean wind currents, marine ecosystems, and the California Ocean Plan. Kim Ogle also states that “Such proactive measures protect the environment and cost processors less in the long run because they will not have to choose between suspending operations and processing out of compliance with their permit”.

R164. Section VIII.E. of the Permit addresses proper operation and maintenance. It states: “The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.”

C165. When the certification is mentioned in the Draft general NPDES permit, does this refer to the EPA certifying documents, or certification by another entity—government, legal, municipal, etcetera?

R165. This language has been removed from the permit. It referred to the State of Alaska’s 401 certification. Because the permit no longer applies in state waters, a 401 certification is not required.

C166. When a municipality submits an NOI application, does the City Council, or County Board of Supervisors (or which ever title is appropriate in Alaska) have to first hold a public hearing, or adopt a Resolution, or requires a signatory page?

R166. It is not the responsibility of EPA to ensure that a municipality that owns a seafood processing facility complies with its own ordinances.

C167. Why is it stated on Page 26 of 50, Section b, “...any necessary plot plans, drawings or maps...” and not all necessary plot plans, drawings or maps?

R167. Since each processor is different and may have different “plot plans, drawings or maps” for their facility. EPA only required the submittal of necessary documents.

C168. Why would Best Management Practices Plans not be required to include plot plans, drawings or maps?

R168. All the information required must be included, however, the way the information is presented could differ. See response to C167.

C169. Are “drawings” diagrams and/or schematics?

R169. Information can be presented in different ways, therefore, diagrams and schematics are both considered “drawings” as required under the permit. See response to C167 and C168.

C170. Where in the Draft is the wording to the effect of the number of employees on a vessel since these vessels sizes vary?

R170. Section IV.C.6.c. (Sanitary or domestic wastes). The NOI must identify the type of marine sanitation device (MSD), including the date when the USCG approved and certified the MSD, when it was installed, its capacity (gal/day) and number of people using the MSD. Identify waste streams that combine with the MSD effluent prior to discharge.

C171. Page 38 of 50, Section F, I concur with the statement “The permittee must retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of annual reports, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years”.

I am not quite sure about the rest of the statement “from the date of the sample, measurement, report or application” because samples and measurements can occur at various times while reports and applications are time specific set dates.

I also concur with the statement “This period may be extended by request” “at any time”. Change “EPA or ADEC” to EPA and ADEC.

R171. The statement “from the date of the sample, measurement, report or application,” means the discharger must retain the information about each sample, measurement, report, or application for five years from the time the information was obtained/taken/prepared. All references to ADEC were removed from the permit.

C172. Page 39 of 50, number 3, I disagree with the statement “The Director of the Office of Compliance and Enforcement may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone (206) 553-1846”.

R172. The statement comes from 40 CFR § 122.41(l)(6) which is a standard provision that is required to be included in all NPDES permits.

C173. Page 40 of 50, number 3 change “And” to the words and, “a copy to:”.

R173. Since permittees no longer need to send ADEC documents pertaining to this permit, that part was removed from the permit.

C174. Page 42 of 50, Section C, the sentence reads “It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit”. Change the sentence to read “In an enforcement action, it shall not be a defense for the permittee that halting or reducing the permitted activity was necessary in order to maintain compliance with this permit”.

R174. The statement comes from 40 CFR § 122.41(c) which is a standard provision that is required to be included in all NPDES permits.

C175. Page 43 of 50, Section G.2, the second sentence reads “To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence...” Include words to the effect that besides signing the documents the person’s name must also be printed.

R175. The statement comes from 40 CFR § 122.41(n) Upset.

C176. Page 44 of 50, Section I, to the paragraph include (OWW) after Office of Water and Watersheds”. Section J, include (OCE) after “Office of Compliance and Enforcement”. Section IX.C, change EPA or ADEC” to EPA and ADEC in both sentences.

R176. Because they are titles (Director of the Office of Water and Watersheds and Director of the Office of Compliance and Enforcement), OWW and OCE were not added. All references to ADEC were removed from the permit.

C177. Page 45 of 50, Section D, change EPA or ADEC” to EPA and ADEC. Section E, the sentence reads “All applications, reports or information submitted to EPA and ADEC must be signed and certified...” The sentence must read “be signed, dated, and certified”. Section E.1.c, for a municipality require that the mayor, or county Board of Supervisors chairperson (which ever title is appropriate in Alaska) be the signatory. Section E.2 change “EPA or ADEC” to EPA and ADEC. Section E.2.c, include (OCE) after “Office of Compliance and Enforcement”. Section E.3, after “Office of Compliance and Enforcement” include (OCE).

R177. Please see responses to C137, C142, and C176.

C178. Page 46 of 50, top of page, Section E.4, I concur with the certification statement made by “Any person signing a document under this Part”. Section G, paragraph, include (OCE) after “Office of Compliance and Enforcement”. It is unclear if the entities to be allowed by the permittee under “Inspection and Entry” includes EPA and ADEC, or EPA and/or ADEC, or EPA

or ADEC since it is stated “EPA Region 10;ADEC; or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law”.

R178. Please see response to C176. The permit has been revised to say, “EPA Region 10; or an authorized representative...”

C179. Page 47 of 50, top of page, Section I, after “Director of the Office of Water and Watersheds” include (OWW).

R179. Please see response to C176.

C180. Page 47 to 50 of 50, Definitions, include “Federal waters” or “Navigable waters of the U.S.”, “General Permit (GP)”, “Nautical mile (NM)”, “National Oceanic and Atmospheric Administration (NOAA)”, “National Wilderness Area”, “National Wildlife Refuge”, “OSHA”, “Standard Operating Procedures (SOPs)”, “Total Maximum Daily Loads (TMDL)”, U.S. Coast Guard (USCG)”, U.S. Geologic Survey (USGS)”, “Water Quality Standards (WQS)”, and “Zone of Deposit (ZOD)”.

R180. The definitions section of the permit has been changed to include definitions and acronyms. Definitions and acronyms of those terms listed in C180 which appear in the final permit have been added.

C181. Page 48 of 50, Definitions, number 13, include (OCE) after “Enforcement”. Number 14, include (OWW) after “Watersheds”. Number 24, include (MSD) after “device”.

R181. Please see response to C176. Please note definitions under Section X of the permit are no longer numbered. MSD has been added after “device”.

C182. Does the USEPA have a set bar as to how many particular violations merit immediate enforcement action, and which ones do not—for some of the fines Region 10 articles it seems that years went by before the Agency took the enforcement action?

R182. EPA can exercise enforcement discretion in determining whether to take an enforcement action.

C183. Do the Code of Federal Regulations (CFRs) include penalties for government employees—USEPA, USCG, etceteras—who knowingly provide false statements, or doctor documents on behalf of any offshore seafood processor whether in Federal waters on the West Coast, Pacific Northwest, or elsewhere in the United States?

R183. This is not a relevant comment on the permit or any of the supplemental documents.

C184. What type of information submitted by any offshore seafood processor may be deemed as confidential?

R184. Information which falls under 40 CFR Part 2, the Confidential Business Information regulations.

Specifically, 40 CFR § 2.208 Substantive criteria for use in confidentiality determinations.

Determinations issued under §§ 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if—

(a) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);

(d) No statute specifically requires disclosure of the information; and

(e) Either—

(1) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or

(2) The information is voluntarily submitted information (see §2.201(i)), and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.

C185. Since the statement under Section G, on Page 46 of 50, mentions the Director of the Office of Compliance and Enforcement, EPA Region 10”, is the “Administrator” referring to the ADEC? Is it referring to some other entity?

R185. As stated in the definition section of the permit: “‘Administrator’ means the Administrator of the EPA, or an authorized representative.” There is also a Regional Administrator who is defined as “‘Regional Administrator’ means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.”

C186. Are all general NPDES permit transfers handled only by the Director of the Office of Water and Watersheds, or does this matter also go through the public review and comment process?

R186. During the term of the permit, all transfers are handled by the Director of the Office of Water and Watersheds.

C187. Why did the list on Page 1 [Draft Appendix A] not include “all excluded waterbodies”?

R187. There are many waterbodies that are excluded due to Section III of the draft permit, so each permittee must look at their individual proposed discharge point and compare it to Section III. Also, additional critical habitat areas may be added during the term of the permit and those areas must be taken into consideration. Appendix A is a partial list of excluded waters where permittees have been known to discharge in the past. It is only intended to be used as a quick reference check and a more thorough evaluation may be warranted.

C188. Please note the pages were not numbered [Draft Appendix C]. I disagree with the last paragraph on Page 3 with regards to the method used for the seafood monitoring report to be descriptive “to a degree allowing DEC and EPA to check the calculation”.

R188. Since Appendix C relates only to discharges within state waters, ADEC will address this comment.

C189. [Draft Appendix C] The EPA and ADEC should not have to decipher the “degree” of the “method used” “in the seafood monitoring report” “to check the calculation”. A set method (up to 3 if applicable) must be used, that can be set by EPA since it is stated on Page 1 that “the two areas” shown on the seafood cover diagram “easily could be reversed”. If the statement “to ensure protection of water quality and human health” is to mean anything, there must not be room for any loopholes. (FACT SHEET, Page 1, paragraph, last sentence).

R189. Please see response to C188.

C190. Please note that “the tables on the next page” “To aid in calculation” were not included. (Page 3, second paragraph, first sentence [Draft Appendix C]).

R190. Please see response to C188.

C191. If “the tables on the next page” were not supposed to accompany the Draft Appendix C, why was the statement made?

R191. Please see response to C188.

C192. Throughout the text [Environmental Assessment], the first letter(s) of the species’ first names are capitalized, but those with additional words do not always have the first letter capitalized, and sometimes they are inconsistent.

R192. American Fisheries Society convention for capitalization of fish species’ names is that only words that are proper nouns are capitalized in the name in the text. Capitalization for

mammalian species followed that used by USFWS and NOAA. EPA will review and edit before finalizing the document.

C193. [Also on the Environmental Assessment] The first letter(s) of the species' first names are capitalized, but those with additional words do not always have the first letter capitalized on Table 3.1--inconsistent. (Page 70).

R193. Please see response to C192.

C194. [The following comments are on the Biological Evaluation] Throughout the text, the first letter of the species' first names are capitalized, but those with additional words do not always have the first letter capitalized, and sometimes they are--inconsistency.

R194. Please see response to C192.

C195. The first letter(s) of the species' first names are capitalized, but those with additional words do not always have the first letter capitalized in the Tables--inconsistency.

R195. Please see response to C192.

C196. Include the number of Category 1 waterbodies--the number designated waterbodies for Categories 2 through 5 are given. (Page 57, sentence "Alaska's 2006 Integrated Water Quality Report...")

R196. According to the 2006 Integrated Water Quality Report, there are over 3 million waterbodies in the state of Alaska. Waterbodies are placed in Category 1 if there are data to support a determination that the water quality standards and all of the uses are attained. The report further states that no waterbodies in Alaska have been designated as Category 1 because the state does not possess that level of detailed information for any one waterbody. However, the majority of Alaska's waters are not subject to human-caused stressors and are considered unimpaired. Therefore, DEC expects that 99.9% of Alaska's waters can be classified as Category 1, however there are no specific waters identified in this category. Since no waters have specifically been designated as Category 1, no number for Category 1 waters was provided in the text.

C197. I disagree with the "No Effect" conclusion for the Polar Bear with regards to the cumulative effects on this species. (Page 87, Table 7.1)

R197. The commenter did not explain why the commenter disagreed with the "no effect:" conclusion. As such, EPA does not have any additional information to evaluate and believes that the no effect conclusion should remain unchanged. No changes were made based on this comment. Please also see the response to C134.

C198. Include the population numbers along with the given percentages for rural family households that use fish, and those that use wildlife. (Page 85, last paragraph)

R198. While the population numbers were not provided with the percentages, they can be estimated based on household numbers and population estimates for Alaska. For 2005 there were 234,000 households in Alaska with an average of 2.8 people per household, resulting in a total population of approximately 655,200 people. Therefore approximately 602,780 to 655,200 individuals use subsistence fish and approximately 517,600 to 602,780 individuals use subsistence wildlife. This information can be included in the text of the final document.

C199. [The following comments are on the Ocean Discharge Criteria Evaluation (ODCE)] Throughout the text the first letter of the species' names are capitalized, but those with additional words do not always have the first letter capitalized, and sometimes they are--inconsistency.

R199. Please see response to C192.

C200. The page numbering is inconsistent (4-3, and Page 8-1).

R200. Thank you for pointing this out. It will be changed for the final.

C201. From Beth Pokorny at Icicle Seafoods, Egegik:

V.A.1.e Once half inch grind size criteria.

My question is how is this defined? To be in compliance does this mean 100% of all discharge material has [to] be one half inch in all dimensions? From personal experience I think this is unrealistic. With the current available technology there will always be a small percentage (2-5%) of material that escapes, for various reasons, the grinding or cutting implements.

R201. Please see response to C10.

C202. Seafloor Monitoring.

My plant, located on the Egegik River in Bristol Bay, experiences a 4-5 knot river current, 2-3 knot tidal influence and zero visibility due to glacial silt and tidal mud. Dive surveys in this instance would be useless and dangerous. In addition, my outfall location is clearly visible at low tide and can be visually surveyed from my dock. I think it's unrealistic to expect all operations to perform seafloor monitoring via dive surveys.

R202. Since this provision concerns discharges within state waters, ADEC will address this comment.

C203. Hydrodynamically energetic waters with higher capacity of dilution and dispersion. The meaning and application of this idea is not clearly defined. At least I have some problems understanding and applying this to my situation. And if I am in an area of "energetic waters" what does that mean to me? Who determines this situation?

R203. Please see response to C19. According to comment 202, this plant is located in State waters, therefore, ADEC will determine the situation surrounding this discharge. Offshore

waters are all expected to meet these criteria as they should have vigorous wave action and higher capacity for dilution and dispersion.

C204. 5.A.I.H. states... foam must be minimized to the extent practicable... Define practicable.

R204. This is left up to each processor to develop in their BMP plan. Please see Section VI.A Best Management Practices Plan.

C205. Mixing Zones.

At times the strong river current and ebb tides will carry a thin stream of foam beyond the 100' mixing zone, although this instantly disperses. Discharge material in this instance is carried out this the tide.

R205. Since this provision concerns discharges within state waters, ADEC will address this comment.

C206. 5.A.1.M Heavy metal sampling.

Is this sampling being required because of contaminants introduced by the processors (i.e.: nuts, bolts, knives)? Or is this because of metals contained within the seafood product itself?

R206. The sampling will evaluate all metals that are being discharged from the processor, no matter their source. Please see response to C44.