IDG370000
Response to Comments
Idaho Small Suction Dredge
General Permit (GP)

Environmental Protection Agency (EPA)
Region 10
May 2018

Prepared by:
Cindi Godsey, EPA
and
Tracy Peak, EPA

Table of Contents

General Information

EPA requested final certification under the Clean Water Act (CWA) § 401 from the State of Idaho on March 14, 2018. The final Idaho Department of Environmental Quality (DEQ) CWA § 401 Certification is dated April 11, 2018. Conditions of the DEQ Certification have been incorporated into the general permit as appropriate.

In December 2017, EPA provided a Biological Evaluation (BE), the Draft Permit, and Fact Sheet to the U.S. Fish & Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), to initiate the process of informal consultation under the Endangered Species Act (ESA).

In a letter dated January 10, 2018, NMFS concurred with EPA's determination that issuance of the permit is Not Likely to Adversely Affect (NLAA) the Snake River Basin steelhead, Snake River Spring/Summer Chinook Salmon, Snake River Fall Run Chinook Salmon, and the Snake River Sockeye Salmon, and NLAA any designated critical habitat. NMFS also determined that the proposed action would not have an adverse effect on Essential Fish Habitat and provided no conservation recommendations.

In a letter dated January 30, 2018, USFWS provided concurrence with EPA's determination of may effect but is NLAA the Banbury Springs limpet, Bliss Rapids snail, Bruneau hot spring snail, Snake River physa snail, bull trout, Kootenai River white sturgeon and grizzly bear. They also concurred with the NLAA determination for bull trout and Kootenai River white sturgeon designated critical habitat.

In January 2018, the EPA increased its civil penalties as required by the Debt Collection Act of 1996. As such, the civil penalties listed in Permit Parts IV.B. have been increased approximately 2%.

Appendix A contains a list of Commenters and Appendix B contains a cross-referenced list between the comments below and the Commenters.

As much as possible, the comments were taken verbatim from the letters or emails received by EPA. These original comments sometimes contain grammatical or spelling errors. In most cases, each paragraph represents comments submitted by separate individuals or organizations.

Authority

1. Comment: My comment on this subject is that the NPDES permit process does not belong to this class of miners. Small scale suction dredging should not be regulated using this process ever.

   If you all plan to remove the requirements for the NPDES for small scale dredging then I, am interested. Otherwise this whole process is egregious and hypocritical to

ask for comments and not have any intention of changing anything other then [*sic*] being more stringent.

This would seem to me that the CWA does not apply to small scale suction dredging. If the CWA does not apply, can the EPA regulate small scale suction dredging by requiring a NPDES, or IPDES, permit? It would seem to me that the answer is no and that EPA should at a minimum, rescind this proposed action based on Supreme Court opinions occurring since the 2013 GP.

Since small scale suction dredge mining does not violate §301 of the CWA by discharging pollutants to the waters of the United States, neither §401, §402, §404 nor any other section of the CWA applies. The EPA has no authority to mandate Idaho's small scale suction dredge miners obtain either a NPDES, or an IDPES when Idaho's General PDES permit is accepted

Why would you all ask for our comments if you are not going to remove anything to include the whole NPDES requirements for small scale suction dredging. The intent of the program for the clean water act is for industrial uses not the small scale dredger.

EPA lacks jurisdiction over the outfall from the suction dredge, lacks jurisdiction over the small scale suction dredges in Idaho themselves, and according to our Governor, has issued an erroneous permit.

My comment on the reintroduction of the EPA NPDES permit requirement for suction dredging is NO WAY. Small scale suction dredging is already overregulated, this would be an over reach of power and in increase in regulation on an activity that already is forced to go through 3 government bureaucracies to obtain permission to perform an activity that is a right not a privilege. JUST SAY NO TO THE EPA NPDES PERMIT REQUIREMENT!

The genesis of the 2013 EPA General Permit for Small Scale Suction Dredge Mining, number IDG370000 was a politically motivated hit on the free market system and ideology of America. It was specifically designed to initiate Section 7(a)(2) Endangered Species Act (ESA), with the effect of purporting to authorize an activity, (read: suction dredge mining) and then prohibiting such activity. This flies in the face of the Administrative Procedures Act.

We oppose this proposal and reserve the right for further comment on this process and the EPA's attempt to create a GP NPDES for Suction Dredging in Idaho.

Response: CWA § 301(a) states "*Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful*" (emphasis added). CWA section 502(12), 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" as any addition of any pollutant to navigable waters from any point source.

CWA section 502(14), 33 U.S.C. § 1362(14), defines the term "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit . . . or vessel or other floating craft, from which pollutants are or may be discharged." The disposal system from

the suction dredge is a discrete conveyance from a vessel or other floating craft. In other words, it is a point source.
CWA section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, rock, and sand – all of which are materials released from suction dredges.

In 1990, the Ninth Circuit Court of Appeals held that placer mining, which includes suction dredging, results in the "discharge" of a pollutant subject to regulation under the CWA. *Rybacheck v. U.S. EPA*, 904 F.2d 1276, 1285 (9th Cir. 1990). While the Alaska Miners Association, Inc. had argued that placer mining does not "add" pollutants to water within the meaning of the Act, the court explained that "even if the discharged material originally comes from the streambed itself, such resuspension may be interpreted to be an addition of a pollutant under the Act." *Id.* Subsequent case law has not changed this basic principle.

EPA is requesting comments pursuant to 40 CFR 124.10 and to hear from the public on the draft permit. EPA takes public comments seriously and has considered any and all substantive comments, but changes can only be made that comport with the laws and regulations applicable to the NPDES program.

2. Comment: The mining laws that govern mineral lands open to mineral entry and location, certainly do not allow for this type of contract. No federal unpatented mining claim holder is remotely beholden to this type of regulatory morass. It is inconceivable how EPA Region 10 has morphed the mandate to reduce water pollution into a mandate to involve itself in every aspect of small scale suction dredge mining in Idaho.

   Response: The General Mining Law of 1872 requires claim locaters to "comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title." Mineral extraction in the United States is governed by various federal and state mining, land use, and environmental laws. The General Mining Law of 1872, the organic acts of the various federal land management agencies, and federal and state environmental statutes control development of these minerals. The CWA provides EPA with the authority to issues NPDES permits. As explained in Comment #1, an NPDES permit is required when there will be a discharge of pollutants from a point source into waters of the United States.

3. Comment: The CWA says "The term ‘‘discharge of a pollutant’’ and the term ‘‘discharge of pollutants’’ each means (A) any addition of any pollutant to navigable waters from any point source..." It would appear from these 2 cases (LA County and Miccosukee) that if a suction dredge merely transfers "soup" through it, like a channel, and places the "soup" back in the same body of water about 15 feet away, there has been neither a "discharge" nor an "addition" into a water that Idaho has declared "non-navigable" by virtue of not listing it as navigable.

   From the current EPA's interpretation your [*sic*] saying sand and gravel no matter how much is a pollutant. That's an extreme outlook on the intent of the program against large scale hydraulic mining and bull dozing, large excavation of river

gravels. You telling people that its [*sic*] against the law to touch any rock or sand in any of these streams then threaten to sue with extreme fines for each violation as if it was no difference in that vs a toxic radioactive waste dump.

Response: The soup ladle example referenced by the commenter refers to a water transfer, which means "an activity that conveys or connects waters of the U.S. without subjecting the transferred water to intervening industrial, municipal, or commercial use" (40 CFR 122.3(i))). Notably, "[t]his exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred." *Id.*

If, during suction dredging, only water was picked up and placed back within the same waterbody, the commenter would be correct that no permit would be necessary. *See South Florida Water Management Dist. v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004). However, in suction dredging, bed material is also picked up with water. Picking up the bed material is in fact the very purpose of suction dredging – the bed material is processed to produce gold. This process is an intervening use that causes the addition of pollutants [rock and sand, see CWA § 502(6)] to be discharged to waters of the United States. As a result, the water transfer exclusion in 40 CFR 122.3(i) does not apply, and an NPDES permit is required for the discharge from this activity.

There is no provision under CWA § 402 for smaller discharges or for those with less impact to be treated as de minimis, with no permit requirement.

4. Comment: In short this is another government over reach and this permit is not needed that the state permit do it's [*sic*] job and prevent redundancy and cut out overregulation that is killing the small scale miner thank you

   Idaho does a fine job of managing its own waters and to have the federal government take over these waterways is clearly based on government control more than actually caring for the land.

Response: The EPA permit and the Idaho Department of Water Resources (IDWR) permit are issued under two different authorities for two different reasons. The EPA NPDES permit is issued pursuant to the Clean Water Act and is an authorization to discharge wastewater to waters of the United States. IDWR regulates the alteration of stream channels from the use of recreational mining equipment in a stream under the Idaho Stream Channel Protection Act.

5. Comment: What we see with the U.S. EPA proposing a permit that exceeds statutory authority in that the Court has set aside the regulation of "incidental fallback," by precluding EPA from Section 301 CWA authority to say that it is a discharge. "The "discharge of any pollutant by any person" is unlawful except in compliance with, inter alia, § 404 of the Act. 33 U.S.C. §§ 1311(a) ("§ 301(a)") and 1344."

   In Idaho the Corps of Engineers concluded that the discharge of bed material from a recreational suction dredge constitutes incidental fallback not subject to Section

404. Letter, Barbara Benge, Corps of Engineers Regulatory Project Manager to Edward Kelly (July 23, 1998).

Response: Understandably, commenters often confuse the "discharge of dredged material" with the "discharge of pollutant". Discharges of dredged or fill material are authorized by the U.S. Army Corps of Engineers (Corps) under CWA § 404 and the Rivers and Harbors Act § 10. Discharges of all other pollutants are authorized by the EPA through the NPDES program under CWA § 402. 33 U.S.C. §§ 1311(a) requires compliance with CWA § 402, in addition to requiring compliance with CWA § 404.

CWA § 404 authorization is not required for "incidental fallback," which is "the redeposit of small volumes of dredged material that is incidental to excavation activity in waters of the United States when such material falls back to substantially the same place as the initial removal." 40 CFR 232.2(3). The discharge from a sluice box is not incidental fallback because it is the discrete act of dumping leftover material into the stream after it has been processed. *Nat'l Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1339-1404-06 (D.C. Cir. 1998).

As explained above and in response to Comment #1, 33 U.S.C. §§ 1311(a), in addition to requiring compliance with CWA § 404, requires compliance with CWA § 402. The EPA is required to regulate the discharge of a pollutant from a point source through an NPDES permit. There is no exception for de minimus discharges either in statute or EPA's implementing regulations.

While the EPA is not in the position to speak to the letter referenced by the commenter, EPA notes that this letter predates the Corps' current definition of incidental fallback, which was developed in response to *National Mining Association v. U.S. Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998). In that case, the D.C. Circuit held that incidental fallback is not subject to regulation under the CWA. In so holding, the court distinguished placer mining as "the discrete act of dumping leftover material into the stream after it has been processed," which is subject to regulation pursuant to *Rybacheck*, from incidental fallback, which is not. *Id.* at 1406.

Furthermore, the Corps routinely informs applicants who request a 404 permit for small suction dredging in Idaho that, unless a regulable discharge of dredged or fill material will occur, the EPA is the lead agency for the activity.

6. Comment: Considering President Trump's 2/28/2017 executive order for the EPA to re-think its definition of the Waters of the U.S., so as to align with the Scalia opinion in Rapanos (rather than Kennedy's opinion etc.), will the EPA be considering this re-direction in this NEPA process? Some past dredgers have received violation notices on state-held non-interstate, non-navigable waters that directly link to Kennedy's "significant nexus" verbiage placing the original violation site as eventually terminating in the Pacific Ocean. This was not in Scalia's opinion. They are also threatened with sentencing per federal, not state sentencing guidelines.

I would also like to inquire if the EPA considers any waters in Idaho as NOT under EPA's jurisdiction, but rather State? There are many rivers/streams in Idaho that are in no way susceptible to use in "interstate or foreign commerce", per 33 CFR §328.3(a)(1). The South Fork of the Clearwater River is an example; Idaho does not consider it a navigable water, let alone susceptible to interstate or foreign commerce functions.

South Fork of Clearwater River is a non-navagable [*sic*] water way so no EPA permit is needed.

The EPA cannot simply ignore the 13-statewide Stay on the 2015 Rule defining "the Waters of the United States", of which Idaho is one

Also what is your interpretation of a navigable river? The majority of the stream you have listed as navigable are not deep or wide enough and flow too fast to navigate or even walk through.

Response: The permit is not undergoing a National Environmental Policy Act (NEPA) process. The permit must be written according to current regulations.

As the commenter stated, on February 28, 2017, the President of the United States issued an Executive Order directing EPA and the Department of the Army to review and rescind or revise the 2015 Rule. The agencies are in the process of reviewing the 2015 Rule and considering a revised definition of WOTUS consistent with the Executive Order.

Jurisdictional waters are defined as "waters of the United States" (WOTUS). 33 U.S.C. § 1362(7). Currently, EPA interprets WOTUS consistent with the 1986/88 regulations defining WOTUS that were in effect prior to the 2015 Clean Water Rule, as informed by applicable guidance documents and consistent with case law. 83 Fed. Reg. 5200, 5201 (Feb. 6, 2018). Notably, together with the U.S. Army Corps of Engineers, EPA issued guidance in 2008 (Guidance). Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States*. Available at: https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf (accessed on 25 July 2017). These regulations and the Guidance are available at: https://www.epa.gov/wotus-rule/about-waters-united-states.

Jurisdictional waters include, for example, waters that are currently used in interstate or foreign commerce. But, they are not limited to just waters that are navigable in fact, as one commenter suggested. Jurisdictional waters also include, for example, all interstate waters and waters that were used in the past, or may be susceptible to use in interstate or foreign commerce, including waters that are subject to Section 9 or 10 of the Rivers and Harbors Act. Interstate or foreign commerce includes commercial waterborne recreation (e.g., boat rentals, guided fishing trips, water ski tournaments, etc.). In addition, for example, jurisdictional waters also include relatively permanent tributaries of other jurisdictional waters.

In response to the comments above, the South Fork (SF) Clearwater River is a jurisdictional WOTUS for at least three reasons. First, because the SF Clearwater River flows year-round, it is a relatively permanent tributary of the main Clearwater

River. The Clearwater River is connected to the Pacific Ocean via other rivers and is regulated under Section 10 of the Rivers and Harbors Act beginning at the mouth of its North Fork down to the confluence with the Snake River. As such, the SF Clearwater River is a tributary of other WOTUS. In addition, the SF Clearwater River is a traditional navigable water because it has documented commercial waterborne recreation in the form of rafting and kayaking. Finally, since it crosses the boundary of Idaho as it flows into the Nez Perce Reservation, the SF Clearwater can also be considered an interstate water.

Should the agencies redefine WOTUS during the permit cycle, jurisdiction for the permit may change. Applicants must determine whether there is a discharge to WOTUS or not based on the currently applicable law.

General Comments

7. Comment: I would recommend that we have a meeting and a hearing. Public meetings are needed to educate the public, we stated in the letter. In addition, from what I understand, people feel valued when attending a hearing, as they can directly be engaged in the commenting process. In a previous EPA commenting period, I attended a hearing in which the EPA did a presentation, had a Q&A, then took public testimony with either written or oral comments. This format was well attended and effective for public engagement.

   Response: In a letter dated February 22, 2018, EPA denied the request for a hearing based on the degree of public interest and the nature of the issues proposed to be raised at the hearing (see 40 CFR § 124.12(a)(1) and 40 CFR § 124.11). The original hearing/meeting request (January 26) anticipated “a multiple stakeholder dialogue” and the clarification (February 16) stated that “people feel valued when attending a hearing, as they can directly be engaged in the commenting process.” Neither request stated the nature of the issues to be raised. Furthermore, EPA only received one request for a public hearing, and thus, there does not appear to be a significant public interest in a hearing. See 40 CFR § 124.12(a)(1). In addition, while EPA does recognize the importance of giving the public an opportunity for engagement, such opportunity to provide feedback has been provided via the public comment period, and it does not appear that a hearing would be beneficial for clarifying issues raised during the permitting process. 40 CFR § 124.12(a)(2).

   A public meeting is discretionary and EPA decided not to hold a public meeting as was done with the first draft permit in 2010.

8. Comment: We find many inconsistencies within the body of the Fact Sheet provided and upon initial review believe that the proposed GP exceeds the authority granted to the EPA and is in direct conflict with the written orders of the Supreme Court and is not acceptable to the citizens of the state of Idaho and conflicts with the regulatory intent of the CWA.

   We disagree with many of the suppositions presented in the fact sheet and directly oppose many of them as reflecting facts not in evidence or as conflicting with

existing statutes, guidelines, court orders and in some case conflict with APA procedural requirements.

Response: These comments contain general statements about the permit and fact sheet without enough detail to determine what issues the commenter disagrees with or finds inconsistent. Please see responses to the more specific comments found elsewhere in this document.

9. Comment: The reason for submitting this letter is to make sure that the EPA has at it's [*sic*] fingertips, some "alternative" scientific studies to consider if the decision is made to proceed regulating an industry that does not violate §301 of the Clean Water Act, according to multiple high court opinions. Every one of these studies conclude in varying language, that small scale suction dredge mining have a "less than significant" impact on the environment.

1) Effects of a Small Suction Dredge on Fishes and Aquatic Invertebrates in Idaho Streams. J.S. Griffith & D.A. Andrews. North American Journal of Fisheries Management. 1: 21-28. 1981.

2) Survey of Suction Dredge Mining Effort and Effects in Selected Mother Lode Streams. California Fish and Game. Laboratory Report 82-6. 1982.

3) Experimentally Determined Impacts of Suction Dredging in Montana. Virginia Thomas. North American Journal of Fisheries Management. 5: 480-488. 1985.

4) Effects of Suction Gold Dredging on Fish and Invertebrates in Two California Streams. Bret Harvey. North American Journal of Fisheries Management. 6: 401-409. 1986.

5) Impacts of Suction Dredge Mining on Anadromous Fish, Invertebrates and Habitat in Canyon Creek, California. California Cooperative Fishery Research Unit " U.S. Fish and Wildlife Service Humboldt State University. Coop. Agreement No. 14-16-0009-1547. 1986.

6) Effects of Suction Dredge Mining on Anadromous Salmonid Habitat in Canyon Creek, Trinity County California. Gary Stern. Humboldt University Masters Thesis. 1988.

7) Effects of Suction Dredging on Streams: a Review and an Evaluation Strategy. Bret C. Harvey and Thomas E. Lisle. 1998.

8) Impact of suction dredging on water quality, benthic habitat, and biota in the Fortymile River, Resurrection Creek, and Chatanika River, Alaska. EPA. 1999.

9) Response of fish to cumulative effects of suction dredge and hydraulic mining in the Illinois subbasin, Siskiyou National Forest, Oregon. Peter Bayley, Oregon State University Dept. of Fisheries & Wildlife. 2003.

10) Suction Dredge Activity Tour, Salmon River (Sept. 15, 2003). California Fish and Game Memo. 2009.

11) Effects of Small-Scale Gold Dredging on Arsenic, Copper, Lead, and Zinc Concentrations in the Similkameen River. Washington State Dept. of Ecology. 2005.

12) Small-Scale Mineral Prospecting White Paper. Washington Dept. of Fish & Wildlife. 2006

13) Some Effects of Suction Dredge Placer Mining on the Short-term Survival of Freshwater Mussels in Washington. Kirk Krueger, Patrick Chapman, Molly Hallock, and Timothy Quinn. Washington Dept. of Fish & Wildlife. 2007.

Response: EPA thanks the commenter for providing the references. The commenter suggests that environmental "significance" should be a determining factor for whether the EPA reissues the general permit. While the commenter has not defined environmental significance, CWA § 301(a) prohibits most point source discharges of pollutants to waters of the U.S. unless they are authorized by an NPDES permit without regard to environmental significance.

In addition, Harvey & Lisle (1998) conclude that "Suction dredging and associated activities have various effects on stream ecosystems, and most are not well understood. In some situations, the effects of dredging may be local and minor, particularly when compared with the effects of other human activities. In others, dredging may harm the population viability of threatened species. Dredging should be of special concern where it is frequent, persistent, and adds to similar effects caused by other human activities . . ." and "Where threatened or endangered species exist, managers would be prudent to *assume activities such as dredging are harmful* unless proven otherwise" (emphasis added).

The California Department of Fish and Game (1982) stated, "The majority of the miners (88%) were dredging according to DFG regulations. However, due to the large amount of dredging effort occurring in California streams annually (Table 3), *there is the potential for significant environmental impacts that were not measured or quantified in this subjective and limited study* (emphasis added).

Thomas (1985) said, "It should be noted, however, that a 6.4-cm [≈ 2.5 inches] dredge is one of the smallest made and Gold Creek had a small proportion of fines in the substrate, factors that would reduce the impact of dredging. Small modifications occurring over time and/or in a number of places within a *watershed can often reach levels resulting in major biological and ecological change"* (emphasis added).

Hassler (1986) indicated, "Dredges operating within 0.5 km [≈ 1640 feet] of another did infrequently *result in cumulative impacts* upon water quality" (emphasis added).

Bayley (2003) specified that, "The statistical analyses *did not indicate that suction dredge mining has no effect"* (emphasis added).

The Washington White Paper (2006) specified that, "The impacts of small-scale mineral prospecting *can be minimized primarily through operational restrictions, including the type of mining equipment, limitations on excavation zones within streams, and allowable work windows*" (emphasis added).

The Washington Department of Fish and Wildlife (2007) stated that, "Our results demonstrate no effect of entrainment and/or exposure of mussels by a suction dredge on their short-term survival, but *burial in dredge tailings often results in mussel mortality"* (emphasis added).

Stern (1988) concluded that, "If dredge mining regulations *were* expounded upon and miners were made aware of the instream habitat needs of salmonids*, the most serious impacts of suction dredge mining could be reduced"* (emphasis added).

The EPA Fortymile River Study (1999) indicated, "*Additional study is needed to fully quantify the impact of suction dredge mining on the environment* of Alaska before final conclusions are reached regarding the effects of this activity on Alaskan streams and their associated plant and animal communities" (emphasis added).

Also, Attachment A of IDWR's Stream Channel Alteration by Recreational Mining Instructions describe potential effects of suction dredging on fish. Please see the responses to Comment # 1, 3, 5 and 52 on the need for an NPDES permit.

10. Comment: Idaho's rivers are a cherished treasure for all Idahoans. When activities are proposed that could destroy these treasures, it's critical that regulations or permits controlling these activities do in fact protect our water and reflect the best available science. Ongoing monitoring and enforcement are also crucial to make any permits meaningful. The EPA's proposed NPDES general permit for suction dredge mining in Idaho does not meet these criteria.

    As a frequent visitor to the Northern Rocky Mountain Ecosystem, especially various parts of Idaho, I know that Idaho's rivers are a cherished treasure for all Idahoans. When activities are proposed that could destroy these treasures, it's critical that regulations or permits controlling these activities do in fact protect our water and reflect the best available science. Ongoing monitoring and enforcement are also crucial to make any permits meaningful. The EPA's proposed NPDES general permit for suction dredge mining in Idaho does not meet these criteria.

    Response: The goal of the CWA is to "restore and maintain the chemical, physical and biological integrity" of the waters of the U.S. See CWA § 101. The conditions in the permit were established to ensure that this goal is met. In addition, the permit protects the designated uses of the waterbodies covered by the permit, including aquatic life where applicable to the waterbody. Therefore, the permit is written to avoid deleterious effects on the applicable waterbodies.

11. Comment: There should be NO suction Dredge Mining in the Southfork of the Clearwater River, or anywhere in the Clearwater basin for that matter.

    I am against allowing any new permits to do suction dredging on Idaho rivers. Clean water sources are a basic human need and right. We need to protect our water sources, not issue permits to pollute our rivers. California is not allowing these frivolous gold dredges. Why would we, in Idaho, allow this pollution of our rivers? We lack current research on our rivers to protect our water.

    I am concerned about the abuse I see from suction dredge mining on Idaho's rivers and streams.

    For years, I have wondered and questions the rational [*sic*] behind allowing so much of our natural resources to be mined. Mineral, water, forest. I recognize that businesses want to make more money and there must be a market for what they

take from the earth and sell. That is business. But what about the flip side of these deals. I can appreciate that businesses pay something to the state for these rights. Does that short-term financial gain make a significant difference to the quality and quantity of the services the State provides? So, the trade-off seems to be the short-term economic benefit versus the long-term damage to the environment. Idaho continues to surprise for its natural beauty. Yet I have seen the results of abandoned dredging sites that diminish the beauty, atmosphere and accessibility of large swaths of riverside areas. I am always reminded of the clear cut areas of Oregon. The State benefited from selling permits and we will see the ugly effects for generations. So, please consider the full picture before making decisions about our land.

I am emailing to voice my opposition to issuing NPDES permits in Idaho.

At a time when rivers are increasingly recognized as crucial and limited sources of habitat, fish and wildlife, recreation and scenic pleasure, why in the world we let people dig them up for fun?

Response: There are certain instances where EPA is prohibited from issuing NPDES permits, see 40 CFR 122.4, none of which apply to the activity covered by this permit. Therefore, EPA is not prohibited from issuing this permit.

When an activity is deemed "recreational," the monetary rewards are not necessarily why someone participates in the activity. Some do it for the experience, some for an adventure, some find it an acceptable outdoor family activity but, no matter the reason, compliance with the permit will minimize the risk for the environmental damage that concerns the commenters.

Permit Requirements

12. Comment: IDWR proposes deletion of the 800 foot separation distance requirement from the draft GP. IDWR believes this requirement is inconsistent with the DEQ §401 Certification. IDWR suggests the EPA rely instead on the turbidity mixing zone requirement established by the §401 Certification. The current §401 Certification states that "there shall be no observable turbidity plume extending beyond the limits of the mixing zone. This limit applies even where multiple suction dredgers are operating at the same time and in the same vicinity; the combined mixing zone shall not exceed 500 feet in length (DEQ §401 Certification for Idaho Small Suction Dredge Placer Miners, December 4, 2013, p. 6). IDWR suggests and supports changing the 800 foot separation distance to match the §401 Certification condition to occur below the mixing zone, or 500 feet downstream of the suction dredge. If a minimum separation distance must be given, IDWR supports a minimum distance of 100 feet consistent with Idaho Stream Channel Alteration Rule 64.06 (IDAPA 37.03.07.64.06), as long as operations comply with the 500 ft. turbidity mixing zone limits authorized by the §401 Certification. The 800 feet separation distance is derived from the 500 foot mixing zone distance described on p 12, item II B 1., Effluent Limitations, plus a designated 300 foot buffer distance (see p. 21, EPA Fact Sheet). IDWR believes the 300 foot buffer

distance is arbitrary and not justified. EPA recently advised IDWR that the 800 foot distance is established by the Federal Government's Biological Evaluation but the Biological Evaluation appears to assume an 800 ft.

For all operations: Suction dredge operations shall not discharge within 800 feet of another suction dredge operation discharge that is occurring simultaneously. This is wrong in all accounts. First if the real property owner is on bottom of his claim this prohibits me from dredging the top 800' of my claim. My claim is only 20 acres but only has 500' of water I can't mine my claim If I don't mine my claim as required by federal government I loose [*sic*] my claim. Tell me how is this reasonable and don't tell me this doesn't' happen because it has happened last two years. The Forest service required us to fill out a sheet for turbidity and longest turbidity we had is 40'. 800' is way to much distance between operations. There is no reasonable issue for this 800' that someone pulled out of there *[sic]* hat.

Response: The commenter refers to the Idaho Department of Environmental Quality CWA § 401 certification for the prior permit. The current certification, dated April 11, 2018, contains the following mixing zone condition:

> Pursuant to IDAPA 58.01.02.060, DEQ authorizes the use mixing zone extends
>
> may 500 lineal feet downstream of the discharge point. There shall be no observable turbidity plume (cloudiness or muddiness) extending beyond the mixing zone.

This limit applies to single dredges or a dredge operation as defined in the permit and does not allow multiple suction dredgers to operate at the same time and in the same vicinity, as the commenter suggested.

In addition, the 800 foot separation distance requirement (500 foot mixing zone plus 300 foot buffer) was a requirement of the 2013 general permit. CWA § 402(o) and 40 CFR 122.44 (l) generally prohibit the renewal, reissuance, or modification of an existing NPDES permit that contains effluent limits, permit conditions, or standards that are less stringent than those established in the previous permit (i.e., anti-backsliding) with limited exceptions, none of which are applicable here.

Under CWA § 101, EPA is required to restore and maintain the chemical, physical and biological integrity of waters of the United States. Protection of the physical integrity of waterbodies includes protection of habitat. Some separation between the end of one mixing zone and the beginning of the next is necessary to protect habitat in the receiving waters and ensure that there are areas in the receiving water where water quality standards are being met and where sediments are not impacted. Permittees who believe that they can operate with a mixing zone less than 500 feet request an individual permit, which would allow them to operate with a smaller separation distance.

13. Comment: 5-1 inch dredges is way too low of a number. If a suction dredge miner has 5-1 inch dredges, that person should have many more 1 inch suction dredges. Perhaps the number should be transmogrified to 500-1 inch suction dredges

Response: EPA decided to allow the operation of several smaller dredges equating to a 5-inch dredge by means of diametrical equivalents. Since five 1-inch dredges are the diametrical equivalent of a 5-inch dredge and no basis has been given as to why 500 would be appropriate, no change has been made as a result of this comment.

14. Comment: Pg. 12 and 13, II.B.3.a. NP-CNF turbidity monitoring shows that temporary/short-term spikes in turbidity may occur during a dredging operation. Do the EPA's NTU limits apply to instantaneous measurements, or are they averaged over a specific period of time?

Response: The turbidity requirements apply instantaneously and are not averaged over any specific timeframe. The distance behind the dredge where monitoring occurs (the mixing zone) takes spikes in operation into account.

15. Comment: Pg. 13, II.C.1 and 2. The "AR" that is referenced here is apparently the Annual Report required of miners in Appendix B. This should be spelled out in this section.

Response: Annual Report is short cited as AR in Permit Part I.G.1.a. on page 10 of the draft permit.

16. Comment: Appendix A and B: The EPA should provide completed examples of these documents so that miners have a greater likelihood of completing them correctly.

For Appendix B, dredgers on the South Fork Clearwater River should also be required to provide total number of hours dredged.

Response: EPA will provide examples of a completed NOI (Appendix A) and Annual Report (Appendix B) on the Idaho Suction Dredge Permit website. Only applicants permitted to operate on Grimes, Elk, or Mores creek, including their tributaries, must report hours dredged in the Annual Report. Permits for those select waters are allocated by hours; for all other waters, permittees must report the number of days dredged.

17. Comment: FS page 17- The proposal suggests that an analytical level be used to determine if a change in NTUs are occurring, but doesn't specify if it is the responsibility of the suction dredge miner or an EPA inspector. Please clarify, who is responsible to take these measurements. It is unlikely a small suction dredge miner would have the equipment, training, and experience to accurately and consistently take these measurements. It is also not clear if the intent is to require a small suction dredge miner to purchase, maintain, and calibrate equipment as well as document result. If it is the intent of EPA to require the suction dredge miner to obtain these measurements, it is recommended that the miners be provided additional guidance on frequency and standard operating protocol for those measurements

Draft Permit Page 18 - I. Changes in discharge of Toxic Pollutants: Same comment as page 17 comment from the fact sheet above.

Response: The numeric values reflected in the Fact Sheet are contained in the TMDL for the SF Clearwater River. EPA requires that permit compliance be determined by visual monitoring. Therefore, no one is responsible to either physically obtain a sample for analysis or purchase, maintain, or calibrate equipment.

The Change in Discharge of Toxic Pollutants language found in Permit Part III.I. is standard language that must be contained in every permit and would only apply if samples were taken that revealed toxic pollutants not limited by the permit were being discharged. The permit does not require such sampling.

18. Comment: Why is it necessary to keep a copy of the entire GP at the location when dredging? If the dredger has his miners number and dredge permit number on site, that should provide authorization and the dredger should be responsible to make sure he is in the right water body at the right time

Response: The entire permit should be kept on or near the site of dredging so that the requirements of the permit are readily at hand and can be referred to easily.

19. Comment: Explosives, motorized winches, or other motorized equipment to move boulders, logs, or other natural obstructions to facilitate dredging are prohibited under this GP. mechanized equipment shall not be used below the mean (ordinary) high water mark. Why can't we move a boulder for safety with a motorized winch or come along. I believe this is a tort claim just waiting to happen as you put our lives at risk by not allowing us to use proper tools for safety.

Response: The prohibition is not intended to keep dredgers from moving any material but ensures that important habitat, which includes large organic debris and large boulders in these areas, will not be destroyed by mechanized equipment.

20. Comment: owners and operators may transfer no more than one gallon of fuel at a time during refilling. Owners and operators must use a funnel while pouring, If your [*sic*] have to repel or climb down 50' embankment to carry 1 gallon of gas is unreasonable. What is the reasoning for only one gallon it should be what you use for the day reasoning is more trips you take more likely for accident.

And as for using funnel with these new style spring loaded gas cans. Has the person who made this B.S ever used one of those with funnel trying to fill up a small motor. It's difficult to use on a car gas can and you require use to use for a motor with a funnel really!

Response: EPA regrets the confusion over this permit requirement which read: "Suction dredges must be anchored to the streambank during refueling, so that fuel does not need to be carried out into the stream. Unless the suction dredge has a detachable fuel tank, owners and operators may transfer no more than one gallon of fuel at a time during refilling." This requirement deals with two different

concepts: (1) anchoring to the streambank and (2) carrying fuel over water. EPA sees no reason why a closed container could not be transported across a waterbody and stored properly until utilized to refill the dredge, which must be anchored to the streambank during refueling. EPA has changed the requirements in Permit Parts II.D.10.e. and f. to separate these two concepts.

EPA regrets not taking into consideration the style of fuel cans that are now available. Permit Part II.D.10.a. has been changed to require a funnel only when no nozzle is used.

21. Comment: Why do we have to tell you when we are done the dredge season has set dates such as jULY 15 august 15 why create more paperwork and complication when you know when we are done because of end of season.

Response: Depending upon the waterbody, a dredge season may be a month, many months, or all year round, so EPA is unable to know how long any particular dredger operated in a permitted waterbody during the open season. EPA has known permittees not to operate because of equipment failure, road closures from forest fires preventing access to claims, unforeseen health concerns, etc. Total dredging hours or days is requested for the Annual Report, which is not due until January 31st for activity conducted during the previous year; a report is not required immediately upon cessation of dredging.

22. Comment: Any alterations made to the current general NPDES suction dredging permit for Idaho, out [*sic*] to make the document more rigorous and robust in terms of environmental protection. Suction dredging operations must be held to the highest degree of scrutiny to ensure thorough environmental protection and protection of existing beneficial uses. Further degradation of Idaho's irreplaceable river ecosystems is unacceptable.

Response: Changes made from the 2013 Permit are meant to simplify and clarify, as much as possible, the permitting requirements. Any changes made from the draft to the new final will be based on the how the comments relate to the regulations and laws governing the issuance of this permit.

23. Comment: Pg. 10, I.G.1. The EPA should specify that submission of an NOI in "a timely manner" means a specific number of days prior to any likely issuance of a General permit. Also, the EPA should make clear that submission or acceptance of a General Permit NOI does not place any time constraints on the Forest Service regarding the timing or any other aspect of Forest Service approval of a Plan of Operations from that prospective miner.

Response: The permit requires that NOIs be submitted at least 60 days prior to discharging (Permit Part I.G.2). This provides the time necessary for EPA review and allows for the 30 days that a land manager has to request that EPA deny coverage under the permit under Permit Part I.F.2. It is very likely that there are areas where coverage could be granted almost immediately and areas where coverage would take longer.

24. Comment: Pg. 11, I.G.1.b. See previous comment. Also, EPA should consider specifying a closing date for South Fork Clearwater River NOI submittal (May 1, perhaps) beyond which the EPA warns miners that permitting may not be completed by the beginning of the IDWR dredging season (July 15) even if that NOI is one of the 1st 15 submitted.

Response: The recommended NOI closure date in the comment is actually the opening date that EPA proposed in the draft permit. EPA proposed opening the NOI submittal on the SF Clearwater beginning May 1st for two reasons. The first is that permit coverage for the GEM creeks will be wrapping up at that time, providing separation between batches of permits processed by EPA. The second is that the land management agencies (USFS/BLM) require site inspections before dredging can be authorized, and it is only after these inspections that a list of prospective applicants can be projected. It is in the applicant's best interest to apply early and schedule their site inspection(s); a May 1 opening date is encouragement to do so.

Also, EPA requires the land manager to say that permit coverage can be authorized, and during the 2016 and 2017 seasons, this word came just days before or on July 15. Finalization of NPDES permits for the SF Clearwater hinges on approved Plans of Operations (POO) by the land management agency. The applicant would be at a disadvantage if EPA established a cutoff date that isn't also adhered to by the land manager (i.e., EPA would have to deny permit coverage to someone still seeking approval of their POO). Coverage by EPA can be done very quickly upon receipt of land management agency approval. We see no reason to prevent an applicant from obtaining permit coverage; rather, we wish to encourage early submittal of NOIs.

25. Comment: For the small recreational dredger who might only use a 2" dredge and want to dredge for perhaps 4 or 5 days during the open period, the application and notification process is more work than it is worth.

Response: EPA sympathizes with these types of operations. Unfortunately, the process is complicated because Idaho contains many protected and withdrawn waters that cannot be covered by either EPA or IDWR, as well as critical habitat designated for endangered species, and waters already impaired for sediment or mercury. Unwinding these complexities takes time.

While it may not be readily apparent, EPA is continually looking at ways to simplify the permit process (e.g., improving permit materials, evaluating options to apply online, offering over-the-counter permits for pre-approved waters, etc.). Since the permit is only reissued every five years, certain improvements may not be incorporated right away, or may require additional effort to accomplish.

26. Comment: If there ARE waters where the [IDWR] Letter Permit is sufficient, that should be made very clear on the permit and by EPA.

Response: As noted in Comment #4, IDWR and EPA issue permits under two different authorities; one permit does not substitute for the other. The only instance where an IDWR Letter Permit may be required, but coverage under EPA's NPDES permit is not, is if there is no discharge of pollutants (rock, sand) from a point source to WOTUS associated with the activity.

27. Comment: Please clarify whether there is a minimum distance requirement for storing fuel from surface water.

Response: Permit Part II.D.10.d. states that "All chemical or petroleum products shall be stored in a safe and secure location at all times. Fuel not stored and dispensed with an American National Standards Institute (ANSI) or Underwriter Laboratory (UL) approved safety container must be maintained more than 100 feet from the mean (ordinary) high water mark." If fuel is stored and dispensed in an appropriate container as described above, there is no minimum distance from surface water.

28. Comment: Pg. 12 and 13, II.B.3. Does this restrict a mining operation to dredging no more than 8 hrs per day, or does it allow a greater processing rate after the first 8 hours of dredging? Or something else?

Response: "Permittees are limited to processing an average of 2 yd^3/hour over the period of an 8-hour day" is applicable to the SF Clearwater River. It means permittees are limited to an 8-hour processing day and no processing rate is authorized outside of this timeframe.

29. Comment: Pg. 4, I.A.1.; Pg. 8, 1.E. EPA should consider that IDWR suction dredge permitting scheme may change during the duration of the NPDES permit to a form which is not compatible/complementary with the role envisioned by the EPA. In particular, the stream reach and season restrictions currently associated with the IDWR letter permit are subject to change at essentially any time at the discretion of the IDWR and/or higher levels of the Idaho State government. The EPA permit should probably have an explicit re-opener clause based on the potential for IDWR permitting changes.

Response: Neither Permit Part referenced in the comment refers to any specific requirement of IDWR. The first says that if a person has an IDWR permit, they may be eligible for coverage under the EPA permit (which implies they may not), and the second advises that a permit from IDWR is necessary in addition to the EPA permit.

EPA acknowledges that IDWR's Recreational Mining Permit Instructions (Instructions) are revised annually by April 1. Where possible, the EPA permit does not reference IDWR timing requirements which may be subject to change; rather, the EPA permit encourages applicants to contact the appropriate regional IDWR office and consult the latest Instructions, for the most current information.

30. Comment: Pg. 12, II.B.1.a. and b. EPA should note that the allowable distance beyond which visible increases turbidity (the mixing zone) are permitted may vary between permitting agencies, such that a visible turbidity distance less than EPA's 500' may apply to a mining operation.

Response: EPA recognizes that other agencies may have more or less stringent requirements, however, EPA is not able to enforce permit requirements other than its own. When and where restrictions differ between permitting authorities, the most stringent limitation sets the standard for the operation.

Permit Process

31. Comment: Drafts are not required to be submitted to the OMB for review; however, does the EPA intend to send the Final Rule document to the OMB/Congress for review pursuant to 5 U.S.C. § 801? This document is considered to be a rule, per the 5 USC § 551(4) definition.

The permit that was erroneously issued in 2013 was never reported to Congress according to the statutory requirements of the Congressional Review Act (CRA). This means that this permit was and is not in effect until it is reported to Congress and Congress acts to either approve it or disallow it. It makes no difference what distortions the EPA Region 10 places in the Federal Register about this permitting scheme, it remains a significant rule according to the CRA. Since this proposed rule is a new rule, it not only must go through the Government Accounting Office to meet the criteria set forth and be in compliance with the Office of Management and Budget, but must face Congressional Review. Send the new rule to Congress or scrap it. The clock isn't even ticking on the rule that EPA thought it had in 2013 because no report has been sent. The rule never took effect. Any and all actions that EPA has taken with respect to this adulteration of our system of laws is needing adjudicated, as it amounts to egregious lawlessness.

The EPA has no authority to propose a Rule, per 5 USC 551(4), that mandates a host of restrictions upon the industry, especially without submission to the Comptroller General and Congress per the Congressional Rule Act. The EPA must rescind the Proposed Rule and only reconsider it again, if Congress amends the CWA §301

Response: The Congressional Review Act ("CRA"), 5 U.S.C. § 801 *et seq*., when it applies, does not require submittal to the Office of Management and Budget. EPA does not intend to submit today's permit to Congress for review under the CRA, as the CRA applies solely to "rules" as defined by the Administrative Procedure Act. 5 U.S.C. 804(3). Section 402 of the Clean Water Act directs EPA to issue "permits" to authorize the discharges at issue here and, under the APA, "permits" are adjudicatory orders which are distinct from "rules." Under the APA, an adjudication is an "agency process for the formulation of an order." 5 U.S.C. 551(7). An order, in turn, is defined as "the whole or part of a final disposition, whether affirmative, negative, injunctive or declaratory in form, of an agency in a matter *other than rule making but including licensing*." 5 U.S.C.

551(6) (emphasis added). A license is defined to "include the whole or part of an agency *permit*." 5 U.S.C. 551(8).

Comments urging that the prior permit should have been submitted to Congress under the CRA are outside the scope of today's action.

32. Comment: Suggest that the EPA make it clear to miners that an EPA General NPDES permit is likely to or may be required by National Forests or BLM Districts across Idaho as a condition of a FS/BLM Plan of Operation approval, and also that approval by the EPA does not obviate the need for coordination with/approval from the appropriate National Forest/BLM District.

Response: Permit Part I.G.5. requires applicants to submit a copy of their NOI to the land manager. EPA also gives land managers a 30 day review period according to Permit Part I.F.3.a. EPA routinely advises permittees in the coverage letter that other authorizations may be necessary, e.g. IDWR permit or USFS/BLM Plan of Operations. Promoting the requirements of other entities does not rest solely with the EPA.

33. Comment: When the Boise National Forest (BNF) is evaluating a proposed Notice of Intent or Plan of Operations, secondary fuel containment is always considered. In an order to be consistent, the BNF requests you include language in this section requiring secondary containment for all fuel and petroleum products.

Response: EPA does not require secondary containment for small amounts of fuel and due to the transient nature of the suction dredge operations covered by the permit, does not anticipate that any dredger would store the amounts necessary to require it but a note has been included in Permit Part II.D.10.d. to indicate the USFS requirement. As noted in Comment #30, when and where restrictions differ between permitting authorities, the most stringent limitation sets the standard for an operation.

34. Comment: It would be helpful if EPA would do the coordination and obtain the necessary approval with any other agencies necessary (USFS, BLM, DEQ, or any others). The applicant may not be aware of all of the necessary approvals (Permit Part I.D.4.a.).

If EPA is responsible for issuing dredge permits, it would be helpful for the EPA web site to contain all information or restrictions in one consolidated location whether it is an EPA, land manager, IDWR or other restriction so the dredge applicant only has to look in one place and avoid conflicting information or interpretation of information listed in different places (Permit Part I.E.).

Response: EPA appreciates the desire for a "one stop shop" permitting framework. Each agency involved in permitting suction dredging does so under different authorities, however, and must ensure compliance with different state and/or federal requirements. One agency cannot issue permits on another's behalf. It is the applicant's responsibility to obtain all necessary permits although EPA strives

to inform applicants, via the permit website or through correspondence, about other potential authorizations needed, and where more information can be found.

Anti-degradation

35. Comment: I'm also concerned that the IDEQ hasn't fully completed the required antidegradation analysis. IDEQ must fulfill all requirements of Idaho's antidegradation rules—including ensuring that all other dischargers in a watershed are working effectively—before certifying this permit.

Prior to approving activity or discharges into these waters, DEQ must perform an antidegradation review to evaluate the effect of an activity or discharge on water quality through a Tier II analysis, as outlined in IDAPA 58.01.02.052.08. It's important to note that a Tier II analysis requires a high-degree of specificity in order to fully assess the chemical, physical, biological and other information regarding the water body. In order to accomplish this DEQ must have a thorough understanding of both current and historic water quality as well as an accurate estimate of the assimilative capacity of the stream and what magnitude of pollution would correspond to a 10% reduction in assimilative capacity. In addition to this, per IDAPA 58.01.02.052.08.b, DEQ must assure that the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for all nonpoint source controls are achieved throughout the watershed prior to allowing any degradation. To confidently assure these provisions are met requires DEQ to have an intimate knowledge of individual streams as well as the larger watersheds they are a part of. As presented, DEQ's 401 Certification appears to lack some of the analyses required by Idaho's antidegradation policy. For example, DEQ makes the assumption that all Tier II water bodies throughout the state have the capacity to assimilate any potential pollution resulting from the discharge limits allotted to dredgers. Is this truly the case for every water body in Idaho? Or could potential pollution associated with this allocation exceed the 10% threshold stipulated in the antidegradation rules? DEQ's Antidegradation Review needs to answer this question for all Tier II water bodies that may experience dredging prior to certifying that this GP complies with Idaho's Antidegradation Rules. DEQ's 401 Certification lacks any mention of such an assurance, and thus remains incomplete.

Prior to certifying this GP, DEQ must complete and share with the public an analysis demonstrating that the highest statutory and regulatory requirements are being upheld within any watershed that contains a Tier II water body that may have dredges operating in it. DEQ must adhere to the requirements stated in IDAPA 58.01.02.052.05 requiring Tier II analyses to be performed on a water body by water body basis. Further, DEQ must comply with the requirement to provide the public notice and an opportunity to review the antidegradation analysis, as stated in IDAPA 58.01.02.052.08.e.iii.

Response: DEQ provided the following response: Antidegradation implementation for general permits is outlined in IDAPA 58.01.02.52.03. This section of the Idaho Water Quality Standards states that the Department will determine if a permit

adequately addresses antidegradation. And, if supported by the permit record, the Department may also presume that discharges authorized under a general permit are insignificant. While small suction dredging conducted in accordance with the permit may result in short-term, localized increases in turbidity, DEQ has determined that such activities do not result in degradation of water quality if the measures presented in the permit and 401 certification are adhered to. Taking into account the size and character of the activity, dredging endeavors authorized under this general permit are not expected to result in lasting adverse changes to water quality (see Mixing Zone response below). Therefore, the Department has determined that small suction dredgers operating inside permit-approved, Tier II water bodies are insignificant. That finding completes the Tier II analysis and there is no need to require application for an individual permit.

36. Comment: Given the high degree of specificity required for a Tier II analysis, we suggest that DEQ's 401 Certification narrow its coverage to only certify dredging on Tier I water bodies. Applicants seeking to dredge in a Tier II water body should be directed to apply for an individual permit, thus providing DEQ a more appropriate means to adequately fulfill all requirements stipulated by Idaho's antidegradation policy.

Response: Given the response to Comment #35, EPA sees no reason to change the requirements for permit coverage on Tier II waterbodies.

TMDLs

37. Comment: I'm concerned that some of the permit conditions will be ineffective or do not comply with Idaho's rules. For example, the EPA proposes to use a 500-ft mixing zone in impaired water bodies. If a water body is impaired by sediment, then a mixing zone is a poor solution because sufficient dilution is impossible. A mixing zone is only appropriate if water quality standards are met at the mixing zone boundary. Suction dredging should instead be explicitly prohibited on water bodies impaired by sediment.

Response: Suction dredging is explicitly prohibited in waterbodies impaired for sediment, except where a TMDL has been developed that contains a wasteload allocation (WLA) for suction dredging, and where the appropriate conditions are incorporated into an NPDES permit. Two Idaho TMDLs contain WLAs for suction dredging: the Mores Creek and the SF Clearwater River TMDLs. Both WLAs have been incorporated into the permit so that dredging can occur in these waterbodies under specific conditions. Please see Comment #41 regarding mixing zones.

38. Comment: The permit relies on outdated information based on TMDLs from 2004 and 2010. These TMDLs should have been reviewed every five years, but it appears that no such review has occurred.

As a fisherman, birder and grandfather teaching my family about the precious nature of Idaho's abundant and clean (yet threatened by climate upheaval) waters

I'm concerned that the EPA's proposed NPDES general permit for suction dredge mining in Idaho relies on outdated information so may be ineffective at protecting Idaho's water quality. For example, the EPA is proposing effluent limits based on TMDLs from 2004 and 2010. These TMDLs should have been reviewed every 5 years, but it appears that no such review has happened. How can the EPA construct protective permit limits using such outdated information?

Ultimately, the general permit proposed by the EPA is based on outdated information and is not strong enough to protect Idaho's rivers.

Since the EPA has stated it has not assessed the efficacy of the 2013 Idaho General Permit, I also look forward to reading your responses to other commenters who may have a concern of EPA's selected use of perhaps outdated and non-peer-reviewed scientific literature and ignoring the many scientific studies that all conclude that small scale suction dredging is Not Likely to Adversely Affect the environment or aquatic species.

The EPA is proposing to permit dredges through this GP on water bodies in Idaho that are impaired by sediment if a TMDL exists and prescribes a WLA specifically for dredge operations. We are concerned with this approach in scenarios where the derived WLA is from a TMDL that is outdated and lacks a recent review of its efficacy. For example, the EPA approved the SF Clearwater TMDL in 2004 and the Boise-Mores Creek TMDL in 2010. Pursuant to Idaho Code §39-3611(7), TMDLs should be reviewed and updated every 5 years. If a TMDL is outdated under this requirement then the EPA should not rely on any WLAs presented as part of the TMDL when making permitting decisions.

Ultimately, the general permit proposed by the EPA is based on outdated information and is not strong enough to protect Idaho's rivers.

Response: There is no provision in the CWA, nor in enacting regulations, that requires TMDLs to be reviewed and updated on a regular basis. The permit is based on the most recent TMDLs developed by the state of Idaho and approved by EPA.

DEQ notes that they continue to involve considerable resources in developing five year reviews of TMDLs in accordance with Idaho Code §39-3611. Fixed resources require that the Department direct efforts toward priority watersheds in order to assure that plans are both adopted and revised to continually achieve water quality standards and protect beneficial uses. Five year reviews are designed to assess that progress is made toward TMDLs and that established targets are still appropriate for the watershed. A review does not necessarily mean there will be any revision to a TMDL, or that the document is out of date. Lack of a review does not imply the factual basis of an approved TMDL has changed or is no longer valid.

39. Comment: IDWR recommends EPA reconsider permit allocation limits based on the overstated dredge processing rate of 2 cubic yards per hour. EPA should reconsider the 15 permit limit on the South Fork Clearwater River given that the TMDL WLA is so high in comparison to the actual activity whereby both the average dredge processing rate and hours worked per day is at least half of the assumed rates used in the both the draft NPDES GP and the TMDL.

Response: The 15 dredge requirement on the SF Clearwater River is a condition of the DEQ-issued, EPA-approved TMDL for this basin. 40 CFR 122.44(d)(1)(vii)(B) requires that "Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7" (Total maximum daily loads (TMDL) and individual water quality based effluent limitations). Until a TMDL with differing requirements is adopted by the State and approved by EPA, EPA cannot permit any more than 15 dredges on the SF Clearwater River.

40. Comment: As a dredger on the S.F. Clearwater I am happy to be able operate there again this year. I would like to see the season extended for another four weeks at some point in the future.

Response: Limited suction dredging on the SF Clearwater was achieved through consultation led by the U.S. Forest Service (USFS) with the USFWS and NMFS, in compliance with the ESA. Completed ESA consultation in waters where threatened or endangered species are present, or where their critical habitat has been designated, enables waters previously ineligible for coverage under the EPA permit to be opened to controlled suction dredging. EPA allows this approach under Permit Part I.D.4.a., which resulted in the opening of Lolo, Moose, French, and Orogrande creeks, and SF Clearwater River between 2013 and 2018. This approach will be retained in the EPA permit, to provide additional waters with ESA concerns the same opportunity for evaluation.

The EPA does not set the timing restrictions for suction dredging, but instead defers to IDWR. IDWR allows dredging from July 15 through August 15 each year in the SF Clearwater River, in order to avoid periods when chinook, cutthroat, and steelhead are spawning and eggs are incubating. Also, for purposes of the TMDL wasteload allocation, it is assumed that 15 operations could dredge each year during the July 15 – August 15 window without resulting in increased bedload movement or surface fine sediment levels downstream of active mining. No wasteload allocation is authorized outside of this one-month period. If IDWR were to extend the season, NPDES permit coverage could not be authorized outside of the July 15 to August 15 timeframe until a new TMDL with differing requirements is adopted by DEQ and approved by EPA.

41. Comment We are concerned over the proposed 500 ft. mixing zone for dredge operations within water bodies impaired by sediment, irrespective of whether a TMDL and WLA for dredge operations exists.

Pursuant to IDAPA 58.01.02.060(a), mixing zones shall not be authorized for a given pollutant when the receiving water does not meet water quality criteria for that pollutant; provided, however, the Department may authorize a mixing zone when the permitted discharge is consistent with an approved TMDL allocation. However even if a TMDL assigns a WLA to dredge operations, any mixing zone allotted to a dredge operation will be insufficient at diluting sediment discharges

from the dredge given that the water at the boundary of the mixing zone would already be impaired by sediment.

A mixing zone is not a legitimate solution to diluting sediment on water bodies already impaired by sediment. Rather, the EPA and DEQ should identify a numeric value that is consistent with Idaho's water quality standards on floating, suspended or submerged matter (IDAPA 58.01.02.200.05), and then assign end-of-pipe limits to any permitted discharger. If end-of-pipe limits are not achievable then it may be inappropriate to conduct dredging activity on that water body.

Response: EPA consulted with DEQ and received the following response: As noted in the comment, IDAPA 58.01.02.060.01.a specifically allows for mixing zones in waterbodies that do not meet criteria for the pollutant in question when two conditions are met: (1) the permitted discharge is consistent with an approved TMDL or other applicable plan or analysis that demonstrates there is available assimilative capacity and (2) authorizing a mixing zone is consistent with achieving compliance with water quality standards in the receiving water. DEQ has determined that the 500 ft. mixing zone authorized in this 401 Certification meets both conditions.

First, the permit generally prohibits, and thus no mixing is authorized for, suction dredging in waters that have been identified by DEQ as impaired due to sedimentation/siltation. The only exception is for waterbodies where an existing TMDL has an established WLA for discharges associated with suction dredging. There are two approved TMDLs that contain such WLAs— Boise-Mores Creek Subbasin Assessment and TMDL (DEQ 2009) and South Fork Clearwater River Subbasin Assessment and TMDLs (DEQ 2003). The fact that both TMDLs provide such WLAs demonstrates there is available assimilative capacity for these discharges in these waterbodies.

Second, sediment movement is a normal part of stream dynamics, with a balance struck between supply and power to transport the supply that is unique to every stream. The nature of the sediment supply varies by landscape and land use. The ability of the stream to 'handle' its supply varies with flow. Sediment impairment occurs when the balance is lost and can manifest itself in many ways. For example, turbidity caused by an excessive load of fine particles that do not quickly settle out and thus may impair sight feeders, an excessive load of somewhat coarser particles that can fill in interstitial space of spawning gravels and thus may impair gravel spawning fish, or excessive loading of coarser particles can cause pools to fill in and may cause loss of habitat. Because the causes and nature of sediment impairment is stream-specific, the water quality standards provide a narrative criterion for sediment based on "quantities which impair designated beneficial uses," IDAPA 58.01.02.200.08. Given this sediment-specific criterion, DEQ does not find it appropriate to apply or translate the general criterion for floating, suspended, or submerged materials.

While small suction dredging disturbs in-place sediments, there will be no increase in the supply of sediment to the stream if the activity is conducted according to the permit and DEQ's 401 Water Quality Certification. Furthermore, in streams draining the Idaho Batholith, such as the South Fork Clearwater and Mores Creek,

the vast majority of the sediment moved by dredging rapidly resettles, especially under the low flow conditions in which dredge mining typically occurs. The primary water quality concern is the increase in turbidity that results, and Idaho's Water Quality Summary Report 34: A Recreational Suction Dredge Mining Water Quality Study on South Fork Clearwater River demonstrates this is small and does not translate downstream more than 150 meters (~492 ft.). Furthermore, the report concludes that "Idaho's WQS criteria for turbidity were not violated within the sediment plumes of active recreational suction dredges" for the duration of the study. Therefore, authorizing a 500-foot mixing zone is consistent with achieving water quality standards and adequate to address turbidity increases caused by dredging activities.

Endangered Species

42. Comment: These creek and river corridors are not spawning grounds for the Salmon or Steelhead they are just travel routes to get to the spawning grounds. Plus the state regulates that part of the mining by not allowing dredging during these spawning time period and the time for the smelts to make there [*sic*] way back to the ocean. If you all really and seriously looked into this you would understand how this has no effect on your endangered species act or critical habitat areas in question.

    Response: The designation of any species as threatened or endangered, along with the designation of critical habitat, is done by either USFWS or NMFS (collectively, the Services), and not EPA. EPA cannot change ESA designations. Pursuant to 40 CFR 122.49(c), EPA must consult on the ESA with the Services to ensure that any action authorized is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. EPA decided that, in the context of this general permit, site specific decisions would be difficult and time consuming to make and instead included a provision that allows EPA to utilize the more site specific consultations of other federal agencies to determine whether dredging would jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. EPA successfully used this approach on Moose, Lolo, Orogrande and French creeks and the SF Clearwater River. The final permit retains this provision and this approach will be used in the future when compliance with the ESA can be assured.

43. Comment: The BNF is participating in a statewide programmatic consultation effort and has provided the USFWS a draft BA for review. While the timing of this current consultation effort may not be practicable for the EPA to participate as a cooperating agency, I would recommend the EPA contacts both the USFS Regions 1 & 4 fisheries biologists to identify if this may be possible in the future.

    Response: Comment noted.

44. Comment: Pg. 5, I.D.4.a. and b. Regarding the "Comments Requested" box and following paragraph on coordination with FS/BLM for ESA Section 7 coverage for mining on non-Federal land, the EPA needs to understand that there is no

mechanism for the FS/BLM to provide such coverage. If the EPA wants to provide Section 7 coverage on non-Federal land, then it needs to do its own ESA consultation (or possibly be a cooperating agency in a joint consultation). Just following "stipulations" from another agency's consultation doesn't meet the procedural requirement of Section 7 for the EPA.

Response: EPA intended this mechanism to lead to a cooperating agency ESA consultation resulting in the development of more site specific stipulations than could be developed during the reissuance of the permit. In the case of private or state lands where the federal land managers do not have jurisdiction, EPA would become the consulting agency. The stipulations that are referred to in the draft permit are those that EPA would place on the coverage and while they would be similar to the land managers' stipulations, the stipulations may not be exactly the same. See Comment #45 for EPA's final decision on the matter

45. Comment: EPA should coordinate with the Forest Service and Bureau of Land Management for ESA consultations and should definitely include the resulting stipulations in the authorization letter. The management of habitat for ESA-listed species should be on a watershed scale, and it is essential that communication occur regularly between federal, state, and private land managers to ensure that a coordinated effort is being earned out to protect these important species and their habitats.

EPA should seek to coordinate with land managers for ESA consultations and apply these results to private and state land. Endangered aquatic species directly suffer from suction dredging and any area these species are present, regardless of jurisdiction, must be off limits to suction dredging activities. Land management agencies are charged with coordination management action that insure the survival and proliferation of endangered species. Therefore, these agencies ought to be involved with informing decisions made by the EPA.

The USFWS supports coordination between the EPA and FLMs for all consultations of ESA listed species and critical habitats as there are overlapping but also different responsibilities for the agencies on federal and state/private lands. A NOI is required to alert FLMs that a small suction dredger intends to operate on federal lands- with or without listed species being present- to ensure that the ESA and other federal regulations and procedures are followed on those lands. However, as the federal agency issuing the GP (the "federal nexus"), the EPA is also responsible for ensuring that the effects of the action on private/state lands do not jeopardize the continuing existence of ESA-listed species or result in adverse modification of designated critical habitat. Therefore, the Service recommends that EPA should verify that the FLM is able to coordinate before proceeding in such circumstances on private/state land to ensure that all agencies and the permittee receive the proper coverage under the ESA.

There should be no coordinations with land managers for ESA because there should be no permit!

Response: As noted in Comment #44, EPA intends to coordinate with federal land managers and other federal agencies, where possible, on ESA consultations as opportunities arise during the next permit cycle. Permit Part I.D.4.b. describes how stipulations will be incorporated into permit coverage.

Responses to Comment #1, 2, 3, 5 and 52 explain why an NPDES permit and ESA consultation is required.

46. Comment: Pg. 6, I.D.4.c. Several to many of these streams/basins do in fact include critical habitat for various ESA-listed fish species.

Response: EPA has decided to provide the list discussed in Comment #47 as the waterbodies available to be covered (see Table 1 of the final permit). This list includes waterbodies that are designated critical habitat under the ESA. Waters that are designated critical habitat could be covered by the permit if the decision of an ESA consultation supports dredging (generally with additional stipulations). The referenced list is not contained in the final permit but will be kept as reference for applicants submitting IDWR's Joint Application for Permits for waterbodies deemed closed or not on the list.

Waterbodies List

47. Comment: Identification of the open water bodies is very difficult. The EPA maps show a lot of open bodies of water (or restricted waters) and the description identifies the restrictions on the open waters. But, the maps are very difficult to use without any identifiable landmarks such as roads, major cities, or names of the water bodies on the maps.

It would be extremely helpful to those trying to interpret the general permit if EPA were to add a list based on Idaho Department of Water Resources' (IDWR) list of open waters to show those waters that are closed in a watershed and the reason for the closure (i.e., ESA, sediment/suspended solids, and/or mercury impairment).

It would be helpful for the EPA to produce a table to include IDWR's list and caveats EPA has for ESA and impaired waters. Having as much information available in regards to ESA and impaired waters in the general permit as possible will only ensure compliance with the guidelines. A clear guide to IDWR and EPA restrictions for ESA and impaired waters will increase the likelihood that protection for these critical species and habitats be upheld

Including the IDWR list is not recommended since this would confuse the two separate permitting process and potentially create future errors if the IDWR table is not updated with EPA or vice versa.

Such a list [IDWR's] may provide some clarification on what waters are considered closed or open to suction dredging under the GP. However, some ESA closed waters are easily and definitively listed, such as designated critical habitat for bull trout and white sturgeon, or for the range of listed snail species. Other closed areas, such as waters not designated as critical habitat but occupied by bull trout,

are not a definitive or static list and the closed area may increase as evidence of occupancy becomes available, either through additional surveys or new detection techniques. It is expected that any new occupied areas will most likely be detected on federal lands. Therefore, the Service recommends language noting that bull trout occupancy may be documented in waters not yet included in the list and specific areas may require further investigation with FLMs and EPA

The BNF observed numerous occasions where those using suction dredges were confused on what river segments were open to the GP in the previous permit cycle. Much of the confusion appears to be where EPA and IDWR open waters were in conflict. The BNF would support any effort such as a table or map that would aid and educate the public on the status of specially regulated ESA and impaired water bodies.

Response: EPA understands the general confusion as to which waterbodies are open or not. To that end, EPA took the list of waterbodies in Attachment F of IDWR's Instructions and amended the list to include waterbodies that are impaired for sediment or mercury, or are designated critical habitat under the ESA (see Table 1 of the final permit). Waters that are impaired could not be covered by the permit unless the permit is modified to include a wasteload allocation from an approved TMDL, as was done in the SF Clearwater River and Boise-Mores Creek TMDLs. Waters that are designated critical habitat could be covered by the permit if the decision of an ESA consultation supports dredging (generally with additional stipulations). Waters not included in the list that are subject to the Joint Application for Permitting (JAP) by IDWR could be covered by EPA if the reasons listed in Permit Part I.D. do not prevent or delay coverage.

EPA recently became aware of an exemption to dredging prohibitions in the SF Clearwater River Basin Plan which allows dredging if a JAP is filed with IDWR. In the 2014 Modification of the 2013 GP, EPA intended to capture and public notice these types of exemptions but did not open this exemption for public comment at that time nor did the 2017 draft permit address this issue. As such, the permit considers the SF Clearwater River tributaries as Protected Rivers and cannot provide permit coverage until the issue is opened to the public for comment through a modification of this permit or during the next reissuance. Until this issue is addressed, dredgers seeking to discharge in this watershed, other than the mainstem of the SF Clearwater River, need to file an individual application for an NPDES permit.

48. Comment: IDWR may support inclusion of the suggested table but would like an opportunity to review such a table before the general permit is finalized. IDWR appreciates that EPA may allow a process to cover a waterbody that may already be closed on EPA's list but IDWR has questions and concerns that EPA's process should necessitate or dictate a specific "process with IDWR". IDWR does not know or understand necessarily what EPA is suggesting or proposing with this specific request for comments. We also are not entirely certain what is meant by EPA's reference to IDWR's "long form process."

Response: EPA shared the list included in the permit with IDWR for review prior to finalizing the permit but did not receive any feedback on the list. Regarding the long form process, the Stream Channel Alteration by Recreational Mining Activities IDWR Instructions for 2017 (valid April 1, 2017 thru March 31, 2018) states: "If you propose to work in a closed area or an extended season, or use mining equipment that exceeds the minimum standards described in these instructions, you must use the long form, Joint Application for Permits, to apply for a stream channel alteration permit." EPA understands that in the 2018 Instructions IDWR has eliminated reference to the term "long form" so will in the future refer to it as the "Joint Application for Permits" or “JAP”.

Allocations

49. Comment: As for allocations for hours or in cubic yards we are given a short time frame for doing our job we should be allowed to dredge from dust to dawn and move whatever material we can move in that day. These rules are forcing us out by making it unproductive do *[sic]* to over regulation.

Response: The allocation of hours versus cubic yards is only a concern in the GEM creeks because of the TMDL applicable to those waterbodies. The response to Comment # 50 addresses this issue.

50. Comment: I don't think it really matters - allocations made one way will be preferred by some dredgers and allocations made the other way will be preferred by other dredgers (Permit Part I.G.1.a.).

The EPA should retain the use of time (hours) due to the stated inability to accurately measure effluent from the dredge. Reliance upon sediment volumes for allocations creates a scenario in which the permit limits could be violated. It appears that allocations using time provide greater assurances that water quality will not be impaired due to dredge activity, and therefore we recommend the continued use of time as the appropriate allocation unit.

EPA should not change the method of wasteload allocation under the Mores Creek Total Maximum Daily Load (TMDL). EPA should maintain the current method of allocating hours on an annual basis and proportionately distributing allocated hours based on the number of applicants. While the number of hours worked can be readily monitored, there is no adequate way to monitor and measure the actual cubic yards processed by each dredge. If the allocation were to be changed from hours to yd^3 . . . recommend using the dredge manufacturers' maximum rated volume for each dredge, which would require collection of such information. The calculation for the Mores Creek TMDL is based on small, recreational dredges operating for 4 hours a day, mining no more than 2 yd3/hr. The California Department of Fish and Game Suction Dredge Permitting Program Literature Review"* includes data that indicates suction dredges with nozzle sizes of 2-5" and engine horsepower of 2.5-13 move a volume of sediment ranging from 1.1-8 m3/hr. This suggests that the TMDL load allocation of 2 yd^3 may be a conservative estimate to begin with. Additional data from the Oregon Department of

Environmental Quality, NPDES Permit Evaluation Report indicates suction dredges ranging from 2-4 inches move 1.4 to 5.2 cubic yards per hour for Keene brand dredges and 2-12 cubic yards per hour for ProLine brand dredges. Therefore, the current method of allocation is likely not underutilizing the TMDL and does not warrant changing.

Suction dredge allocations should be made on a volume basis as opposed to hours of operation. In considering allocations, existing conditions should be evaluated. Levels of fines sediment and streamflow volume are but two factors that could influence the impacts of a dredging operation.

Lacking specific data for dredge sizes and processing volumes, and the numbers or ratios of different size dredges typically used in Mores Creek, at this time the Service recommends the EPA continue to use the hourly limit as calculated using the average of 2 yd^3/hr. Monitoring hours of operation should be easiest for the dredger to accurately document in the required annual report in order to ensure that the annual wasteload is not exceeded

The EPA is specifically requesting comments on changing the Grimes, Elk, and Mores Creeks (G.E.M) dredging allocation system. You are considering the current system from an annual allocation of dredging days to a volume based allocation. It can be very difficult to calculate volumes of dredged material. Accurately measuring the volume of tailings or the void created from dredging is problematic and would be difficult to enforce. It might be easier to develop a formula which calculates the number of allowable dredging days based on the dredge size. For example (using generic assumptions), if a miner is allocated three (4 hr.) dredging days on Elk Creek with a 5 inch dredge, that would translate to an allocation of 7.5 dredging days with a 2 inch dredge. If the EPA proposes to change the allocation system in the next permit cycle, please provide details on how EPA would administer, monitor, and enforce this requirement.

IDWR supports allocations based on cubic yards instead of hours. EPA should consider implementing the allocation on cubic yards immediately rather than waiting until the next GP cycle. IDWR notes a typographical error on p. 19 of the Fact Sheet regarding number of hours for Mores Creek (should be 60 hours instead of 84). IDWR finds that the discussion and calculations given in the Fact Sheet are somewhat confusing and could be presented more simply. For example, the segment waste load allocations given for each of the three creeks stated in tons/year could simply be converted to cubic yards/year (or cubic yards per dredge season). IDWR notes that the assumption of 2 cubic yards/hour discharge for small scale suction dredges used in the TMDL waste load allocations is likely overstated. A recent search of literature and information by IDWR regarding small scale suction dredge discharge rates indicates rates are typically in the range of 0.5 to 1.4 cubic yards/hour, and that miners working in Idaho streams typically do not process or discharge more than 1.5 cubic yards per day (IDWR Memorandum, Review of the 15 Special Supplement Permit Limit for Small Scale Suction Dredge Mining on the South Fork Clearwater River, November 16, 2017). IDWR agrees with EPA's statement in the Fact Sheet that "for those dredges that process less than 2 cubic yards/hour, allocating hours underutilizes the WLA provided by the TMDL." IDWR recommends EPA consider allocating permitted dredge activity on

the three creeks by cubic yards instead of hours, and that it consider using more representative dredge discharge or processing rates rather than the theoretical maximum 2 cubic yards/hour.

Response: EPA has decided to retain the current practice of allocating hours under the TMDL for the GEM creeks. EPA considered a change to cubic yards per hour because dredgers had suggested that their dredges may not be able to process 2 cubic yards per hour and that the wasteload allocation of the TMDL was being underutilized. In reviewing information that was submitted during the comment period, EPA found that this may not be the case. The Keene catalogue states that a 4-inch dredge has the capacity to move up to 5 cubic yards per hour. Even if this capacity was estimated under ideal circumstances, it is much more than is allowed. Obviously, smaller dredges will move less material, but without a comparative ratio, hours are the easiest to allocate and track. Additionally, permit compliance is largely based on visual monitoring; estimating cubic yards processed would require permittees to perform calculations based on physical conditions and measurements. This additional step in records maintenance (Permit Part II.C.1.) may be viewed as an undue burden by applicants.

Fish

51. Comment: Dredging has significant negative effects on andromnous [*sic*] fish, and has little justification since it is simply a recreational pursuit

    The damage to fish spawning beds and amphibians that even one portable suction dredger can cause is on a huge scale. Multiply that by the number of permits you issue plus those not bothering to get a permit, and the damage will be irreversible. Endangered species are at stake, as well as our fisheries, and whole food chains.

    Response: This permit does not apply in either waterbodies that are designated as critical habitat under the ESA, or areas that are occupied by listed aquatic species, including anadromous fish, unless compliance with ESA § 7 has been completed through another federal process (e.g. USFS Plan of Operations).

52. Comment: This type of mining does not harm but benefits the fish habit in these stream. It removes toxins and human waste products that have been put in the stream either directly or non. The EPA needs to base its regulations, enforcement or changes to such on the science and the science does not support any of your claims.

    The science to justify this permit system is a simply non-existent. A Not Likely to Adversely Affect (NLAA) determination from the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (the services) that was completed for a prohibition of suction dredge mining in ESA listed, critical habitat(s). That is the sum total of the scientific evidence that was contemplated for this endeavor.

Response: There seems to be some confusion between the need for a permit and the impacts of an activity. An NPDES permit is required because, as discussed in response to Comment #1, small suction dredge activities discharge pollutants from a point source to waters of the United States. CWA § 301(a) prohibits the discharge of pollutants from point sources to waters of the United States unless, *inter alia*, they are authorized by a NPDES permit issued under CWA § 402. The CWA does not say that only discharges having an "impact" need a permit. It says that the discharge itself is unlawful without the permit. Neither the CWA nor its implementing regulations has any provision for smaller discharges or those with less impact to be treated as de minimis with no permit requirement.

53. Comment: Pg. 14, II.D.4.a.i and ii. These conditions refer to "fish," but also reference Appendix C which mentions only trout, salmon, whitefish, and Pacific lamprey. Is a miner supposed to know when and where fish species such as shiners and sculpin spawn? Also the term "alevin" is usually used to refer to a newly hatched salmonid with a yolk sac still attached and which is still in the redd. Again, the miners are going to be hard-pressed to identify salmonid redds where eggs or alevins might occur—perhaps EPA should qualify these conditions with something like, "Miners may rely on the instructions of a professional fisheries biologist or on IDWR to determine locations and timing likely to avoid disturbance of salmonid and Pacific lamprey spawning."

Response: Permit Part II.D.4. requires that dredgers avoid areas where fish are spawning or where fish eggs or alevins are *known to exist* at the time dredging occurs (emphasis added). This requirement of the Permit is not limited to trout, salmon, whitefish, and Pacific lamprey. Appendix C is included in the permit to help dredgers identify and avoid spawning areas and was not meant to be inclusive. Dredgers may acquire this information however they choose.The information provided in Appendix C mirrors Attachment B of IDWR's Instructions for Stream Channel Alteration by Recreational Mining Activities.

While EPA welcomes discussion between dredgers and knowledgeable professionals, EPA is declining to include the requested language because if, for example, a dredger has knowledge of fish eggs in an area, this area must be avoided regardless of the instructions of a professional fisheries biologist or IDWR.

54. Comment: The following revision is suggested for the third bullet in Appendix C: Steelhead and Rainbow Trout usually spawn in early spring prior to peak runoff periods from March through June but primarily in the months of April and May, and their eggs and fry remain in the gravel until mid-summer. Native Cutthroat generally spawn post peak runoff, usually late May to early July and their eggs and fry remain in the gravels until late summer.

Response: EPA has consulted with the NMFS on this comment and will change the language of the bullet item to read:

: Steelhead, Rainbow and Cutthroat Trout spawn during spring (March-June). Peak spawning of steelhead and rainbow trout often occurs during April and

May and incubation may extend into mid-summer. In many areas, peak cutthroat spawning occurs during May and June and incubation may extend into late summer.

NMFS counselled not to narrow the timeframes too much because spawn timing is one of the least constrained behaviors, and is ultimately controlled by temperature and photoperiod rather than discharge. If adult fish grow slower or are delayed and arrive "late," they will still spawn. Runoff does not control spawning, but can affect adult access and movement, redd site selection, and proximate temperature. Incubating eggs develop with thermal units that cause the earliest and latest spawned eggs to hatch within a few weeks or months of each other.

The perceived later spawn timing of cutthroat is often related to their presence in higher elevations and smaller streams. These streams may not be free of snow/ice or be accessible to adults until July, which is when spawning would then begin to occur and incubation development would remain relatively slow due to extended colder water temperatures during summer.

55. Comment: Most if not all the rivers are controlled my large dams that control the flow of water down the rivers. No longer do the rivers have large flows of water in the spring ripping up the sand and gravel on the bottom. Over time the rivers pancake over with silt and slime with the sand and gravel becoming unusable to the fish to spawn in. They need sand and small gravel to deposit the eggs under, and the large flow of water in the spring to flush the smelt downstream and in to the ocean so they can come back in 4 years, 20 30 pounds fully grown to complete the cycle. Suction Dredging opens the pancaked rivers bottom up, turning over the sand, gravel, slime and bugs on the bottom. This allows a perfect sand gravel mix for spawning beds, creates deeper holes for cooler water.

Response: Dredge tailings may be attractive to salmonids as sites for redd (nest) construction because tailings are often located near riffle crests where fish frequently spawn, and they provide relatively loose, appropriately sized substrate. However, dredge tailings may reduce embryo survival because they tend to be less stable than natural spawning gravels. Embryos in tailings may suffer high mortality if high flows scour the tailings, thereby destroying the redds (Harvey & Lisle, 1998).

Compliance

56. Comment: If someone is discovered violating the EPA GP in a State-held water, do the Idaho or Federal laws apply regarding the punishment of fees &/or incarceration? The two are vastly different.

Response: Enforcement for not obtaining coverage where necessary or violating the requirements of the General Permit would be pursuant to the Clean Water Act's enforcement provisions. See 33 U.S.C. § 1319. If state laws or regulations are also violated, the individual could also be subject to state-led enforcement. EPA cannot speak to state-led enforcement.

57. Comment: Recreational opportunities along the South Fork of the Clearwater have also been negatively affected. Dredging leaves large holes in the riverbottom, in spite of regulations requiring refilling, and the sediment released by dredging covers essential spawning sites, again in spite of regulations, which are seldom enforced.

Response: Permit Part II.D. contains best management practices that prohibits changing the stream channel in such a way that alters the bottom elevation of the active stream channel or redirects the flow of water into the stream bank, and prohibits actions which could harm fish passage, spawning fish, and spawning habitat. Documented noncompliance with conditions of the permit may result in enforcement action by EPA, see next Comment.

58. Comment: The EPA must also enforce the revised permit. To date, the agency has been largely absent when it comes to flagrant violations under the existing general permit. What is the point of a permit if it's never enforced?

The continued lack of enforcement is frustrating.

We lack funds to police this dredging

Response: Within the NPDES enforcement program, EPA may use a variety of tools to ensure compliance with its permits. Generally, when EPA issues a new permit, EPA first spends time educating the regulated industry about the permit. Following the issuance of the 2013 permit, EPA hosted a webinar on April 9, 2013, and was also invited by and gave presentations to the Idaho Gold Prospectors Association Boise Chapter (held April 9, 2013) and the Gold Prospectors Association of America Nampa Chapter (held January 17, 2014). EPA also issued, in 2014, over 300 letters to IDWR recreational mining permit holders to further inform the mining community about the new permit. Since 2013, EPA has issued eight notices of violation, ten warning letters, and taken two formal enforcement actions. EPA also continues to evaluate complaints received about illegal suction dredging activities and is prepared to use whatever tools are necessary to enforce the permit.

59. Comment: The EPA should prioritize regularly monitoring on the Salmon and Boise rivers each weekend between July 15 and October 1. Otherwise, the consultation process under the Endangered Species Act is largely meaningless, and important populations of salmon and steelhead could be harmed.

Response: As mentioned in response to Comment #58, above, EPA continues to evaluate complaints received about illegal suction dredging activities and is prepared to use whatever tools are necessary to enforce the permit. Documented noncompliance with conditions of the permit may result in enforcement action by EPA.

60. Comment: Dredgers regularly operate in the Salmon River, Boise River and other iconic Idaho rivers and streams. These areas are critical for the recovery of threatened

species such as bull trout, steelhead, Chinook salmon and other species. The EPA should ensure that consultation under the Endangered Species Act includes measures to ensure enforcement.

Response: This permit does not apply in waterbodies that are designated as critical habitat under the ESA or areas that are occupied by listed aquatic species, including anadromous fish, unless compliance with ESA § 7 has been determined through another federal process (e.g. USFS Plan of Operations).

As noted in response to Comment #57, Permit Part II.D. contains best management practices that prohibits actions which could harm fish passage, spawning fish, and spawning habitat; these conditions apply to all waters in Idaho. Additional restrictions to protect threatened or endangered species and their critical habitat may be required by NMFS and/or USFWS through ESA consultation. These may include inspection and reporting requirements to ascertain compliance.

Suggested Changes to the General Permit

61. Comment: Pg. 5, I.D.4.a. “ESA determination” is a vague and inexact phrase. If the EPA wants to depend on the FS or BLM for ESA Section 7 compliance on Federal land, then they need to use that term, and need to specify that a miner seeking coverage under their General permit also needs to meet FS/BLM requirements.

Response: EPA has considered this comment and made the following change to Permit Part I.D.4.: “unless ~~an ESA determination~~compliance with ESA § 7 has been ~~made~~determined through another federal process . . .”

A permittee need meet FS/BLM requirements only if the permittee is mining on FS/BLM land. As stated in Part I.A. of the permit, “Permittees are expected to follow all other applicable regulations including acquiring permission from land managers or land owners to access a site and acquiring other required permits.”

In addition, EPA coordinates issuing coverage under the permit with the land managers; Permit Part I.F.3.a. gives the land managers a 30-day review of EPA Notices of Intent during which time the land manager can request that EPA withhold coverage under the permit.

62. Comment: Please consider adding a general statement (italicized below) at the end of the paragraph (FS page 9 corresponding to Permit Part I.D.1.) on National Protected Areas: . . . National Conservations Areas, National Wilderness Areas, *or other federals lands formally withdrawn from mineral entry* unless . . .

Response: EPA will change the Permit Part I.D.1. to accommodate this request. This change allows for the possibility of dredging if a land managers’ approval is acquired in areas where it did not exist when EPA issued the 2013 Permit.

Miscellaneous

63. Comment: If I wanted to I could find some form of false justification to ban all white water rafting on all the streams and state many ways in how they pose dangers to the natural habitat. Rafting is an outdoor sport, small scale dredging and fishing are also, we shouldn't pick and choose which one we agree or disagree with based on our political view points and personal opinions. I personally think highways are pollutants they contain the largest amount of hydrocarbons and toxic waste, they interrupt animal migrations etc. So should they all be torn up and removed? I was recently talking to one of my biologist 3 days ago about how micro particles of plastics have been having a huge environmental problem on the oceans plankton and sea life. Think about that as you read this email response on your plastic computer and keyboard or your cellphone or car loaded in petroleum based products polluting the earth. How technical do you want to get? Are you wanting humans to become endangered to save the natural habitat when the cave men where around? Are humans and our need to survive not considered natural to this planet?

Response: EPA is considering suction dredge activity in this permit. The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of waters of the United States. Please refer to the response to Comments #1 and #52 regarding why an NPDES permit is required. Other activities referenced by the commenter are either not considered point sources or are covered by permitting mechanisms other than this permit.

64. Comment: I am often on the Payette and Boise rivers and cannot believe that these miners can stay in one location all summer long, working the same 20 yards of river / stream until the bottom of the river has a 6 foot hole they have removed from the bank or backwaters. This is done for no regard to fisheries, water quality or habitat loss. There should be a 14 day river use limit in which they would have to move a minimum of 10 miles to another portion of river and another campsite if they wish to continue to dredge. I find it unacceptable that these out of state miners are spending all summer ripping up our rivers and taking our campsites for next to no cost to them. They do not dredge in Nevada, Oregon or Washington or wherever their home state is because Idaho makes it so easy for them to camp and dredge for free all summer long.

Response: EPA's permit only authorizes the discharge of pollutants from the dredge and does not apply in either waterbodies that are designated as critical habitat under the ESA, or areas that are occupied by listed aquatic species, including anadromous fish, unless compliance with § 7 of the ESA has been completed through another federal process (e.g. USFS Plan of Operations).

The permit also contains best management practices, which are in part designed to protect fish. Only in specific instances, where necessary to comply with TMDLs and/or the ESA, does the permit limit the time a dredge can be operated in a given location. The IDWR issues permits under a program that contains limitations on the

time of year that suction dredging may occur. It is EPA's understanding that these timing windows consider the impacts of dredging on fish. EPA does not have any regulatory authority over land management decisions such as how long anyone can camp at a certain location.

65. Comment: Every time we dredged, we had large amounts of fish in our dredged hole in the morning, when we start dredging every day the fish move to the discharge of water from the dredge eating all the bugs we uncovered from under the rocks. The water is cloudy from the discharge, it has all the junk that settled in to the rocks over the years from the lack a good flushing in the spring. I went ½ a mile downstream and you cannot tell we are dredging up stream. People look at the end of the dredge and think we are putting all this junk in to the water, it was already in the water!!

    What the dredge is doing is HELPING the river in small places where it is being dredged.

    Most people have NO CLUE what good the dredging is doing for the rivers and fish.

    Response: Comments noted. Please refer to the response to Comments #1 and #52 regarding why an NPDES permit is required.

66. Comment: My family has mined in Idaho for years and it is unfortunate those real property owners of mining claims are not listed [*sic*] to and I hope I'm proved wrong and see a change in the way our government is handling OUR public lands.

    Response: EPA does not have any regulatory authority over mining claims or public land management decisions. Please see the response to Comment #1 and #52 for information on the NPDES permit.

67. Comment: Miners don't pay for coverage under the general permit. Perhaps if permits cost $100 or more, funds would be available for more regular monitoring and enforcement and would encourage broader compliance.

    Response: EPA has no regulatory authority to collect fees for its NPDES permitting and compliance activities.

68. Comment: I appreciate the EPA's efforts to protect Idaho's water quality through this proposed NPDES general permit for suction dredge mining in Idaho.

    Response: Comment noted.

69. Comment: Now I have met a few of your employees and many of you all use to work for environmental groups like the sierra club, Idaho conservation league, and tons of other groups that pop-up whenever there is a sue and settle money making potential. The collusion with these groups needs to stop this one sided group

thinking view as you can see has become a dangerous problem for democracy in this country.

Response: The 2013 GP and 2017 draft permit were written to comply with federal law and, with the addition of the conditions of the CWA § 401 Certification, with State law. During the public comment period, EPA takes comments from all parties and, if necessary, adjusts the conditions of the final permit to comport with the law.

70. Comment: Donald Trump and industry stooge Scott Pruitt have destroyed much of the EPA's credibility. As such, a record low percentage of Americans trusts our current EPA. I certainly don't like (or trust) this proposed general permit for suction dredge mining in Idaho's waterways.

Response: Comment noted.

71. Comment: We, the citizens of Idaho, are trusting you to do your job and keep our natural resources in as pristine a condition as is possible.

Please do the right thing and keep suction dredgers out of our waters!

Response: The objective of the Clean Water Act is to restore and maintain the chemical, physical and biological integrity of waters of the United States. CWA § 101. Pursuant to CWA § 402, EPA evaluates permit applications and develops permits that meet the statutory and regulatory requirements, and can also develop general permits for categories of discharges. If EPA develops a general permit that meets the statutory and regulatory requirements and a proposed discharge meets the permit's requirements, then EPA would authorize coverage under the general permit.

72. Comment: The permit that EPA thought they had since 2013 has done nothing to protect human health and safety.

Response: Comment noted.

73. Comment: You may issue a permit at no cost but if we agree and if anything happens its [*sic*] our fault and we are fined or go to jail (Joe Robertson) but let's not forget what the EPA did with Gold king Mine and Animas river. Where is there fault and admittance that they are at fault and who holds them accountable. Did anybody get fined? Did anybody go to jail? NO!

Response: With regard to this permit, EPA does have enforcement discretion, but only for failure to obtain permit coverage where necessary or for violating the requirements of the General Permit. See 33 U.S.C. § 1319. The remainder of the comment is irrelevant to the 2018 General Permit for discharges from small suction dredges in Idaho.

74. Comment: FS Page 28. C. National Forest System Lands Please replace the last sentence to: 'These regulations require an operator to submit a 'Notice of Intent' to the Forest Service for activities which might cause significant disturbance of the surface. A Plan of Operations must be submitted for activities likely to cause a significant surface disturbance and bonding for reclamation is required prior to the start of operation. Proposals are submitted to the USDA Forest Service District Ranger who is in charge of the area on which the proposed operation will take place.'

Response: The Fact Sheet is a final document when it is published as the technical basis for the draft permit. This part of the Fact Sheet is informational and there is no corresponding Permit Part to edit.

Appendix A: List of Commenters

#	Name
1	Jann Higdem
2	Charles Hill
3	Archie George
4	Earl Adsley
5	Todd Davis
6	Robert Carroll
7	Randi Walters
8	Terrell Bostick
9	Glen Albertson
10	Kay Goyden
11	Borg Hendrickson
12	Amber Ziegler
13	Susan Chaloupka
14	Kyle Irby
15	Daralene Finnell
16	John Finnell
17	Diane Bomgardner
18	Davida Mitchell
19	Steven Rinehart
20	Jenny Estes
21	Pat Monger
22	Kerri Stebbins
23	Joshua Johnson
24	Jason Keel
25	Elaine French
26	Kam Majer
27	Martha Bibb
28	Daniel Roper
29	Carol Yerden
30	Richard Rusnak
31	Sandy Christensen
32	Suzanne Troje
33	Gerald Munk
34	Ted Stout
35	Karin Lindholm
36	Michael Dorey
37	Rhea Verbanic
38	Brent Davy
39	Rob Brazie
40	Charles Tate
41	Zach Conde
42	Jeremy Fryberger
43	Karen Ward
44	Michael Ihli
45	Clearwater/Nez Perce National Forests: Rebecca Anderson
46	Marilyn McAllister
47	Alex Hackett
48	Jeanne Lynch
49	Bruce Becker
50	Thomas McCabe
51	Jennifer Mitchell
52	Alaina Giltz
53	Linda Karl
54	Gail White
55	Ann DeBolt
56	Alida Bockino
57	Joan Scofield
58	Susan Deemer
59	Jeanette Schandelmeier
60	Thomas Jones
61	Maryellen Easom
62	David Hoversland
63	Scott McLean
64	Gloria Ray
65	Janet Abromeit
66	Jeff and Reb Baraglia
67	Kristina Priest
68	ICL: Austin Hopkins
69	Tom Kovalicky
70	Ricky Lanham
71	Lura Morgan
72	Wendell Memmott
73	Danette Phelan
74	elizabeth vavricka
75	Tom Wilson
76	Susan Van Vooren
77	Gary Bowling
78	Bruce Oliver
79	Araya Warren
80	Kip Dieringer
81	Nez Perce Tribe: Lisa Anderson
82	Donald G. Smith
83	Idaho Rivers United: Ava Isaacson
84	Caribou-Targhee National Forests: Diane Wheeler
85	USFWS: Mark Nelson
86	Tenmile Mining District: David Hembree
87	Boise National Forest: Rick Wells
88	Frank Roetzel
89	IDWR: Tim Luke

Appendix B: List of Commenters by Comments

Comment #	Commentor #	Comment #	Commentor #
1	1, 2, 66, 77, 82,	38	1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 27. 28, 30, 32, 65, 33, 34, 35, 37, 38, 42, 44, 45, 47, 49, 52, 53, 54, 55, 56, 58, 59, 60, 61, 62, 63, 64, 69, 70, 73, 74, 78, 79
2	82	39	89
3	1, 2	40	80
4	66, 86	41	68
5	2, 82	42	2
6	1, 2, 66,	43	87
7	83	44	45
8	86	45	45
9	1	46	66, 81, 83, 85
10	4, 6, 7, 8, 9, 13, 14, 15, 24, 32, 34, 38, 42, 49, 55, 56, 58, 60, 61, 64, 65, 70, 74, 78, 79	47	72, 81, 83, 84, 85, 87
11	3, 19,27,40,88	48	89
12	66, 89	49	66
13	82	50	68, 72, 81, 83, 85, 87, 89
14	45	51	3, 88
15	45	52	2, 82
16	45	53	45
17	87	54	84
18	72	55	75
19	66	56	1
20	66	57	3
21	66	58	4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 69, 70, 71, 73, 74, 76, 78, 79
22	83	59	4, 6, 7, 8, 9, 13, 14, 24. 32, 34, 38, 49, 55, 56, 58, 60, 61, 64, 65, 70, 74, 78, 79
23	45	60	14, 22, 23, 25, 26, 29, 31, 35, 36, 41, 43, 46, 48, 50, 51, 57, 67, 71, 76
24	45	61	45
25	72	62	87

Comment #	Commentor #	Comment #	Commentor #
26	72	63	2
27	87	64	39
28	68	65	75
29	45	66	66
30	45	67	14, 22, 23, 25, 26, 29, 31, 35, 36, 41, 43, 46, 48, 50, 51, 57, 67, 71, 76
31	1, 82	68	14, 22, 23, 25, 26, 29, 31, 35, 36, 41, 43, 46, 48, 50, 51, 57, 67, 76
32	45	69	2
33	87	70	42
34	72	71	26, 88
35	5, 10, 11, 12, 16, 17, 18, 19, 20, 21, 27, 28, 30, 33, 35, 37, 44, 47, 52, 53, 54, 59, 62, 63, 68, 69, 73	72	82
36	68	73	66
37	14, 22, 23, 25, 26, 29, 31, 35, 36, 41, 43, 46, 48, 50, 51, 57, 67, 71, 76	74	87