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EPN Comments on
"Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions"
EPA-HQ-OW-2026-6965
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The Environmental Protection Network (EPN) harnesses the expertise of more than 800 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

Introduction

EPA has proposed to remove the "means of transportation" qualifier from the National Pollutant Discharge Elimination System (NPDES) vessel exclusion at 40 C.F.R. § 122.2(b) and to substitute a test based solely on whether a vessel or floating craft is physically secured to the seabed.[1] An immediate consequence of this change would be to eliminate NPDES permitting requirements for "offshore seafood harvesting and processing from vessels that discharge in the contiguous zone or the ocean."[2] There are currently two EPA-issued general permits regulating offshore seafood processors—factory trawlers and processing motherships—in federal waters off Alaska, Washington, and Oregon that contain such permitting requirements. EPN urges EPA to withdraw this rule which, if finalized, would devastate important fisheries in the Pacific Ocean and perhaps elsewhere.

The Rule Would Deregulate a Substantial, Documented Source of Marine Pollution

EPA's own permitting record shows the environmental protections that this proposal would eliminate. In 2016, 14 vessels expected to seek coverage under the general permit for offshore seafood processors operating off Washington and Oregon discharged, in the aggregate, more than 22.5 million pounds of solid processing waste.[3] These 14 vessels represent only a fraction of the 79 permittees the proposal identifies as currently covered under EPA's offshore seafood processing general permits for Washington/Oregon and Alaska.[4] The Alaska permit, which covers the balance of the 79 permittees, authorizes discharges at a far larger scale: in 2015, the vessels then reporting data discharged approximately 1.1 billion pounds of seafood processing waste in the aggregate, with individual vessels reporting as much as 88.2 million pounds in a single year.[5]

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[1] 91 Fed. Reg. 56819, 56821–24 (Sept. 4, 2026) (proposed 40 C.F.R. §§ 122.2(b), 122.3(a)).
[2] 91 Fed. Reg. at 56825.
[3] EPA, Fact Sheet, NPDES General Permit for Offshore Seafood Processors in Federal Waters Off the Coast of Washington and Oregon (Permit No. WAG520000) (2017 re-proposal), Table b (Section I.A.2, "Vessels Expected to Seek Permit Coverage").
[4] 91 Fed. Reg. at 56824–25 (Regulatory Flexibility Act analysis) ("79 permittees covered under the Region 10 offshore seafood processing general permits"; "the number of establishments (79)").
[5] EPA, Fact Sheet, NPDES General Permit for Offshore Seafood Processors in Alaska (Permit No. AKG524000) (2019), at 10–11 (Section II.C, "Discharge Characterization for Annual Report Years 2014 and 2015").

This waste is not merely high-volume but also high-strength. EPA has estimated that stickwater—a waste stream regulated under this general permit—contains a median biochemical oxygen demand of 7,600 mg/L and a reported daily maximum of 432,000 mg/L. This is orders of magnitude higher than the 30 mg/L secondary-treatment standard applicable to municipal sewage.[6] And these discharges enter waters that EPA has documented to be prone to severe hypoxia, including a 2002 event with Dungeness crab mortality exceeding 75 percent in commercial pots and a 2006 event in which oxygen depletion spanned more than 3,000 square kilometers and eliminated fish from rocky-reef surveys.[7] These conditions were serious enough that EPA used the general permit to impose a year-round 1,890-square-mile discharge prohibition.[8] EPA's Alaska permitting record documents another serious concern: of discharge samples taken between 2010 and 2015, 72 percent exceeded EPA's chronic aquatic-life criteria for copper and 57 percent exceeded the criteria for zinc.[9] The Quinault Indian Nation reported that its fishers' catch was reduced "to near zero" following discharge events within its treaty fishing area, attributing the effect to fish satiation from the discharged waste.[10]

The Rule Would Benefit Corporate Industrial Discharges at the Expense of Small Entities and Communities

The environmental harms summarized above are by no means offset by relief to small operators. Contrary to the unsupported and/or extrapolated assertions in the Federal Register Notice (FRN), the offshore fleet deregulated by this rule is not dominated by small businesses. Indeed, EPA's own permitting record for the Alaska general permit—which alone covers the majority of the 79 permittees—directly contradicts this extrapolation. EPA found in 2019 that "there are few, if any, small businesses that are owners or operators of facilities subject to this permit."[11] Trident Seafoods Corporation describes itself as North America's largest vertically integrated seafood harvesting and processing company, employing approximately 9,000 people worldwide.[12] American Seafoods Group is majority-owned by Bregal Partners, a U.K. private equity firm with $1.25 billion of committed capital.[13] Glacier Fish Company's ownership includes Nippon Suisan (U.S.A.), Inc., a wholly owned subsidiary of Nissui Corporation, a publicly traded Japanese seafood conglomerate.[14] Glacier Fish's Alaska Ocean—one of the vessels reflected in the Washington/Oregon discharge figures above—is

[6] EPA Region 10 & AQUA TERRA Consultants, Draft Ocean Discharge Criteria Evaluation for the General NPDES Permit for Offshore Seafood Processing Discharge in Federal Waters off the Washington and Oregon Coast, Permit No. WAG520000 (Aug. 2015), Table 2.3; 40 C.F.R. § 133.102 (30-day average BOD5 standard of 30 mg/L for publicly owned treatment works).

[7] EPA, Fact Sheet, WAG520000, supra note 3, p. 11.

[8] EPA, Fact Sheet, WAG520000, supra note 3, p. 15.

[9] EPA, Fact Sheet, AKG524000, supra note 5, Appendix A, at 32–34 (Tables 3–4).

[10] EPA, Response to Comments, NPDES General Permit for Offshore Seafood Processors in Federal Waters off the Washington and Oregon Coast, WAG520000 (Mar. 4, 2019), p. 26.

[11] EPA, Fact Sheet, AKG524000, supra note 5, at 29 ("Impact on Small Businesses").

[12] Forbes, Company Overview: Trident Seafoods, https://www.forbes.com/companies/trident-seafoods/.

[13] Bregal Investments, Bregal Partners, https://www.bregal.com/strategies/bregal-partners/.

[14] IntraFish, Alaska Community Development Group Acquires Controlling Stake in Pollock Supplier Glacier Fish (Oct. 27, 2021); Undercurrent News, Sources: Glacier Fish in Talks for Stake in Iquique US (Nov. 19, 2014).

a 376-foot factory trawler with the capacity to catch and process 225 tons of fish daily, and is the largest vessel in the entire U.S. commercial fishing fleet.[15]

The interests actually threatened by this FRN's proposed seafood waste deregulation belong to small, individually-licensed operators and treaty-protected tribal fishers—not to the large corporations that stand to benefit from this rule. Washington's coastal Dungeness crab fishery has 223 license holders, and Oregon issues roughly 450 permits. The Oregon Dungeness Crab Commission describes the crab fleet as ranging "from the small wooden troller with its two-man crew" to modest steel vessels.[16] Waste discharges from the vessels this rule seeks to deregulate dwarf the entire crabbing catch: in a single year, 14 vessels discharged more solid processing waste (22.5 million pounds, see footnote 3 above) than Oregon's entire commercial crab fishery lands in an average year (16 million pounds). These same waters support tribal treaty fisheries already documented in the record as suffering catch reduced to near zero following discharge events, see footnote 10 above, and coastal communities whose shellfish harvests have previously been shut down for months by water-quality events tied to nutrient pollution.[17] Despite consisting of small operations, the fisheries most impacted by this rule are by no means economically insignificant. According to the Fact Sheet, Dungeness crab landings in Washington in 2006 had an ex-vessel value of $29.5 million, comprising nearly half of the total ex-vessel value of non-treaty commercial fish landings from Washington fisheries.[18]

This rule represents a give-away to large, well-heeled corporations to the detriment of small businesses, individuals, and coastal communities.

EPA Has Not Justified Reversing Nearly Five Decades of Unchallenged, Congressionally Undisturbed Practice

The "means of transportation" test has governed this exclusion since 1979.[19] Congress amended the Clean Water Act (CWA) repeatedly since then and, in 2018, comprehensively restructured vessel discharge permitting through the Vessel Incidental Discharge Act—all without disturbing this provision. Sophisticated industry counsel litigated permit conditions in this exact fishery for a decade without ever challenging the jurisdictional predicate itself.[20] EPA offers no reasoned

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[15] Port of Seattle, All About the Fishing Fleet at Terminal 91, https://www.portseattle.org/blog/all-about-fishing-fleet-terminal-91 ("The Alaska Ocean, owned by Seattle-based Glacier Fish Company, is not only the largest factory trawler at Terminal 91, but the largest in the entire U.S. fishing fleet! At a whopping 376 feet long..., the ship has the capacity to catch and process 225 tons of fish every day.").

[16] Washington Dep't of Fish & Wildlife, Coastal Commercial Dungeness Crab Fishery, https://wdfw.wa.gov/fishing/commercial/crab/coastal; Oregon Dungeness Crab Commission, https://oregondungeness.org/the-fishery/.

[17] Washington Dep't of Ecology, comments on preliminary draft NPDES General Permit WAG520000 (Feb. 10, 2017) ("A recent harmful algal bloom shut down recreational and commercial razor clam and Dungeness crab harvest for most of the 2015/2016 season in Washington, causing an economic hardship for the State's coastal communities.").

[18] EPA, Fact Sheet, WAG520000, supra note 3, p. 18.

[19] 91 Fed. Reg. at 56822 (citing 44 FR 32854, 32859 (June 7, 1979)).

[20] EPA, Response to Comments, WAG520000, supra note 10 (comments of Perkins Coie LLP on behalf of the At-Sea Processors Association); EPA, Response to Comments, NPDES General Permit for Offshore Seafood Processors, Alaska (Permit No. AKG524000) (2019) (comments of the Freezer Longline Coalition, Groundfish Forum, and At-Sea Processors Association).

explanation for reversing this settled position now, and does not reconcile its new "secured to the seabed" test with the 1974 agency interpretation it also invokes in support.[21]

EPA has Failed to Analyze Costs to be Borne by Fishers, Tribes, and Coastal Communities

EPA has designated this proposed rule as a "significant regulatory action" subject to Executive Order 12866, which requires an accounting of both costs and benefits.[22] Yet the proposal's entire discussion of foregone benefits consists of one unquantified sentence acknowledging "possible effects on marine species and receiving-water quality."[23]

EPA's Draft Economic Analysis confirms rather than cures this problem. Its entire discussion of foregone benefits states that seafood processing waste is "high in nutrients and biochemical oxygen demand" and "can contribute to ocean acidification and hypoxia," but fails to address specific hypoxia events referenced in the permitting record that have caused Dungeness crab mortality exceeding 75 percent and that led EPA to impose a 1,890-square-mile discharge exclusion.[24] Nowhere does EPA's analysis mention, let alone monetize, the specific economic interests its own permitting record already identifies as at risk from exactly this kind of discharge: coastal Dungeness crab fisheries valued at tens of millions of dollars annually and Tribal treaty fisheries documented in EPA's own files as already experiencing catch losses. A cost-benefit analysis that catalogs $1.8 million in compliance savings to industry while omitting known, specific, non-trivial costs to identifiable third parties is not a reasoned accounting of the rule's effects—it is half of one.

EPA has Failed to Identify, Much Less Analyze, Affected Dischargers Beyond the 79 Vessel Permittees

This proposal is not limited to seafood processing—it would deregulate any unsecured "vessel or other floating craft" discharging in the contiguous zone or ocean. EPA's cost, paperwork, and small-entity analyses nonetheless assume a fixed universe of exactly 79 permittees, all in one industry. EPA's only stated basis for excluding other offshore sectors—oil and gas, mining, aquaculture—is the bare assertion that they are "unlikely to be affected" because they are typically secured to the seabed. But the proposal fails to analyze whether particular dischargers, such as oil rigs that use dynamic positioning thrusters to maintain location over the drill site or the mobile support vessels that service offshore oil and gas operations and may qualify for the same exclusion. An agency cannot rely on a quantified cost savings, a paperwork burden estimate of zero, and a small-entity certification that are all built around a single named population, while adopting regulatory text that reaches an unexamined and potentially much larger one.

The Proposal Does Not Resolve Whether Any Federal Permitting Program Would Apply if NPDES Does Not

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[21] 91 Fed. Reg. at 56823 n.3 (citing EPA Office of General Counsel Opinion, May 13, 1974).

[22] 91 Fed. Reg. at 56823.

[23] 91 Fed. Reg. at 56820.

[24] EPA, Office of Water, [Draft] Economic Analysis for the Proposed Updates to the National Pollutant Discharge Elimination System Definitions and Exclusions § 4.5 (Aug. 2026), Docket No. EPA–HQ–OW–2026–6965.

EPA states that these discharges "may be subject to other statutory or regulatory requirements imposed by other statutes such as" the Marine Protection, Research, and Sanctuaries Act (MPRSA), the Oil Pollution Act, and the Vessel Incidental Discharge Act, without analyzing whether any of them actually reach this waste stream.[25] MPRSA's own exclusion for effluent already "regulated under" the CWA would no longer apply to this waste stream once it is excluded from NPDES, and MPRSA's separate exclusion for discharges "incidental to the propulsion of, or operation of motor-driven equipment on, vessels" does not naturally reach industrial processing waste.[26] On the other hand, the "fish waste" exclusion in 33 USC 1412(d), which generally bars MPRSA permitting requirements, does not apply in areas where the Administrator finds that such effluent could endanger the environment. The permitting record for the 79 vessels referenced in the proposal provides ample evidence to conclude that the existing fish waste effluent could cause harm.

So, the proposed rule can be viewed in either of two ways: (1) as an attempt to completely deregulate the billion plus pounds of seafood processing waste currently controlled by NPDES permits; or (2) as simply substituting the CWA permitting requirements for MPRSA regulation. The former interpretation would endanger the marine environment, the latter would disrupt an existing, effective permit structure and thrust needless costs on EPA and the regulated parties by requiring new permits under different authorities. EPA's cost analysis assumes zero compliance burden and zero new information collection—a conclusion in tension with any expectation that these discharges may be subject to MPRSA.[27] This proposed rule would either subject currently NPDES-regulated discharges to MPRSA or it would leave these discharges completely unregulated. EPA cannot have it both ways. Before finalizing a rule that would also remove NPDES coverage from other floating structures throughout the contiguous zone and ocean, not only this fishery,[28] EPA must determine whether a replacement permitting requirement exists and disclose the answer to the public.

Conclusion

The line EPA has drawn—secured to the seabed, or not—tracks naval architecture, not pollution control. It bears no relationship to the volume, toxicity, or environmental effect of what is discharged. Applied to this record, it removes permitting requirements for many millions of pounds of high-strength organic waste discharged annually by large, well-capitalized, and in some instances foreign-owned processors, to the detriment of tribal treaty fisheries, independent commercial crabbers, and the Endangered Species Act listed species EPA's own permits were designed to protect. And the extent to which it removes NPDES authority over other discharges to the contiguous zone and ocean is not disclosed or discussed in this notice. EPN urges EPA to withdraw this proposed rule.

[25] 91 Fed. Reg. at 56822.

[26] 33 U.S.C. § 1402(f).

[27] 91 Fed. Reg. at 56823 (Paperwork Reduction Act analysis).

[28] See 91 Fed. Reg. at 56821 (proposed 40 C.F.R. § 122.2(b) applies to any "vessel or other floating craft" in the contiguous zone or ocean, not solely to seafood-processing vessels).