



April 27, 2021

**BY ELECTRONIC COMMUNICATION TO:**

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**RE: OBI Seafoods, LLC Comments to APDES Draft Permit No. AKG521000**

Dear Ms. Ebert:

OBI Seafoods, LLC (OBI) hereby submits our comments for the draft APDES Onshore Seafood Processors General Permit (AKG521000). The comments are in addition to those submitted by Mr. Charles Blumenfeld on behalf of the Pacific Seafood Processors Association (PSPA) of which we are a member. We believe that both our comments and PSPA's will aid the Department in creating a permit with provisions that are reasonable and attainable for the many diverse facilities subject to it and to meet compliance. We anticipate that our comments will be seriously considered.

**Request for Sufficient Time to Comply with New Permit Requirements**

OBI requests that the period between the permit's issuance date and the effective date is extended considerably more than that of the Kodiak General Permit, or that the schedule of submissions in Table 1 is updated to allow for additional time to achieve compliance. We cannot overstate the importance of providing facilities with enough time to perform engineering reviews, construction, and prepare and submit the facility plan reviews for the major renovations that all our facilities require for compliance with this new permit.

OBI operates nine facilities that would be covered by this general permit, all of which require significant upfront investment to achieve compliance. The most expensive and onerous conditions of this permit are the inclusions of non-process wastewater, retort cooling water, boiler blow down, and catch transfer water as covered discharges. Our facilities must capture and either divert these waters to an existing outfall, or potentially be required to install an additional outfall if the existing outfall/waste conveyance system cannot handle the additional volumes of water to be captured, treated, and discharged.

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Of the nine facilities that OBI would operate under this permit, eight would require thermal modeling to determine if effluent standards can be met at the MZ boundary granted under this permit. If any facilities are unable to meet WQS at the MZ boundary, options must be considered to either design and construct a passive or active cooling system, or to apply for a larger MZ.

For our Kodiak facility, the process of 1) having engineers gather facility information, 2) conduct thermal plume modeling, 3) assess alternative options to comply with effluent temperature requirements, 4) create a proposed facility design, and 5) submit a MZ application, antidegradation analysis, and 5) NOI based on this proposed design took over six months to complete. This extensive amount of work has required the use of three engineering firms to perform the needed modeling and design proposals.

An extended effective date timeline must also give serious consideration to time needed for the facility to be granted Approval to Construct by ADEC, and for any of the physical construction outlined in the proposed design needed to incorporate the newly covered discharges outlined above. For this upcoming permit, we will need to perform essentially the same amount of work as we are currently undertaking for our Kodiak facility, and we will need to do this work for up to eight (8) additional facilities, some of which operate in excluded areas and would need to undergo a public notice period which would further delay the timeline to be in compliance.

It is important to note for the timeline of permit implementation, subject facilities have significantly more constraints to engineering and construction timelines than those facilities affected by the new Kodiak General Permit. Six of our nine facilities to be covered under this permit are remote and/or short-season operations with harsh winter weather conditions that severely limit the work window including the reliance on barge company shipping schedules.

As an example, Bristol Bay facilities have significant snow and ice buildup on and under their docks that prevents construction work until thawing occurs. Construction on a facility's waste conveyance system can only occur when the facility is not in operation or no ice is present. It is important to consider that pre-installation biological surveys would be required during this same period if additional outfalls are required.

To this end, to ensure all the above actions necessary to achieve compliance are properly engineered, reviewed/permitted by ADEC, and construction completed, OBI requests that the effective date of this new permit begin on June 1, 2022, or 9 months after permit issuance, whichever is later. The extension of the current permit has already been lengthy, so allowing time to adequately comply with the requirements of this new permit while operating under the extended permit would not result in any "environmental harm." An extension would allow affected processors the time to successfully comply with the new requirements and minimize the need for processors to enter into Compliance Orders by Consent (COBC) in the event that companies are unable to comply with an earlier permit effective date.

### **Engineering Plan Review and Final Approval to Operate (FATO) Delays**

It is our understanding that the ADEC Engineering Division is expected to receive a significant influx of plan review submittals from the subject facilities listed in **Appendix D**. Facilities must be able to operate during this waiting period and we would comply with the numerous new conditions of the permit to the best of our ability. We request that the Department issue a statement providing interim permit coverage until the FATO is received.

OBI is committed to maintaining compliance with environmental permits, however, failure to provide enough time to attain compliance once the permit has been issued would potentially result in the undesirable option of a COBC.

This comment goes to further our request for a permit effective date as described above. Similar to the other Alaska seafood processors severely impacted by COVID-19, OBI spent over \$8.6 MM in CY2020 in order to operate. Even with the new vaccines, these expenses and the burdensome requirements to keep the local communities and our employees safe will continue through CY2021. Many of the projects that were planned since our June 1, 2020 merger have been postponed due to our closed campus policy and State mandates/advisories which have severely limited our ability to perform the above-mentioned modifications for the new permit.

### **Waiver Option for the Annual Discharge Limit**

The Department has omitted the waiver option and rescinded the waiver for facilities with existing discharge limit waivers such as OBI Excursion Inlet (AKG52-0059) and OBI Petersburg (AKG52-0303). With the waiver, these two facilities have consistently maintained the ZOD below a half-acre or have no presence of a ZOD, respectively.

OBI strongly disagrees with EPA's October 2010 opinion and the Department's current opinion that this discharge limit waiver should be rescinded. The opinion is arbitrary and based on assumptions that have been proven false over the last 30 years in certain areas of operation. There are several locations where there is no negative ecological impact on the sea bottom from the discharge of seafood wastewater. The 10-MMLbs limit should not be applied to hydrodynamically energetic waters and a mechanism should be included for a facility in one of these locations to seek a waiver from this limit. The draft Fact Sheet lists 'flushing and mixing characteristics of the receiving water' in consideration for project area ZODs but these characteristics were evidently not considered for the existing annual discharge limit waivers.

Submitted with these comments are discharge and pile size data from seafloor surveys conducted at OBI Seafoods' Excursion Inlet and Petersburg facilities ("OBI Production and Pile Size – Excursion Inlet and Petersburg.pdf"). These data show no correlation between waste discharged and ZOD pile size at either facility, supporting EPA's decision to grant 10-MMLbs discharge waivers to both facilities. We urge the Department to rely on available physical data instead of outdated modeling to make scientifically-sound regulatory decisions.

Outdated/Faulty Modeling for ZOD Size Determination

There is industry and agency consensus that the 10-MMLbs annual discharge limit is based on outdated and erroneous modeling results. The input data were also faulty about tidal current velocities and other assumptions. The Department and consultants have acknowledged that there are more appropriate models available today for determining conservative discharge limits to reduce ZODs to under one acre, however, **Section 4.4.5** of the draft Fact Sheet provides extensive details about the history behind the 10-MMLbs limit and continually references the computer modeling conducted in 1993-1994.

**Section 1.11.1** of the draft Fact Sheet states: 'Cumulative discharges to waterbodies and discharge sites increases the probability that greater than a 1.0 acre deposit of seafood waste would form on the seafloor if the total cumulative seafood waste discharge is greater than 10 million pounds to a single waterbody.' This is simply untrue, and the assumption cited, again references the erroneous modeling.

We are aware that TetraTech was previously contracted by the Department to investigate contemporary modeling software options, and it is our understanding that the project ended with no final determination and/or lack of funding. If this is the case, why is the Department unable or unwilling to revisit this plan? The Department has had oversight of this general permit since October 31, 2008 and the seafood industry has consistently offered to provide funding in support of such studies.

The Department also acknowledges in **Section 3.2.3** of the draft Fact Sheet that 'DEC continues to rely on the 1993 modeling in order to authorize discharge volumes and ZODs.' And in **Section 4.4.5** of the draft Fact Sheet, the Department states: "During the permit cycle, DEC will likely contract to have further modeling performed and staff trained to complete the newest ZOD formation modeling...During the AKG521000 permit cycle, DEC will continue to rely on the 1993 modeling."

OBI finds this position objectionable and indicates a lack of good faith on the part of the Department for such an important requirement. For numerous, important reasons in our comments below, facilities that have a ZOD under one acre or no existing ZOD, and meet AK WQS must be able to maintain this existing waiver. Seafloor surveys provide evidence that there is no correlation between the annual discharge quantity and size of the ZOD in certain areas of operation. We request the Department to provide their reasoning behind ignoring this evidence and continue to permit this waiver option.

The 10-MMLbs discharge waiver was previously allowed because EPA and the Department know that the modeling results were flawed and granted facilities the ability to discharge more than this amount if it can be shown that higher annual discharges do not increase the extent of the ZOD, if any is present. If the Department is planning to perform updated modeling during the next permit cycle, we believe that discharge waivers should be left in place until the updated modeling is completed. This allowance would provide the Department with the ability to improve the permit conditions with current science and modeling while allowing facilities to continue to fully operate with safeguards in place in the form of periodic seafloor surveys and ZOD size restrictions.

### Devastatingly Severe Negative Impacts on Local Economies

Despite supporting seafloor survey data and the initial rationale used to grant waivers to the 10-MMIbs discharge limit, an indiscriminate decision by the Department to not include the existing waivers for OBI Excursion Inlet and OBI Petersburg could very well result in premature cessation of fishing, fish landings, and supporting processing operations. In turn, this would result in severe economic harm done to these communities and negatively impact the well-being of hundreds of Alaskans that depend on these fisheries to support their livelihood.

Petersburg is a community where commercial fishing is the mainstay of the local economy. Petersburg is ranked as the 25<sup>th</sup> most active U.S. fishing port by weight and as the 24<sup>th</sup> port by value with landings of over 35.3 million pounds of seafood worth over \$44 million. Over 23% of Petersburg's population make a living associated with commercial fishing and it is the largest private sector employer in the community. Operating about nine months a year, the OBI Petersburg's workforce is totally comprised of residents until the summer salmon processing season occurs in June-September when additional workers are needed.

The recent UAA report, *Commercial Fisheries & Local Economies*<sup>1</sup> (attached) empirically demonstrates the local community's economic benefits from commercial fishing and processing through direct, indirect, and induced effects. The report shows direct and spillover effects from Alaskan commercial fisheries on local wages, employment, and income; providing solid, empirical evidence demonstrating that commercial fisheries contribute to significantly to local economies.

The report shows that commercial fisheries in communities like Petersburg and Juneau have significant, positive direct effects including but not limited to:

- Additional fishing and processing crew are hired;
- Processed harvests produce more value added products;
- Evidence of employment spillovers from commercial fishing into non-fishing sectors; and
- Local permit ownership creates an opportunity for fishery earnings to be spent locally on goods and services, in addition to hiring local crew members; who in turn, are more likely to spend their earnings locally.

A 10% increase in a community's annual fishery earnings leads to a 0.3% increase in employment, which translates to 7.12 jobs per million dollars of fishery earnings, and a corresponding increase in resident income. An increase of one dollar in fisheries earnings results in an increase of total income by 1.54 dollars, with primary economic spillover positively affecting the earnings of local commercial fishing permit owners.

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<sup>1</sup> Commercial Fisheries & Local Economies. Watson, Brett\* et.al., January 21, 2021. Institute of Social and Economic Research, University of Alaska Anchorage. \*Corresponding Author. Post-Doctoral Researcher. Email: [bwjordan2@alaska.edu](mailto:bwjordan2@alaska.edu). This document is attached with our comments.

The importance of the fisheries to the economies of Juneau and Petersburg cannot be underestimated. The 2021 salmon forecast for southeast Alaska is the largest since 2015. As cited in the UAA report, 71% of fish harvesters are Alaskan residents; the mean earnings (ex-vessel value) of southeast Alaska salmon are \$61.25 million dollars annually, second only to Bristol Bay salmon.

Local small and large businesses in these Alaska communities continue to face unprecedented challenges during the COVID-19 pandemic. This action by the Department potentially adds to Alaskan's economic hardship by further restricting economic opportunities through eliminating these previously approved waivers. An arbitrary and capricious decision to not honor discharge waivers is not in the best interest of Alaskans.

#### Operational Limitations and Increased Cost

For the OBI Petersburg facility which discharges into Wrangell Narrows, the list below provides additional information in support of the discharge limit waiver option.

- Tidal currents at the discharge terminus are more than 5 knots and occur four times per day. When not operating the meal plant, there has never been solids accumulation on the sea bottom and periodic dive surveys and anecdotal information provide verification.
- The meal plant is operated whenever the design throughput is reached during salmon season. It cannot be operated during the shoulder seasons. We do not have the option of storing by-product due to odor and quality issues.
- When the maximum design input rate for the meal plant is reached, the ground excess by-product is discharged through the outfall. The design input rate for Petersburg is 350,000 lbs/day or about 1,500,000 round pounds of salmon/day depending on the products being produced. For example, canning produces more by-product. In the last ten years, we have exceeded the design capacity which is why we are raising this issue.
- We expect future high forecasts for pink salmon runs and we would rely on the limit waiver to avoid additional costs to discharge at sea. Discharging at sea is problematic for several reasons:
  - The tender's round trip would be about 8 hours requiring a second vessel to haul out or we would struggle to operate;
  - At least two contracted vessels would be required to apply for an APDES or EPA Offshore Seafood Discharge General Permit;
  - We do not own any tenders and tender owners may elect to perform other types of work and not be available requiring others to go through the permitting process;
  - A tender moored alongside our limited dock space would block space that would otherwise be used to service the tenders delivering seafood;
  - Tender vessel costs are expensive and are usually over \$4,500 per day plus fuel per vessel; and
  - Having to travel this route to discharge the by-product at sea is more damaging to the environment than discharging through our outfall, including potentially less dispersal in the offshore discharge zone.

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- Should operations be shut down because of struggling to keep up with discharging at sea, the impacts would be felt on our mostly local fleet since about 85% are from Petersburg. The negative impacts due to a drop in commerce would decrease the raw fish tax and hurt the other southeast Alaska towns, our local workforce, and the town of Petersburg.

For optimal rendering plant operation, a daily byproduct feed rate of approximately 100,00-300,000 lbs is necessary, depending on finished product (oil and/or meal). These discharge waivers enable the facility to remain in operation in the event of a prolonged rendering plant shutdown during a high-volume year. Excursion Inlet and Petersburg are OBI's largest facilities and must be able to operate at full capacity as they were originally designed. In the event that pink salmon runs return at full strength, and if we are unable to operate the rendering facilities, the loss of the waiver would place these facilities at a competitive disadvantage with average-sized seafood processing facilities.

For all the above reasons, OBI requests our existing waivers for the 10-MMlbs discharge limit be retained and honored under this new permit.

#### **Facility Responsibility for Vessel Actions and Discharges**

There are stipulations throughout the permit for facilities to implement BMPs to regulate vessel activities and to monitor and report vessel activity that may violate AK WQS. While facilities can provide recommended BMPs to vessels while at our docks, we must continue to remind the Department that they do not have the authority to require permitted facilities to monitor or control the actions of vessels delivering seafood to facilities, and therefore cannot be held responsible or liable for their discharges. These vessels are not owned by OBI and we have no legal authority over their actions. It is important to recognize that the processing facilities covered by the draft Permit do not own, operate, or control the fishing vessels that deliver to them. We do not necessarily object to providing to seafood delivery vessels a BMP educational document as described in **2.5.6.7.25.1 through 2.5.6.7.25.7**— a simple "Do's and Don'ts" list for example. However, as mentioned we object to any inference by ADEC that permittees are accountable for monitoring or controlling a vessel's compliance/non-compliance with the BMP list provided or for any other actions of the vessel, whether or not it is related to their discharge, the methods/materials/chemicals they use on-board, how a vessel's domestic-use wastewaters are plumbed, etc.. It is not within ADEC's authority to hold permittees responsible for this.

Furthermore, OBI will continue to assert that (1) fish hold transfer water returned to fishing/tender vessels is not a discharge to waters of the United States and, therefore, not subject to regulation under the Clean Water Act; and (2) the discharge of fish hold water from these vessels is an "incidental discharge," specifically exempt from permitting under the Vessel Incidental Discharge Act of 2018 (VIDA). Reasoning behind our stance has been thoroughly detailed in comments made to the Department by OBI, by Perkins Coie (representing multiple seafood firms operating in Alaska), and by other industry representatives.

The comments also apply to a vessel's live tank water used by regulation for holding live crab, which the Department has chosen to include in the definition of "catch transfer water" despite this water never being used

to transfer crab to the facility. Live tank water is an incidental discharge from the vessel and exclusively part of the normal operation of the vessel.

From a safety standpoint, the vessels must fully press (fill up) their RSW holds for stability as they travel from the fishing grounds to the processor. Once at the dock, discharge is necessary so that facility personnel can enter the live tanks and off load the crab by hand into brailer bags that are then lifted by crane onto the facility dock. Some of this water cannot be pumped by the processor and must be discharged overboard. The practice of hand picking also applies when offloading black cod (sablefish) and halibut due to the fragile nature or shape of the fish.

### **Byproduct Utilization**

OBI requests that the Department provide clarifying conditions or definitions under **Section 2.1.12** to outline metrics that would ensure a permittee to “fully utilize to the extent practicable all by-product production processes available at the facility.” This stipulation is concerning from both compliance and enforcement perspectives because the term “practicable” is vague and varies greatly by facility.

### **Seafood Processors Discharging to Estuarine Rivers**

By varying discharge depth requirements for marine and estuarine discharges, the Department has acknowledged that discharges into estuaries are typically much more shallow than marine discharges, however, the Department has yet to acknowledge the challenge this puts on these same facilities to meet AK WQS within the 100-foot MZ. As demonstrated by discharge depths outlined in **Appendix D-4**, estuarine MZs have significantly less water volume available to dilute discharges to meet effluent limitations.

OBI expects that all canneries operating in estuarine waters under this permit would struggle to meet effluent temperature requirements within their MZ boundaries and would either need to design and construct a passive or active cooling system or apply for a larger MZ. When considering the effective date of the permit, OBI again requests that the Department acknowledges the length of time it would take for processors to perform MZ modeling, consider alternative options to meet temperature requirements, complete design proposals, public notice applications, receive Approval to Construct, and physically complete any new construction.

### Devastatingly Severe Negative Economic and Operational Impacts

Please review the attached recent study in support of our comments:

“Final Economic Benefit of Bristol Bay Salmon\_3.17.21”

**Section 2.1.5.3.1** of the draft Permit states that facility operations shall cease in extreme negative tide conditions that result in a “no-water” condition at the outfall terminus. Our three estuarine river facilities operate 24 hours a day during peak production, and they can barely keep up with processing and vessel



deliveries at this time. These facilities regularly have extreme negative tide conditions that would force routine closures of the facility during peak production and some of the shortest fishing seasons in Alaska.

At these facilities, outfall extensions are not an option as the shallow water conditions would result in outfall damage from vessels, further limiting the production and economic prosperity of the surrounding communities. Furthermore, decades of sea surface, shoreline, and seafloor monitoring at these facilities indicate no adverse short or long term effects on water quality in these areas when discharging in “no-water” conditions.

It is important to remember that a vessel’s ability to catch and deliver seafood to a facility is based upon fishery escapement determined by Alaska Fish & Game, not by the seafood companies. As Alaska Fish & Game dictates the amount of time that areas are open to fishing, vessels must be able to quickly offload their catch for processing and return to the grounds as quickly as possible.

By implementing the limitation under **2.1.5.3.1**, facility production must stop as these facilities because they do not have the space to hold large amounts of seafood during a process shutdown. Such lengthy production interruptions would result in 1) delivered fish becoming putrid if there is no way to process and no room to store until able to process at the next tide cycle, 2) no practical means to dispose of putrid fish in remote locations as cited in **1.4.1** of the draft Permit, 3) facilities being forced to turn away vessels putting the fishermen on catch limits which is the worst possible outcome during a short fishing season, and 4) if fish cannot be offloaded because of production bottlenecks, putrid fish would result. Fishing vessels can have seafood pumped out using large pumping systems, but they are unable to pump their own catch overboard.

For these rational and practical reasons, OBI insists that permit condition **2.1.5.3.1** must be removed from the draft Permit.

### **Annual Discharge Increases**

**Section 1.8.2.3** details conditions for discharging in excluded areas that requires notice to the Department at least 60 days prior to implementing the change. As written, these conditions include “material changes at the facility, including...significant increases in amount of pollutants discharged (greater than a 25% increase in the four-year annual average amount (weight) discharged).” It is unclear if notice must be given if a greater than 25% increase in the four-year annual average amount discharged occurs that is not due to material changes at the facility, such as a large run during a specific year. If so, it is unclear how a facility discharging in an excluded area is expected to proceed if it is approaching 125% of its four-year average discharge. OBI requests that the Department provide clarification to this section.

OBI also requests that the Department consider the devastating economic impacts that would be caused from such unreasonable and arbitrary forced shutdowns of facilities due to poor four-year average discharges. In these circumstances, we would expect this to force many facilities – especially the smaller businesses – to permanently close.

## **Comments and Objections to Certain Effluent Monitoring and Receiving Water Quality Monitoring Requirements**

OBI requests that with the exception in **Sections 2.1.6.1.1 and 2.3.2**, the requirements for effluent analyses under **Sections 2.2.4, 2.2.5 and 2.2.6** be eliminated from the draft Permit. As stated in **Sections 3.1.2 and 3.3** of the draft Fact Sheet, the intent behind collecting additional effluent information for a “grind and discharge” BCT permit should be to determine whether the discharge is a risk for violations of the AK WQS. Under the draft Permit, this is assessed through Receiving Water Quality Monitoring required under **2.3.2**.

Until the receiving water quality monitoring study is completed, and the Department can determine if processors are able to comply with the AK WQS at the MZ boundary, it is premature to force additional effluent monitoring onto permittees during this permit cycle. The additional data would not indicate whether the discharge complies with AK WQS at the edge of the MZ or project area ZOD.

Facilities discharging into an estuarine river are disproportionately affected by MZ requirements such as less volume and currents during slack tide to dissipate pollutants beneath AK WQS at the edge of the MZ. Receiving water monitoring at these locations also poses a safety risk for the samplers due to heavy vessel traffic and for the sampling vessel to hold its position in varying currents at the 100-ft MZ boundary with any degree of accuracy.

### Timeline for Reductions in Monitoring

The Department has updated **Section 2.2.6.3** to state that at the agency’s discretion, monitoring frequencies may now be reduced after two years instead of one year. There is no explanation or basis for increasing this timeline if it is already at the agency’s discretion to reduce monitoring frequency. Furthermore, it remains unclear if monitoring frequencies can only be reduced for criteria that have effluent limitations referenced in the permit (temperature and pH) and AK WQS (DO, residues, turbidity, TRC), or if other parameters can also be reduced following low detection results. We request that parameters that are eligible for reduced monitoring be listed in the Permit or Fact Sheet and that **2.2.6.3** be reverted to the previous one-year period for monitoring reduction eligibility.

### Receiving Water Quality Monitoring

Time restrictions provided in **Sections 2.3.2.2 and 2.3.2.3** are too restrictive for some processing facilities due to the short duration of their season. As an example, OBI Naknek’s 2020 operating season was from June 22 to July 20, only 4.5 weeks. For facilities with such short processing seasons, the requirement for samples to be taken at least 4 weeks apart is actually less representative of typical effluent conditions at these locations as these samples would need to be taken at the beginning and end of the processing season, which typically are periods of lowest production. Modifying this requirement would provide the Department with more relevant water quality information and would reduce the burden on processing facilities with shorter seasons.

**Section 2.3.2.9** states that sampling coordinates must be accurate to  $\pm 30$  feet. For consistency, we request that this be updated to  $\pm 50$  feet as stipulated for coordinates submitted as part of the NOI's Area Map (**1.7.1.1**) as well as conditions of the Offshore Seafood Processors Wastewater Discharge General Permit (AGK523000) (2.3.2.4).

Receiving water monitoring at these locations also poses a safety risk for the samplers due to heavy vessel traffic and for the sampling vessel to hold its position in varying currents at the 100-ft MZ boundary with any degree of accuracy.

#### Noncompliance for Sample Holding Time Exceedances

**Section 2.1.4.8.6** outlines requirements for delivering samples to an accredited laboratory. For each sample that arrives outside of analytical method holding times, **Section 2.1.4.8.6** states that the permittee must submit a noncompliance notification. Many facilities do not operate in locations with laboratories nearby and must ship samples by air to Anchorage. Many facilities are remote, accessible only by small prop land and/or float planes. In all cases, flight schedules are dictated by weather and are frequently delayed or cancelled with minimal notice.

Holding time exceedances due to flight delays and cancellations have been well documented by our facilities. Facilities with a record of sample shipment attempts cannot be deemed non-compliant for shipment delays beyond their control. Some parameters are not being analyzed to determine compliance with current effluent limitations, therefore, exceeded holding times should not be considered as a noncompliance event.

OBI proposes that additional clarification be added similar to that in the Offshore Seafood Processors General Permit and Fact Sheet which state:

*"2.2.5 DEC may grant a waiver from required monitoring in Table 3, Table 4, and Table 5 if the permittee can demonstrate they have historically been unable to perform sampling onboard by demonstrating through multiple (3 or more) shipping attempts that the samples cannot arrive within required hold times. Waivers from monitoring require an annual reapplication to provide for changes in operations or if DEC is able to determine that similar vessels are able to conduct monitoring."*

Failure to add similar allowances to this general permit penalizes facilities in remote locations and disfavors such locations in small communities that have historically been supported by the fishing industry.

#### Grind Size Monitoring

While the 0.5-inch grind size and reporting requirements remain intact during the upcoming permit cycle, OBI would like to emphasize the language of the 2018 Omnibus Appropriations Bill, which reads:

*“Fish Grinding.-Under a Clean Water Act general permit, onshore seafood processors in Alaska are allowed to grind and discharge seafood waste. The permit requires that all seafood waste be ground to a size of no more than one-half inch in any dimension. Unfortunately, in some instances, the best available technology is unable to achieve a half inch grind dimension on a consistent basis due to the malleable nature of fish waste. The Agency should develop a policy to ensure that fish processors using the best available technology and/or best conventional practice will be considered in compliance. Additionally, processing vessels operating in waters off-shore of Alaska are subject to the same one-half inch grinding requirement even though there are no documented water quality issues that require such grinding. The Agency should exempt offshore processing vessels from the requirement.” (Statement of Managers, Page 57)*

We are aware that the 2019 renewal of the EPA Offshore Seafood Processors in Alaska General Permit omitted the 0.5-inch grind size limit except for vessels discharging greater than 10-MMLbs/year in Steller sea lion critical habitat. OBI acknowledges that this is a directive for policy development at the federal level and that the Department does not have the ability to implement these policies without approval from EPA.

Our purpose in highlighting this text is for the Department to ensure that ADEC’s APDES seafood inspectors and enforcement staff are fully informed about this issue during the upcoming permit cycle, with the intent that the Department’s Compliance Enforcement Division continues to use discretion when issuing Notices of Violation solely for grind size exceedances. It is common knowledge that grind size exceedances are not a reflection of the performance of a facility’s grinding system. The industry has tried every available grinder type used in the food processing sector and none have been shown to grind seafood scraps to  $\leq 0.5$ -inch 100% of the time.

#### Sea Surface and Shoreline Monitoring

**Section 2.3.1.3.1.1** stipulates that a permittee shall meet all AK WQS at the boundary of an authorized MZ. Many facility outfalls are located beneath the path of vessels arriving and leaving facility docks. It is unclear if a permittee is out of compliance if foam, sheen, or residues originating from the outfall have been transported out of the MZ from vessels moving through the area. We request clarification be added to the draft Permit or Fact Sheet and statements included in the Fact Sheet denoting enforcement discretion for these conditions.

#### Nuisance Species

As previously commented, nuisance species are referenced in **Section 2.1.11.3.1** as criteria for determining a nuisance discharge, however, these species (or characteristics of the species) are not defined in the draft Permit nor the draft Fact Sheet. The Department continues to avoid clarifying this issue, as there is no clear definition within this draft Permit or draft Fact Sheet, nor in the Kodiak General Permit or Fact Sheet. There must be clear guidelines in place for facilities and inspectors to objectively decide if any fish or wildlife present near an outfall should be considered an undesirable or nuisance species.

### Outfall Inspection

**Section 2.1.7.2** discusses “Severed, Failed, or Damaged Systems,” and states that “The permittee shall report any failure of the discharge system to DEC in accordance with Appendix A, Part 3.4 (Twenty-four Hour Reporting).” OBI requests this wording be revised to remove the telephone and written report requirements if the failure of the discharge system is discovered and repaired at a time when no processing or discharges are occurring.

Pipes often break during the winter or a seismic event when facilities are not processing and are discovered when staff return to the facility to prepare for the season. Repairs are made in-kind before processing begins. We request clarification for these types of routine repairs and that they not be categorized as “failures” and would not be reportable as a violation. The repairs would be documented in the facility’s Pre-Operational Inspection Log which can be provided to the Department upon request or submitted with the Annual Report.

### **Seafloor Survey Monitoring Requirements**

Based on our extensive historical records of seafloor survey results across all our facilities, OBI believes that the monitoring frequency described in **Section 2.3.5 and Table 7** of the draft Permit are excessive and financially burdensome and should be reduced when there is evidence that no deposition exists on the estuarine river or sea bottom. Specifications must be included for facilities discharging ground solids in dynamic estuarine river or sea conditions where dispersal of ground solids prevents any seafloor deposition.

OBI is familiar with EPA’s January 2011 opinion about waste piles and that seafood discharge must not cause a sludge, solid or emulsion to be deposited on the seafloor, and we also understand the Department’s concern about antibacksliding. Furthermore, we understand the importance of the survey requirements, but firmly believe that allowances must be made to reduce seafloor survey occurrences for facilities with the seafloor at discharge locations visible from above water, environments with strong tidal influence, and with historical data available to show no evidence of seafloor deposition.

If the Department requires an initial survey, and the survey indicates no presence of deposition from the seasonal operation, subsequent surveys should not be required until the next permit cycle. As outlined above, we also believe that an increase in production of >125% is arbitrary and has no basis for the shorter seasonal operations.

The cost for a diving company to travel to Alaska from Seattle or an Anchorage office is very expensive. Costs often range of \$30,000-\$50,000 or more per survey depending on the characteristics of the waterbody and remoteness of the location. Contractors working on any project in Alaska bill the facility for mobilization costs including travel, weather delay standby days, lodging and meals. The diver survey cost is based on a day rate per diver including the insurance cost required for commercial divers that is passed onto their clients. Depending on depth, a hyperbaric chamber may be required on board the support vessel which adds to the cost for ensuring diver safety. Processing the survey data and report preparation adds to the final cost. With the

increased scope and requirements outlined in **Appendix E-3**, we have been advised by dive companies that the costs of performing seafloor surveys may increase by as much as 250%.

#### Table 7 Survey Requirements

**Footnote 'e' of Table 7** states: "Survey is only required if the actual amount discharged is equal to or greater than 125% of the previously authorized discharge amount." Survey history indicates that such increases in production are not expected to raise the probability of bottom deposition in a hydrodynamically active estuarine river or bay, which supports our position that allowances must be made for facilities that meet certain requirements. Since this is unsupported by fact and prior survey history, the provision/footnote should be removed.

It is unclear if the "previously authorized discharge amount" means that new authorizations will be granted to a facility each year based on their four year discharge average, and if so, if a new NOI will be required each year based on updated four-year discharge averages. We request that additional clarification is added to the permit, as there is very little information about conditions for additional surveys.

#### Pre-Biological Survey After 12 Months of No Discharge

OBI requests that instead of a pre-biological survey outlined in **Table 7**, an outfall integrity check be implemented for facilities that have not discharged in at least 12 months. OBI sees no clear basis for a mandatory seafloor survey to be performed after 12 consecutive months with no processing. Our historical survey data indicates that ZODs diminish in size over time, likely due to currents, storms, seismic activity, and other naturally occurring conditions, especially for our seasonally operated facilities that will be covered under this permit. We understand the value and need to routinely perform outfall line integrity inspections, especially after extended periods of no use, however our historical seafloor data does not support the Department's view that a complete pre-discharge biological survey will reveal any significant data on water quality or permit compliance that the already onerous seafloor survey schedule would not already provide.

#### Living Substrates

We request clarification of **Section 2.1.3.1** as it implies that facilities with an outfall in "living substrates" is required to perform a pre-discharge survey if the facility has not operated for the past 12 consecutive months. It is unclear if this applies to a facility's outfall not located in "living substrates."

#### Postponement of Seafloor Surveys due to No Production

OBI also requests that conditions be added to the permit to allow companies to postpone a seafloor survey if a facility does not operate for the calendar year that a survey is required per **Table 7**.

### Project Area ZOD

We disagree with the Department's comparison between wood waste and seafood waste in draft Fact Sheet **Section 4.4.3** and the proposed requirements related to the concept of the project area ZOD, especially for facilities with a ZOD less than one acre or with no bottom deposition. The increased complexity of the seafloor survey for the divers to cover so much ground underwater to account for insignificant deposits of discontinuous coverage is unwarranted, especially when considering the proposed increased survey frequency.

We also disagree with the concept of a ZOD forming at the dock due to fish transfer water discharges as described in Fact Sheet **Section 4.4.3**. We know of no such example where the amount of seafood potentially discharged overboard would create bottom deposition, and request that these two references be removed from the fact sheet.

### Timeline for Seafloor Survey Completion

**Section 1.8.4.2.5** outlines the requirement for seafloor surveys to be completed within 60 days of the completion of processing, and **2.3.5.5.1** adds that if a survey cannot be completed during this period due to surveyor scheduling, the facility must show that a surveyor was contacted at least three months prior to the scheduled survey date. This is an unreasonable requirement from a logistical standpoint for both the facility and the dive companies.

While end-of-season dates can be approximated based on typical environmental conditions, there are many environmental and operational variables which dictate when a facility stops processing. Most seafood processing facilities operate at maximum for 3-4 months each year, with processing duration often shortened or extended each season based on operational and environmental considerations.

In addition, the Department must not realize that there are very few dive companies with the skills and equipment capable of properly performing the detailed surveys required by the draft Permit. According to **Appendix D** of the draft Permit, 72 or so facilities would be required to conduct the survey, therefore, it will be impossible for all of the anticipated 72+ facilities covered by this permit to have the survey conducted within 60 days of terminating operations.

### Photographic Log Requirement

Divers must have the ability to record video in place of a photo log. We have spoken to the dive companies and they have emphasized the use and value of video versus a still photograph every few feet whether there is deposition present or not. Most importantly, from a safety standpoint, this is unreasonable to require the divers to take still photographs which greatly increases the time they must remain in the water often under harsh and cold conditions. The Department would be much better served to receive a video file versus hundreds to thousands of still photographs showing bare sand. Some areas have high turbidity, and nothing would be gained using still photography.

### Beggiatoa as an Indicator of Seafood Deposits

**Appendix E-3** erroneously includes *Beggiatoa spp.* and other types of bacterial mats (**Part I, Section 3(c)**) as solely related to deposition of seafood waste on the seafloor. The discussion in the draft Fact Sheet ignores the fact that *Beggiatoa spp.* mats are naturally occurring in sediments and are found in areas where no seafood deposits are found. Therefore, it is unreasonable to include these mats in the calculation of “continuous coverage.”

### Seafloor ZOD Sediment Coring

**Appendix E, Part II.4.j.** requires additional data be collected during the survey but states: ‘Coring may be required to determine the actual thickness...greater than three feet deep..’ This reads as though dive companies are expected to contact the Department and ask whether coring is required. We request this requirement be revised to clarify diver expectations.

Coring past three feet has very little to no value outside of remediation projects, yet significantly increases the cost for a routine survey with deposition less than three quarters of an acre. Coring is an entirely different type of survey from a remediation design/project survey, and requires different equipment, therefore it is wholly unfeasible to combine these two survey methodologies in this General Permit for an authorized ZOD.

Similar to our comments regarding effluent monitoring at remote facilities, holding time exceedances for seafloor survey core samples from our remote facilities will result in the diver returning return to the facility to pull additional samples, resulting in an incredible cost to the processor for reasons often outside of their control. Such requirements for a non-remediation project type of seafloor survey is both unreasonable and cost prohibitive.

For these reasons, we request that the coring and ‘marked stick’ measuring requirements be removed for authorized ZODs as ZODs are limited by areal extent and not by volume of measured deposition.

### Collection of Gas Samples

If the release of gases from the deposition is observed, **Part II.4.i.** requires collection of water samples or gas monitoring be performed including the seafloor where no waste deposition is observed. We object to the new sampling requirements on the basis that they are excessive and unnecessary for an authorized ZOD.

### **Technical Amendments Requested**

As previously commented, **Section 2.6.4.2.2.1** states that in Annual Reports, processors must “report the number of days of processing and the raw product (pounds) processed (for sampling days and total monthly) for each commodity line...” We request that this stipulation be removed because it appears to be an erroneous carryover from the AKG528000 Kodiak General Permit. Though the term “commodity line” is used throughout



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this draft Permit, neither the draft Permit nor draft Fact Sheet provide a definition of commodity lines and do not include reporting by commodity line in **Table 3** (Table 4 in AKG528000). Furthermore, nowhere in this draft Permit does it state that records must be kept for the number of days that each commodity line is processed, nor the amount of each commodity lines' raw pounds processed. This stipulation would lead to significant confusion for all processors, especially those that do not operate a facility in the City of Kodiak and are not familiar with these requirements.

As previously commented, **Table 3, Footnote b** continues to note that "Waste discharged = raw product – finished product." This does not account for any spoiled or putrid waste that cannot be discharged per **Section 1.4.1** and must be disposed via landfill or barge.

We request that **Section 1.3.7** be revised from "Discharge of seafood waste and wastewaters by vessel" to "Discharge of seafood waste and wastewaters by non-permanently moored craft and barges." This revision would match wording used in **Section 1.1.2** and clarify that "permanent vs. non-permanent" is the differentiating factor instead of "moored craft and barges versus vessel."

**Section 2.1.8.7** states: "This shall include the discharge of live tank waste and catch transfer water that often contain large solid pieces of seafood (e.g., small fish, fish heads, and internal organs)." This underlined section is an assertion by the Department that does not clarify any permit regulation or intent and adds no value to the permit. We request that this section be removed.

**Sections 2.2.2 and 2.6.5.5** require that the data provided in the monthly DMRs be summarized in the Annual Report. These data are readily available to the Department; therefore, we request that this burdensome and duplicative task be removed from the draft Permit's reporting requirements. The requirement for double data entry increases the risk for error and requires additional time to proof prior to submittal. The Department and EPA are expected to have the necessary IT resources to generate NetDMR data reports as needed for Department review.

We appreciate the opportunity to provide these comments during the public notice review process. Please do not hesitate to contact us if you have any questions.

Sincerely,

OBI Seafoods, LLC



Joe Frazier  
Vice President - Food Safety, QA and Regulatory Affairs