

**Department of Environmental Conservation  
Response to Comments**

**for the**

**Medium-Size Suction Dredge Placer Miners General Permit**

**APDES Permit No. AKG371000**

**Public Notice: October 1, 2015 – November 2, 2015**

**December 18, 2015**



Alaska Department of Environmental Conservation  
Wastewater Discharge Authorization Program  
555 Cordova Street  
Anchorage, AK 99501

## 1.0 Introduction

### 1.1 Summary of the Permit

The Medium-Size Suction Dredge Placer Miners General Permit (AKG371000) authorizes discharges of wastewater from suction dredges with intake diameters greater than six inches and less than or equal to ten inches that process gold placer ores and rely on beneficiation processes based on gravity separation. The permit provides statewide coverage for discharges to fresh and marine waters of the U.S., with certain limitations. Fact Sheet Sections 1.0 and 2.0 provide additional coverage information and regulatory history. Specific conditions under which pollutants may be discharged are detailed in the permit and further explained in the fact sheet.

### 1.2 Opportunities for Public Participation

The Alaska Department of Environmental Conservation (DEC or the Department) proposed to issue an APDES wastewater discharge permit for the discharges from medium-size suction dredge placer miners. To ensure public, agency, and tribal notification and opportunities for participation, the Department:

- identified the permit on the annual Permit Issuance Plan posted online at: <http://www.dec.state.ak.us/water/wwdp/index.htm>;
- notified, via letter, fax and/or email, potentially affected tribes, local governments, the National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (USFWS), and the U.S. Environmental Protection Agency (EPA) that the Department would be working on this permit;
- posted a preliminary draft of the permit on-line for a 10-day applicant review August 31, 2015 and notified potential permittees, tribes, local governments, and State and federal agencies, including the Alaska Department of Fish and Game (ADF&G), Alaska Department of Natural Resources (DNR), NMFS, the USFWS, and EPA;
- formally published public notice of the draft permit in three newspapers (*Alaska Dispatch News*, *Fairbanks Daily News-Miner*, and *The Nome Nugget*), posted the public notice on the Department's public notice web page, and distributed the public notice to potential permittees, tribes, local governments, and State and federal agencies, including ADF&G, DNR, NMFS, the USFWS, and EPA;
- posted the proposed final permit modification on-line for a 5-day applicant review November 24, 2015 and notified potential permittees, tribes, local governments, and State and federal agencies, including ADF&G, DNR, NMFS, the USFWS, and EPA; and
- sent email notifications via the APDES Program List Serve when the preliminary draft, draft, and proposed final permit were available for review.

The Department received written comments on the draft permit from the following interested party: USWFS. Additional comments were received on the proposed final permit from the following interested parties: Joell Stine (JS) and DNR.

This document summarizes the comments submitted and the justification for any action taken or not taken by the Department in response to the comments. Comments received during the final 5-day applicant review that did not result in substantial changes are not addressed within this document and may be discussed within the final fact sheet. Commenter references are included within the comment summaries.

### **1.3 Final Permit**

The final permit was issued by the Department on December 18, 2015 with an effective date of February 1, 2016. There were changes from the public-noticed permit to the final permit based on comments received. Significant changes are identified in the response to comments and reflected in the final permit and fact sheet. Minor edits, such as format changes or correction of typos, were made to the permit and fact sheet for clarification and may not be specifically identified in this document.

## **2.0 Comments on Permit Coverage**

### **2.1 Comment (Draft Permit) - Permit Part 1.3 (Limitations on Coverage):**

One set of comments recommended withdrawing the revised seasonal prohibition start date of October 1 for Steller's eider wintering areas and restoring the September 1 start date of the prior permit. The commenter agreed that the revised one-mile buffer would likely be sufficient to protect wintering Steller's eiders from collisions with mining vessels and noted that this should simplify permits for operators and establish consistency with buffers for other protected and sensitive resources. The prior permit prohibited operation from September 1 to April 30 within 4.0 nautical miles of locations used by 125 or more Steller's eiders as wintering areas. The commenter further recommended implementing 1) a more stringent August 1 prohibited discharge start date in those areas that molting eiders are likely to occur and 2) a one-mile buffer around eider critical habitat to offer additional protections to wintering and molting eiders.

The commenter also provided guidelines to assist the Department and operators in ensuring that polar bears are protected during operations. These include Polar Bear Interaction Guidelines, developed to ensure that activities are conducted in a manner that avoids conflicts between humans and polar bears, and guidelines for safely and non-lethally deterring polar bears from damaging property and endangering the public as found in the Final Rule of the MMPA Deterrence Guidelines (enclosed). (USFWS)

**Response:**

The Department has restored the seasonal prohibition start date of September 1 for Steller's eider wintering areas and has also included a one-mile buffer around locations listed as critical habitat for eiders under the Endangered Species Act (ESA). Because wintering habitat occurs in remote locations along the Alaska Peninsula and Aleutian Chain and fall and winter weather and sea conditions limit operation, the Department does not foresee the seasonal or geographic limitations resulting in adverse impacts to any active or proposed operations under the permit. However, to incorporate flexibility into the authorization process, the 2015 permit includes language allowing case-by-case exceptions based on input and a statement of non-objection from USFWS.

The Department reviewed prior USFWS comments on the 2007 Draft Small-Size Suction Dredge General Permit (AKG375000) that included a list of Steller eider molting areas. All molting locations listed in the prior comments also appeared to be listed as ESA critical habitat for eiders. The 2015 permit does not authorize any discharges within ESA critical habitat for the Steller's and spectacled eiders. Therefore, additional language for molting areas has not been included in the permit.

Because the Department's authority and permit conditions are focused on the regulation of wastewater discharges under the Clean Water Act, the permit does not include recommendations or conditions that detail interactions with polar bears. However, the Department retains the ability to distribute interaction guidelines through a separate cover letter, the Department website, guidance documents, or similar methods.

**2.2 Comment (Proposed Final Permit) - Permit Part 1.3 (Limitations on Coverage):**

The Department received a comment for language clarification on Permit Part 1.3.2 that stated "Discharges within National Park System Units (i.e., Parks and Preserves), National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, or waters designated as wild under the Wild and Scenic Rivers Act are not authorized unless the Department receives written approval or a statement of non-objection from the lead agency with jurisdiction over the area." The comment voiced concern that the State of Alaska is turning over regulatory authority on a State-owned river to a federal agency and that the language used, "lead agency with jurisdiction over the area" is potentially misleading and too open to interpretation.

**Response:**

The language in Permit Part 1.3.2 was clarified to state that discharges within one of the “federal reserves” are authorized unless the Department receives a valid objection from the management agency with authority over the federal reserve within 30 days of the agency receiving notice of the proposed discharge. Rather than relying on a notice of non-objection, the Department may authorize the discharge if a valid objection from the management agency is not received. Operations on State-owned land within a federal reserve are excluded from the notification requirements of Permit Part 1.3.2.