

Response to Comments
AKG-37-1000

EPA public noticed the draft permit on April 24, 2005, for a 45 day comment period which ended on June 6, 2005. Comments were submitted by the Center for Science in Public Participation (CSP²), the Alaska Miners Association, and Alaskans for Responsible Mining.

In a letter dated June 9, 2005, the National Marine Fisheries Service (NMFS) agreed with EPA's Endangered Species Act (ESA) determination that the issuance of these permits would result in no adverse effects on listed species. NMFS agreed with EPA that potential adverse effects to EFH would be precluded if the Army Corps of Engineers (Corps) incorporates conservation recommendations into their individual Section 10 permits issued under the Rivers and Harbors Act.

In a letter dated August 9, 2005, the US Fish & Wildlife Service (USFWS) provided additional information relating to species under ESA. This information is further discussed in Comment #10.

The State issued their final §401 Certification of the permits on August 16, 2005.

1. Comment: CSP² comments that EPA should not relax the prohibition on facilities in Wild and Scenic Rivers because the only reason mining is allowed that the bed of the rivers are under control of the State of Alaska, which does not have responsibility for managing the waters designated for protection but does have an economic interest in exploitation of the minerals in the river bed. CSP² also notes that there are no mechanical operations currently in these areas as implied in the Fact Sheet.

AMA supports removing the prohibition on permit coverage for wild portions designated under the Wild & Scenic Rivers Act.

Response: EPA has decided to retain the prohibition on coverage in the "wild" portion of areas within the boundaries designated under the Wild and Scenic Rivers Act (WSRA). The intent of the WSRA is not to halt use of a river, but its goal is to preserve the character of a river. Uses compatible with the management goals of a particular river would be allowed. With at least 25 rivers designated under WSRA within the state of Alaska, it would not be prudent to assume that mining would be a management goal for each system.

2. Comment: CSP² requests that "wild" portions of Wild & Scenic Rivers be added to the list included in Permit Part I.E.2.c.(1) as an area where a land management agency may request that EPA deny coverage under the GP if the proposed change discussed in Comment 1 is made.

Response: See Response to Comment 1.

3. Comment: CSP² states that coverage under the GP should not be granted if a facility is in significant non-compliance so a land manager should not have to request that a permit be denied as is stated in Permit Part I.E.2.c.(2).

Response: The general permit includes language as to when an individual permits may be required. Permit Part I.E.1.b. states that EPA may require an individual permit. if a discharger is not in compliance with the terms and conditions of the GP. Permit Part I.E.2.c.(2) includes an opportunity for a land management agency to provide “on-the-ground” information to EPA regarding compliance of a facility within their jurisdiction.

4. Comment: AMA requests that the BMP contained in Permit Part II.C.5.b. - Suction dredges shall not operate within 800 feet of a location where it is visually apparent by the Permittee that another operation has taken place – should be removed because it adds confusion and it is not logical. As written, there is no limit on when another operation may have been active. AMA states that the key is that not more than one operation should be dredging at a time.

Response: EPA is removing this portion of the BMP from the general permit, because AMA is correct that the rationale given for this part of the BMP does not support this requirement. EPA would recommend that suction dredgers take note of the disturbances of past operations to better assess the capabilities of the natural recovery of the stream system.

5. Comment: CSP² states that EPA needs to improve its public notice distribution process by perhaps including electronic noticing through e-mail.

Response: 40 CFR 124.10(c) describes the methods that EPA is required to use for public notifications of permit actions. While the public notice must appear in a daily or weekly newspaper within the area affected by a facility and EPA has attempted to keep an interested parties list for activities within a state, EPA has not fully explored using electronic means for notifications.

6. Comment: ARM urges EPA to reinstate the nozzle size restrictions of the 1996 modified permit (4 inches up to and including 8 inches) because allowing larger mines to operate with less protection for water quality is unjustified and inconsistent with EPA’s obligation under the CWA.

In a related comment, AMA supports the change to the nozzle size proposed by the draft general permit.

Response: Under Section 402 of the CWA, EPA is required to issue permits authorizing discharges into waters of the United States. Also, under Section 401 of the CWA, EPA must have State Certification that the permit meets WQS.

The small suction dredge general permit was re-issued in 2002 and increased the scope of the permit to include coverage for facilities with nozzle sizes up to and including six inches (up from four). The GP was certified by ADEC. The GP was not appealed.

Since there is already a valid permit to cover these facilities, the lower nozzle size covered by the Medium-size suction dredge general permit will remain at above six inches.

The increase from eight inch to 10 inch, inclusive, occurred during the GP reissuance in 2000. Even though EPA's study recognized that further studies would be beneficial in assessing the full impacts of suction dredging, EPA used its own 1999 study, as well as the 1999 USGS studies, to conclude that an increase to 10 inches would not be detrimental to water quality. ADEC certified the 2000 permit and has certified this issuance as well. Therefore, the upper nozzle size limit is not being changed.

8. Comment: ARM requests that EPA take action to complete its obligation to further study the impacts of suction dredge mining on the waters of Alaska.

Response: While EPA agreed that further studies would be beneficial towards understanding the full effects of suction dredging on the environment, EPA did not commit to conduct any further studies, unless funds became available. In this time of shrinking federal budgets for environmental protection, it is unlikely that EPA would finance another study in the near future.

9. Comment: CSP² believes that the data found in the EPA suction dredge study is insufficient to support the conclusion that monitoring turbidity is a full surrogate for monitoring metals

Response: In the EPA Suction Dredge Study (EPA-SD) The primary effect of dredging on water chemistry was increased turbidity, total filterable solids, and copper and zinc concentrations downstream of the dredge. Unfiltered metals data for copper and zinc show large spikes just

below the dredge but by 250 feet downstream, the water quality was less than the chronic criteria for these parameters.

For Site 1 in the EPA-SD, at 100 feet downstream, turbidity values were reported at 19 NTU which, with background levels reported at 2.2 - 2.3 NTU, would exceed the AWQS of 5 NTU above background. But at 200 feet below the dredge, the turbidity values were 3.7 NTU which is only 1.4 - 1.5 NTUs above background which is well within the AWQS and the permit limits. The USGS report states that the turbidity values for Site 2 were less than Site 1. In their study, USGS attributes higher turbidity for Site 1 to increased volume of the larger dredge and the finer material being mined. It should be noted that even with these adverse conditions, the ten inch dredge was in compliance with the discharge requirements of the NPDES permit.

10. Comment: The USFWS-Anchorage Field Office provided additional information regarding species listed under the ESA. They recommend an addition to the circumstances under which the Regional Administrator may deny coverage under the GP which are outlined in Permit Part I.E.2. USFWS suggests that suction dredging in certain areas of southwestern Alaska may affect endangered species and lists the following quadrangles to guide this decision:

Kodiak	Kaluk	Bristol Bay	Atka
Kaguyak	False Pass	Sutwik Island	Adak
Ugashik	Nushagak Bay	Stepovak Bay	Gareloi Island
Naknek	Samalga Island	Simeonof Island	Rat Island
Seldovia	Goodnews Bay	Unimak	Kiska
Dillingham	Hagemeister Island	Unalaska	Attu
Cape	Mt. Katmai	Umnak	Pribilof Islands
Mendenhall	Afognak	Amukta	
Trinity Islands	Iliamna	Seguam	

Response: EPA has received notices from few, if any, of the designated areas and does not expect an increase in individual permitting due to the inclusion of this additional circumstance for considering an individual permit. Permit Part I.E.2.d. will be added to the GP and state: when USFWS believes that consultation is necessary for facilities proposed in or near marine coastal waters to protect Steller's eiders, spectacled eiders or sea otters.

REFERENCES:

www.nps.gov/rivers/about.html - printed 8/12/2005

US Fish and Wildlife Service. 2005. Alaska's Threatened and Endangered Species. Unpublished report, Anchorage Fish and Wildlife Field Office, Anchorage, Alaska. March 2005.