



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

July 17, 2006

Michael F. Gearhead, Director
Office of Water and Watersheds
U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, WA 98101

Re: Reissuance of NPDES
Permit AK-000105-8 for
Tesoro AK Petroleum Co.

Attn: Robert Rau

Dear Mr. Gearhead:

The National Marine Fisheries Service (NMFS) has reviewed your draft permit, related Fact Sheet, and Biological Evaluation as it relates to Essential Fish Habitat (EFH) for the reissuance of the Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) permit to discharge pollutants to the marine waters of Cook Inlet at Port Nikiski. Based on the information in the referenced documents we offer the following comments specific to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Our comments to you under the Endangered Species Act will come under separate cover.

Permit Background and Description of the Action

The Tesoro Alaska Petroleum Company (Tesoro) owns and operates a refinery on the western shores of the Kenai Peninsula approximately 60 miles southwest of Anchorage, Alaska, in the town of Nikiski. The refinery receives feed stocks from Cook Inlet and North Slope oil fields via tanker shipments and pipeline, in addition to some tanker shipments of Indonesian crude oil. Tesoro now has two NPDES permits for their Nikiski operations. This permit (AK-000105-8) covers primarily treated ballast water prior to discharge to Cook Inlet, and was originally issued to KPL. Permit No. AK-000084-1 covers all wastewater discharges related to the refinery itself. The permit was originally issued to Kenai Pipeline Company in 1973 and expired in 1978. The permit was reissued in October 1979 and expired in October 1984, and has been administratively extended since that time. The existing permit has only oil and grease (8 mg/L daily average & 15 mg/L daily maximum) and pH (6.0 – 9.0) effluents limits with additional narrative standards and monitoring requirements.

Currently, none of the tanker ships that operate through the Nikiski terminal have segregated compartments for oil and ballast water. As a consequence, oil and sea water commingle in the same holding compartment, and while the two remain segregated with the water on bottom, ballast water becomes contaminated with petroleum related compounds that must be treated prior to discharge. In addition to treating ballast water, petroleum contact, or tank bottom water from



crude storage tanks are also treated at this facility. Minor volumes of stormwater that accumulate in the containment area surrounding the ballast water storage tanks are also treated.

Flows through the ballast water treatment system are somewhat weather dependent, because during high seas, particularly in the winter, empty or partially full tankers are forced to take on sea water as ballast to stabilize the ship. The decision on whether to take on ballast water and how much, is entirely up to the captain of the vessel. Since flow volumes through the ballast water treatment plant are highly variable, the draft permit does not contain any flow or mass-based effluent limitations. However, the facility will be required to monitor and report flow through the system on a daily, per batch, and annual basis; and account for the source of these wastewaters. In addition, the draft permit contains prohibitions on dilution to achieve concentration-based effluent limits.

EFH, HAPCs, and the EFH Assessment

Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act requires federal agencies to consult with NMFS on all actions that may adversely affect EFH. NMFS is required to make conservation recommendations, which may include measures to avoid, minimize, mitigate or otherwise offset adverse effects.

NMFS has identified the following federally managed species that could be present in the project area: Alaska plaice, Pacific cod, Atka mackerel, walleye pollock, Dover sole, arrowtooth flounder, flathead sole, rockfish, rex sole, rock sole, sablefish, sculpins, skates, squid, salmon, and weathervane scallops.

The information regarding Habitat Areas of Particular Concern (HAPC) is out of date. The identification of HAPCs provides a conservation focus for those habitats that meet one or more of the following considerations: ecological importance, sensitivity to disturbance, risk of exposure to development activities, or rarity. Recently, NMFS re-assessed EFH and HAPC through a comprehensive environmental impact statement (EFH EIS; April 2005), and refined EFH descriptions and HAPCs. For detailed information, please see <http://www.fakr.noaa.gov/habitat/efh.htm> and <http://www.fakr.noaa.gov/analyses/efh/HAPCa0406.pdf>.

Specific HAPC changes begin with a public nomination process for an area (or areas) that meet one or more the HAPC considerations. Further, a priority or resource issue may be set by the North Pacific Fishery Management Council to focus nominations. Once nominated, proposed HAPCs undergo scientific and public review. The process ends with specific HAPCs being identified. HAPCs may or may not include specific fishery management measures to conserve habitats within the HAPC. An example would be a call for HAPCs where sensitive juvenile rockfish populations concentrate nearshore. Any proposed areas meeting this priority would be reviewed. Once finalized, the HAPC would be an area highlighted as important to juvenile rockfish.

Finally, this HAPC process replaces the previously described broad HAPC categories (living substrates in shallow water, living substrates in deep waters, and anadromous fish streams; EFH

EA 1999) with the tri-annual HAPC nomination process. No HAPC's are identified within Cook Inlet at this time.

EFH Conservation Recommendations

The draft Permit proposes that for Water Quality based effluents Total aqueous hydrocarbons (TAqH) may not exceed 15 $\mu\text{g/L}$ and total aromatic hydrocarbons (TAH) may not exceed 10 $\mu\text{g/L}$ at the end of the pipe. NMFS agrees with the EPA that these new effluent limits may create operational difficulties for Tesoro at the ballast water treatment plant, and recognizes that the two year compliance schedule to achieve these new limits is reasonable.

Section 308 of the Clean Water Act and Federal regulation 40 CFR 122.44(i) require monitoring in permits to determine compliance with effluent limitations. Presently, there is very little effluent monitoring data available, (other than oil and grease and pH sampling as required in the 1979 permit) therefore, we agree with the proposed requirement in the draft Permit to require expanded effluent and whole effluent toxicity testing.

In addition, when considering the cumulative impacts of ballast water from ships, it is important to consider possible impacts from invasive species. Ballast water from ships has been a leading mode of introducing invasive throughout the world. Pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act, we recommend that the proposed requirement in the draft permit to impose monitoring requirements on non-conventional pollutants such as chemical oxygen demand and total organic carbon be expanded to include bio-sampling for non resident species of flora and fauna.

Under section 305(b)(4) of the Magnuson-Stevens Act, EPA is required to respond to NMFS EFH recommendations in writing within 30 days. If EPA will not make a decision within 30 days of receiving NMFS EFH Conservation Recommendations, EPA should provide NMFS with a letter within 30 days to that effect, and indicate when a full response will be provided.

We look forward to working with you to address the issues discussed above to minimize the effects of this project on living marine resources, including EFH. Jeanne Hanson is the contact for this project and can be reached at 907-271-5006.

Sincerely,



Robert D. Mecum
Acting Administrator, Alaska Region

cc: Records File # 1503-02
Brad Smith - PRD
Dan Vos - PRD