

Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Jack Faulk, Water Permits Division, Office of Water (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202-564-0768; email address: [faulk.jack@epa.gov](mailto:faulk.jack@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** In December 2003, a long-standing exclusion of discharges incidental to the normal operation of vessels from the NPDES program became the subject of a lawsuit in the U.S. District Court for the Northern District of California (*Northwest Env'tl. Advocates et al. v. United States EPA*, 2005 U.S. Dist. LEXIS 5373 (N.D. Cal. 2005)). The District Court issued a final order in September 2006 providing that

the blanket exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR § 122.3(a), shall be vacated as of September 30, 2008. On July 23, 2008, the U.S. Ninth Circuit Court of Appeals upheld the District Court's decision. This meant that, effective December 19, 2008, except for those vessels exempted from NPDES permitting by congressional legislation, discharges incidental to the normal operation of vessels that were excluded from NPDES permitting by 40 CFR § 122.3(a) were subject to the Clean Water Act (CWA) section 301 prohibition against discharging, unless authorized by an NPDES permit.

In late July 2008, Congress enacted two pieces of legislation to exempt discharges incidental to the normal operation of certain types of vessels from the need to obtain an NPDES permit.

The first of these, entitled the Clean Boating Act of 2008, amends the CWA to provide that discharges incidental to the normal operation of recreational vessels are not subject to NPDES permitting, and instead, creates a new regulatory regime to be implemented by EPA and the U.S. Coast Guard under the new 312(o) of the CWA. S. 2766, Pub. L. 110-188 (July 29, 2008).

The second piece of legislation provided for a temporary moratorium on NPDES permitting for discharges, except for ballast water, subject to the 40 CFR § 122.3(a) exclusion from (1) commercial fishing vessels (as defined in 46 U.S.C. § 2101 and regardless of size) and (2) from those other non-recreational vessels less than 79 feet in length. S. 3298, Pub. L/10-299 (July 31, 2008). The statute's NPDES permitting moratorium ran for a two-year period beginning on its July 31, 2008 enactment date, during which time EPA was to study the relevant discharges and submit a report to Congress. EPA finalized this Report to Congress, entitled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet" in August 2010 (EPA, 2010), a copy of which is available on EPA's Web site at <http://www.epa.gov/npdes/vessels>. The moratorium was subsequently extended to December 18, 2013 by P.L. 111-215 and further extended to December 18, 2014 by the Coast Guard and Maritime Transportation Act of 2012 (H.R. 2838) signed on December 20, 2012 (Pub. L. 112-213).

On December 8, 2011, EPA published the draft permit in the **Federal Register** and the Agency published the final Small Vessel General Permit (sVGP) also in today's **Federal Register** to ensure

that NPDES permit coverage is available for those vessels currently excluded from permitting by that moratorium.

This ICR calculates the burden and costs associated with the NPDES program, identifies the types of activities regulated under the NPDES program, and describes the roles and responsibilities of the Agency associated with the sVGP.

**Form numbers:** None.

**Respondents/affected entities:** Entities potentially affected by this action are owners/operators of commercial fishing vessels and non-recreational, non-military vessels less than 79 feet in length that are operating as a means of transportation with incidental discharges to waters of the United States.

**Respondent's obligation to respond:** required for owners/operators needing to obtain or retain the benefit of permit coverage under the sVGP.

**Estimated number of respondents:** 137,739 (total).

**Frequency of response:** Once, annually as needed, quarterly.

**Total estimated burden:** 138,597 hours (per year). Burden is defined at 5 CFR 1320.03(b).

**Total estimated cost:** \$5,064,298 (per year), includes \$0 annualized capital or operation & maintenance costs.

**Changes in estimates:** This is a new information collection.

Dated: August 29, 2014.

**Sheila E. Frace,**

*Acting Director, Office of Wastewater Management.*

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2011-0150; FRL-9916-36-OW]

### Final National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit for Discharges Incidental to the Normal Operation of Vessels Less Than 79 Feet

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of final permit issuance.

**SUMMARY:** Environmental Protection Agency (EPA) Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are finalizing the NPDES Small Vessel General Permit (sVGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. EPA is finalizing the sVGP, which has an effective date of

December 19, 2014, to authorize discharges from vessels less than 79 feet in length, because the law imposing a moratorium against NPDES permitting of these discharges expires on December 18, 2014. That law generally provides that no NPDES permits shall be required for discharges (except discharges of ballast water) incidental to the normal operation of vessels less than 79 feet and all commercial fishing vessels.

EPA provided notice of the availability of the draft permit and accompanying fact sheet for public comment in the **Federal Register** on December 8, 2011.

**DATES:** This permit is effective on December 19, 2014.

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on the day 2 weeks after **Federal Register** publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. This permit also provides additional dates for compliance with the terms of the permit.

**FOR FURTHER INFORMATION CONTACT:** For further information on the sVGP, contact Jack Faulk at (202) 564-0768 or Ryan Albert at (202) 564-0763, or at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave, NW., Washington DC 20460; or email at [vgp@epa.gov](mailto:vgp@epa.gov).

**SUPPLEMENTARY INFORMATION:** This supplementary information is organized as follows:

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### I. General Information

#### A. Does this action apply to me?

This action applies to vessels less than 79 feet in length operating in a capacity as a means of transportation that have discharges incidental to their normal operation into waters subject to this permit, except recreational vessels as defined in Clean Water Act (CWA) section 502(25) and vessels of the Armed Forces as defined in CWA section 312(a)(14). Affected vessels are henceforth referred to as non-military, non-recreational vessels. Unless otherwise excluded from coverage by Part 5 of the sVGP, the waters subject to this permit are waters of the U.S. as defined in 40 CFR 122.2. That provision defines "waters of the U.S." as certain inland waters and the territorial sea, which extends three miles from the baseline. More specifically, CWA section 502(8) defines "territorial seas" as "the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." Note that the Clean Water Act does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA sections 502(9), (10). See CWA section 502(12) and 40 CFR 122.2 (definition of "discharge of a pollutant"). This permit, therefore, does not apply in such waters.

Non-military, non-recreational vessels greater than 79 feet in length operating in a capacity as a means of transportation that need NPDES coverage for their incidental discharges will generally be covered under the VGP (78 FR 21938, April 12, 2013). Similarly situated vessels less than 79 feet in length may be covered under the VGP, or may instead opt for coverage under the sVGP. Commercial fishing vessels greater than 79 feet in length are not eligible for coverage under the sVGP but can be covered under the VGP should they need to do so (e.g., after expiration of the moratorium from permit requirements for these vessels).

#### B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action: Docket ID No. EPA-HQ-OW-2011-

0150. The official public docket is the collection of materials, including the administrative record required by 40 CFR 124.18, for the final permit. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information may not be publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through <http://www.regulations.gov> and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically at <http://www.federalregister.gov>.

An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at <http://www.regulations.gov>. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the "Search" box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this section.

#### C. Public Outreach: Public Hearings and Public Meetings, Web Casts

Because EPA anticipated a significant degree of public interest in the draft sVGP and the draft VGP, EPA held a public hearing on Wednesday January 11, 2012, to receive public comment and answer questions concerning the draft permits. The hearing was held at EPA

East Room 1153, 1201 Constitution Ave. NW., Washington DC 20460. In addition, EPA held a public meeting on Monday January 23, 2012, at the Ralph H. Metcalfe Federal Building, Room 331, 77 West Jackson Blvd., Chicago, IL 60604. The purpose of those meetings was to present the proposed requirements of these two draft general permits and the basis for those requirements, as well as to answer questions concerning the draft permits. The public meetings and public hearing were attended by a wide variety of stakeholders including representatives from industry, government agencies, and environmental organizations. In addition, EPA held a webcast on January 19, 2012, and two online Question and Answer sessions on January 31 and February 7, 2012, to provide information on the proposed permits and to answer questions from interested parties that were unable to attend the public meetings or hearing.

#### *D. Who are the EPA regional contacts for this permit?*

For EPA Region 1, contact John Nagle at tel.: (617) 918-1054; or email at [nagle.john@epa.gov](mailto:nagle.john@epa.gov); or at US EPA, Region 1, New England/Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Mail Code: OEP 06-1, Boston, MA 02109-3912.

For EPA Region 2 in New York and New Jersey, contact Patricia Pechko at tel.: (212) 637-3796; or email at [pechko.patricia@epa.gov](mailto:pechko.patricia@epa.gov); or at US EPA, Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866 or for EPA Region 2 in Puerto Rico and the Virgin Islands, contact Sergio Bosques at tel.: (787) 977-5838; or email at [bosques.sergio@epa.gov](mailto:bosques.sergio@epa.gov); or at US EPA Region 2, Caribbean Environmental Protection Division, City View Plaza II—Suite 7000, 48 Rd. 165 Km 1.2, Guaynabo, Puerto Rico 00968-8069.

For EPA Region 3, contact Mark Smith at tel.: (215) 814-3105; or email at [smith.mark@epa.gov](mailto:smith.mark@epa.gov); or at US EPA, Region 3, 1650 Arch St., Mail Code: 3WP41, Philadelphia, PA 19103-2029.

For EPA Region 4, contact Karrie-Jo Robinson at tel.: (404) 562-9308; or email at [robinson.karrie-jo@epa.gov](mailto:robinson.karrie-jo@epa.gov); or Kip Tyler at 404-562-9294 or email at [tyler.kip@epa.gov](mailto:tyler.kip@epa.gov); or at US EPA, Region 4/Water Permits Division, Atlanta Federal Center, 61 Forsyth St. SW., Atlanta, GA 30303-3104.

For EPA Region 5, contact Sean Ramach at tel.: (312) 886-5284; or email at [ramach.sean@epa.gov](mailto:ramach.sean@epa.gov); or US EPA, Region 5, 77 W Jackson Blvd., Mail Code: WN16J, Chicago, IL 60604-3507.

For EPA Region 6, contact Jenelle Hill at tel.: (214) 665-9737; or email at

[hill.jenelle@epa.gov](mailto:hill.jenelle@epa.gov); or at US EPA, Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202-2733.

For EPA Region 7, contact Alex Owutaka at tel.: (913) 551-7584; or email at [owutaka.alex@epa.gov](mailto:owutaka.alex@epa.gov); or at US EPA, Region 7, 11201 Renner Boulevard, Lenexa, Kansas 66219.

For EPA Region 8, contact Lisa Luebke at tel.: (303) 312-6256; or email at [luebke.lisa@epa.gov](mailto:luebke.lisa@epa.gov); or at US EPA, Region 8, 1595 Wynkoop St., Mail Code: 8P-W-WW, Denver, CO 80202.

For EPA Region 9, contact Eugene Bromley at tel.: (415) 972-3510; or email at [bromley.eugene@epa.gov](mailto:bromley.eugene@epa.gov); or at US EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105-3901.

For EPA Region 10, contact Cindi Godsey at tel.: (206) 553-1676; or email at [godsey.cindi@epa.gov](mailto:godsey.cindi@epa.gov); or at US EPA, Region 10, 1200 6th Avenue, Suite 900, Seattle, WA 98101.

## **II. Statutory and Regulatory History**

The Clean Water Act (CWA) section 301(a) provides that “the discharge of any pollutant by any person shall be unlawful” unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines “discharge of a pollutant” as “(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.” 33 U.S.C. 1362(12). A “point source” is a “discernible, confined and discrete conveyance” and includes a “vessel or other floating craft.” 33 U.S.C. 1362(14).

The term “pollutant” includes, among other things, “garbage . . . chemical wastes . . . and industrial, municipal, and agricultural waste discharged into water.” The Act’s definition of “pollutant” specifically excludes “sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces” within the meaning of CWA section 312. 33 U.S.C. 1362(6).

One way a person may discharge a pollutant without violating the CWA section 301 prohibition is by obtaining authorization to discharge (referred to herein as “coverage”) under a CWA section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 U.S.C. section 1342). Under CWA section 402(a), EPA may “issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)” upon certain conditions required by the Act.

Historically, EPA had not required NPDES permits for discharges incidental to the normal operation of a

vessel; however, on July 23, 2008, the United States Ninth Circuit Court of Appeals upheld a lower court decision that the Agency’s approach to exclude these discharges from permitting exceeded the Agency’s authority to do so under the Clean Water Act. *Northwest Env’tl. Advocates et al. v. United States EPA*, 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. 2006). This decision prompted EPA and Congress to take several actions. For larger vessels (i.e., greater than 79 feet in length), EPA issued the Vessel General Permit (VGP) in late 2008 to provide a mechanism for these vessels to comply with CWA permitting obligations. For smaller vessels and commercial fishing vessels, Congress enacted Public Law (Pub. L.) 110-299 to provide a two-year permitting moratorium to allow time for EPA to study discharges from these vessels and provide a Report to Congress (“*Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet*,” August 2010). Congress has subsequently extended the permitting moratorium for smaller vessels and commercial fishing vessels through December 18, 2014. (Pub. L. 111-215 and Pub. L. 112-213).

The Small Vessel General Permit (sVGP), as finalized, is a mechanism for EPA to provide coverage for discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length once the discharge moratorium ends on December 18, 2014. All discharges incidental to the normal operation of a vessel less than 79 feet, when that vessel is operating in capacity as a means of transportation, are eligible for coverage under this permit.

EPA is issuing this permit in advance of the date permit coverage is required to give small vessel owners and operators time to read and prepare for these new permit requirements.

## **III. Scope and Applicability of the 2014 sVGP**

### *A. CWA Section 401 Certification and Coastal Zone Management Act*

EPA may not issue a permit authorizing discharges into the waters of a state until that state has granted certification under CWA section 401 or has waived its right to certify (or been deemed to have waived). 33 U.S.C. 1341(a)(1); 40 CFR 124.53(a). EPA gave each state, tribe, and territory as applicable over nine months to certify, well over the 60 day regulatory norm for NPDES permits. EPA found that this 401 certification had unusual circumstances

which warranted additional time (e.g., the permits regulate discharges of mobile point sources; they have broad applicability to the waters of every state and tribe in the country). If a state believed that any permit condition(s) more stringent than those contained in the draft permit were necessary to meet the applicable requirements of either the CWA or state law, the state had an opportunity to include those condition(s) in its certification. 40 CFR 124.53(e)(1). Twenty-three states and one Indian tribe provided such conditions in their certifications, and EPA has added them to the sVGP pursuant to CWA section 401(d). 33 U.S.C. 1341(d).

Similarly, EPA may not authorize discharges under a general permit into waters of a State if the State objects with EPA's National Consistency Determination, pursuant to the regulations implementing of the Coastal Zone Management Act ("CZMA"), specifically the regulations at 15 CFR 930.31(d) and 930.36(e). If the State coastal zone management agency objects to the general permit, then the general permit is not available for use by potential general permit users in that State unless the applicant who wants to use the general permit provides the State agency with the applicant's consistency determination and the State agency concurs. 15 CFR 930.31(d). The National Oceanic and Atmospheric Administration (NOAA) has explained that "a State objection to a consistency determination for the issuance of a general permit would alter the form of CZMA compliance required, transforming the general permit into a series of case by case CZMA decisions and requiring an individual who wants to use the general permit to submit an individual consistency certification to the State agency in compliance with 15 CFR part 930." 71 FR 788, 793. No state objected to EPA's national consistency determination.

#### B. Geographic Coverage of sVGP

The sVGP is applicable to discharges incidental to the normal operation of a vessel (identified in Part 1.4 of the sVGP and section 3.6 of the sVGP fact sheet) into waters subject to these permits, which means "waters of the U.S." as defined in 40 CFR 122.2, except as otherwise excluded by Part 5 of the permit. This includes the territorial seas, defined in section 502(8) of the CWA, extending to three miles from the baseline. *Pacific Legal Foundation v. Costle*, 586 F.2d 650, 655–656 (9th Cir. 1978); *Natural Resources Defense Council, Inc. v. U.S. EPA*, 863 F.2d 1420, 1435 (9th Cir. 1988).

The general permit will cover vessel discharges into the waters of the U.S. in all states and territories, regardless of whether a state is authorized to implement other aspects of the NPDES permit program within its jurisdiction, except as otherwise excluded by Part 5 of the sVGP. While, pursuant to CWA section 402(c), EPA typically is required to suspend permit issuance in authorized states, EPA may issue NPDES permits in authorized states for discharges incidental to the normal operation of a vessel because 402(c)(1) of the Clean Water Act prohibits EPA from issuing permits in authorized states only for "those discharges subject to [the state's authorized] program." Discharges formerly excluded under 40 CFR 122.3 are not "subject to" authorized state programs. The vessel discharges that will be covered by the permit are discharges formerly excluded from NPDES permitting programs under 40 CFR 122.3. (See discussion of the vacatur of this exclusion above.) Therefore the discharges at issue are not considered a part of any currently authorized state NPDES program. See 40 CFR 123.1(i)(2) (where state programs have a greater scope of coverage than "required" under the federal program, that additional coverage is not part of the authorized program) and 40 CFR 123.1(g)(1) (authorized state programs are not required to prohibit point source discharges exempted under 40 CFR 122.3).

#### C. Categories of Vessels Covered Under the sVGP

The sVGP applies to discharges incidental to the normal operation of non-military, non-recreational vessels less than 79 feet (unless a vessel elects for coverage under the VGP instead). The discharges eligible for coverage under this permit are those covered by the former exclusion in 40 CFR 122.3(a) prior to its vacatur.

#### D. Summary of the sVGP

EPA is today finalizing the sVGP for vessels less than 79 feet. EPA is finalizing the sVGP to provide coverage for vessels less than 79 feet in length because the Public Law (Pub. L.) 110–299 NPDES permitting moratorium (subsequently extended by Pub. L. 111–215 and Pub. L. 112–213) expires on December 18, 2014. EPA recognizes that small commercial vessels are different in operation than larger commercial vessels, generally have fewer discharge types, and that owner/operators of smaller vessels have particularized expertise and different resources available to manage their vessels than owner/operators of larger vessels.

Hence, the sVGP is structured differently for this class of permittees. The sVGP will not require the vessel owner or operator to submit a Notice of Intent (NOI) to receive permit coverage. However, as with vessels not required to submit an NOI under the 2013 VGP, sVGP permittees are required to complete and keep a Permit Authorization and Record of Inspection (PARI) form onboard their vessel at all times (either in paper form or electronically). EPA also notes that vessel owner/operators of vessels less than 79 feet may choose whether they wish to seek coverage under the sVGP or the VGP. The PARI form, different forms for the sVGP and VGP, will document under which permit the owner/operator has sought coverage. The discharges covered in the sVGP are categorized into several broad categories listed in the permit and include: common-sense requirements for general discharges, fuel management, engine and oil control, solid and liquid waste management, deck washdown and runoff and above water line hull cleaning, vessel hull maintenance, graywater, fish hold effluent, ballast water, and overboard cooling water discharges. The sVGP includes non-numeric effluent limits in the form of Best Management Practices (BMPs), which were developed for these discharges because EPA has determined that it is infeasible to calculate numeric effluent limits at this time. The BMPs are designed to minimize the amount of any discharge produced as well as reduce the likelihood the discharge would enter a waterbody. EPA determined that for most small vessel discharges, minimization of pollutants in discharges can be achieved without using highly engineered, complex treatment systems. The sVGP also requires the owner/operator to inspect the vessel quarterly and take any corrective action, as necessary, and certify to such on the PARI form each year.

#### E. Summary of Significant Changes From the Proposed sVGP

EPA received comments from more than 70 commenters and based on those comments, the Agency made a number of revisions to the proposed permit as reflected in today's action. Significant changes from the proposed permit are summarized below and discussed in more detail in the permit fact sheet and in the response to comments document available in the docket (Docket ID No. EPA-HQ-OW-2011-0150 accessible at <http://www.regulations.gov>):

1. Removed the requirement that only vessels with less than 8 cubic meters of

ballast water are eligible for sVGP coverage.

2. Added a provision that, when feasible and safe, operators must use ballast water pumps instead of gravity draining to empty these tanks.

3. Defined what it means for an environmentally acceptable lubricant (EAL) to be “technically infeasible” for a vessel to use as the term is used in the permit describing when EALs may not be required and added the Swedish Standard SS 155434, Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR) requirements, and EPA’s Design for the Environment (DfE) to the list of acceptable labeling programs for EALs.

4. Clarified the prohibition against discharging unused bait overboard is specific to unused “live” bait from a different water body.

5. Added a condition that accumulated bilgewater must be removed, to the extent practicable, prior to transporting a vessel from one waterbody to another over land.

6. Added a prohibition against using any other organotin compound (beyond an absolute prohibition of tributyl tin) as a hull coating except in certain instances.

7. Clarified vessel hull cleaning should not be done within 90 days of painting, unless the vessel’s hull is “substantially fouled” and that cleaning of hulls does not necessarily have to be done using “only soft sponges.”

8. Clarified that discharges from continuous “once-through” ambient water used for keeping the catch alive during transit is not subject to the permit requirements for discharging to shore-based facilities.

9. Clarified that “periodic” inspections of the engine and of the hull are to be done at least quarterly.

10. Clarified that any problems identified during the quarterly visual inspection or when inspecting fuel and hydraulic systems for damage or leaks must be corrected as soon as possible.

11. Added a condition that a quarterly inspection is not required on vessels that are not in the water for that quarter but this must be documented on the PARI form for that quarter.

12. Added definitions for several terms used in the permit, including “ballast tank,” “ballast water,” “ballast water capacity,” “fish hold,” “minimally-toxic,” “minimally-toxic soaps, cleaners, and detergents,” “minimize,” “not bioaccumulative,” “seafood processing,” and “sewage from vessels.”

13. Added State and Tribal-specific requirements for 21 states and one tribe, pursuant to CWA § 401, to the permit.

#### IV. Analysis of Economic Impacts of sVGP

##### A. Costs of the sVGP

EPA estimates that between 115,000 and 138,000 vessels are potentially affected by the sVGP requirements. The establishments that own and operate vessels that will be subject to the sVGP are primarily associated with the fishing and water transportation industries, and with the oil and gas sector within the mining industry. To estimate the effect of sVGP requirements on an industry as a whole, EPA’s analysis takes into account previous conditions and determines how the industry would act in the future in the absence of permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations and with current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. EPA estimated potential compliance costs to vessels associated with each of the practices and discharge categories identified in the sVGP, and with the inspection and recordkeeping requirements. Overall, EPA finds that sVGP requirements could result in total annual incremental costs for domestic vessels ranging between \$7.1 million and \$16.9 million (2010\$) in the aggregate. This includes the paperwork burden costs and the incremental costs of all practices for applicable discharge categories. Per vessel incremental compliance costs average between \$17 and \$133 per year, depending on the number of applicable discharge categories and baseline practices.

To evaluate economic impacts of sVGP requirements on the affected industries, EPA performed a firm-level analysis. The firm-level analysis examines the impact of incremental costs per vessel to comply with the sVGP requirements on model firms that represent the financial conditions of “typical” businesses in each of the examined industry sectors. Since nearly all firms in the affected industries are small, the firm-level analysis focuses on assessment of impacts on small businesses. Further, given the distribution of revenue among firms in the affected industry sectors, which suggests a relatively greater potential for impacts to small firms in the commercial fishing industry, EPA looked more specifically at this industry when assessing the significance of impacts. To evaluate the potential impact of the sVGP on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and

facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this permit. Because the impact of sVGP compliance is likely to be most significant for firms at the lower end of the firm size spectrum, the analysis focused on firms in the smallest revenue category in each industry. The results of this test provide estimated compliance cost thresholds that range between \$331 and \$680 per year (1%) and between \$994 and \$2,040 per year (3%), depending on the industry. The estimated sVGP compliance costs (\$17 to \$133 per year) are well below these thresholds. Based on this firm-level analysis using the average characteristics of firms in the lowest revenue category, EPA concludes that the sVGP will not have a significant economic impact on a substantial number of small entities based on information showing that firms would have lower compliance costs than would exceed the 1 percent cost-to-revenue threshold under high-end cost assumptions.

##### B. Benefits of the sVGP

Although EPA was unable to evaluate the expected benefits of the permit in dollar terms due to data limitations, the Agency collected and considered relevant information to enable qualitative consideration of ecological benefits and to assess the importance of the ecological gains from the revisions. EPA expects that reductions in vessel discharges will benefit society in two broad categories: (1) Enhanced water quality from reduced pollutant discharges and (2) reduced risk of invasive species introduction.

Because many of the nation’s busiest ports are considered to be impaired by a variety of pollutants found in vessel discharges, reducing pollutant loadings from these discharges is expected to have benefits associated with the reduction of concentrations of nutrients, metals, oil, grease, and toxics in waters with high levels of vessel traffic.

#### V. Executive Orders 12866 and 13563

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) this action is a “significant regulatory action.” Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821) and any changes made in response to OMB recommendations have been documented in the docket for this action.

**Authority:** Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: August 21, 2014.

**Deborah A. Szaro,**

*Deputy Regional Administrator, EPA Region 1.*

Dated: August 21, 2014.

**Joan Leary Matthews,**

*Director, Clean Water Division, EPA Region 2.*

Dated: August 21, 2014.

**Jose C. Font,**

*Director, Caribbean Environmental Protection Division, EPA Region 2.*

Dated: August 21, 2014.

**Jon M. Capacasa,**

*Director, Water Protection Division, EPA Region 3.*

Dated: August 21, 2014.

**Gail D. Mitchell,**

*Deputy Director, Water Protection Division, EPA Region 4.*

Dated: August 21, 2014.

**Timothy C. Henry,**

*Deputy Director, Water Division, EPA Region 5.*

Dated: August 21, 2014.

**James R. Brown,**

*Acting Deputy Director, Water Quality Protection Division, EPA Region 6.*

Dated: August 21, 2014.

**Karen Flournoy,**

*Director, Water, Wetlands, and Pesticides Division, EPA Region 7.*

Dated: August 21, 2014.

**Darcy O'Connor,**

*Acting Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance, EPA Region 8.*

Dated: August 21, 2014.

**Nancy Woo,**

*Associate Director, Water Division, EPA Region 9.*

Dated: August 21, 2014.

**Daniel Opalski,**

*Director, Office of Water and Watersheds, EPA Region 10.*

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**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2014-0301; FRL-9915-79]

### Availability of Stipulated Injunction in Northwest Center for Alternatives to Pesticides v. EPA litigation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces to the public the availability of an Order (stipulated injunction) issued by the

U.S. District Court for the Western District of Washington that, among other things, would reinstate streamside no-spray buffer zones to protect endangered or threatened Pacific salmon and steelhead in California, Oregon, and Washington. The stipulated injunction, issued on August 15, 2014, settles litigation brought against EPA by the Northwest Center for Alternatives to Pesticides (NCAP) and others. These buffers were originally established by the same court in prior litigation brought against EPA by the Washington Toxics Coalition (WTC) and others. Like the original buffer zones, the limitations in this stipulated injunction are part of a court order but are not to be enforceable as labeling requirements under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The no-spray buffer zones will apply to the pesticides carbaryl, chlorpyrifos, diazinon, malathion, and methomyl. These buffers will remain in place until EPA implements any necessary protections for Pacific salmon and steelhead based on reinstituted consultations with the National Marine Fisheries Service (NMFS). EPA is reevaluating these pesticides in connection with its current FIFRA registration review process and the stipulated injunction reinstates the buffers in the interim.

#### FOR FURTHER INFORMATION CONTACT:

Anita Pease, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7695; email address: [pease.anita@epa.gov](mailto:pease.anita@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you develop, manufacture, formulate, sell, and/or apply pesticide products, and if you are interested in the potential impacts of pesticide use on listed species. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

• Other stakeholders who have an interest in potential impacts of pesticides on listed species.

However, this action is directed to the public in general, and may be of particular interest to the parties in the NCAP v. EPA litigation, environmental organizations, professional and recreational fishing interests, other public interest groups, state regulatory partners, other interested federal agencies, pesticide registrants and pesticide users. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*C. How can I get copies of this document and other related information?*

A copy of the stipulated injunction is available in the docket under docket identification (ID) number EPA-HQ-OPP-2014-0301.

## II. Background

### A. What action is the Agency taking?

EPA is announcing the availability of a stipulated injunction issued on August 15, 2014, by the U.S. District Court for the Western District of Washington that, among other things, reinstates streamside no-spray buffer zones to protect endangered and threatened Pacific salmon and steelhead in California, Oregon, and Washington. The stipulated injunction settles litigation brought against EPA by NCAP and others. Like the original buffer zones, the limitations in this injunction are part of a court order but are not enforceable as labeling requirements under FIFRA. To view the interactive map displaying the areas where the buffer zones apply, go to [www.epa.gov/espp/litstatus/wtc/uselimitation.htm](http://www.epa.gov/espp/litstatus/wtc/uselimitation.htm). The interactive map is expected to be updated no later than September 30, 2014 to include the current list of chemicals subject to the restrictions, enhanced spatial resolution, and the most recent geospatial data depicting stream reaches where the buffer zones apply. The no-spray buffer zones apply to the pesticides carbaryl, chlorpyrifos, diazinon, malathion, and methomyl. These buffer zones will remain in place until EPA implements any necessary protections for Pacific salmon and steelhead based on reinstituted consultations with NMFS. EPA is reevaluating these pesticides in connection with its current FIFRA