

Response to Comments

Hatchery General Permit for Federal & Tribal Hatcheries in Washington June 2009

Introduction

A period for public comment on the draft permit was provided from November 12 through December 29, 2008. EPA conducted an informational meeting on December 17, 2008, in Seattle, Washington.

Seven individuals, representing tribal interests, governmental agencies, and one public interest group, submitted comments; they are listed below.

Commenters

- 1 Bruce Stewart, Northwest Indian Fisheries Commission (NWIFC)
- 2 Ray Brunson, US Fish & Wildlife Service, Olympia Fish Health Center (FWS Olympia)
- 3 Daniel Diggs, US FWS, Portland (FWS Portland)
- 4 Kurt Beardslee, Wild Fish Conservancy (WFC Beardslee)
- 5 Mark Hersh, Wild Fish Conservancy (WFC Hersh)
- 6 Bill Moore, Washington Department of Ecology (Ecology)
- 7 Bill St.Jean, Chief Enhancement Biologist, Nisqually Tribe

This document addresses the concerns raised in those comments by grouping those on similar topics.

At the outset, it is important to clarify that a Fact Sheet (FS) provides background information for the development of a draft permit; it is actually a final document when it is made public during the public comment period. As such, it is not subject to correction or revision. Where appropriate, we will acknowledge in this Response to Comments any errors or corrections to the information in the Fact Sheet; however, the Fact Sheet will not be changed. This Response to Comments document serves as a supplement to and, in some cases, a correction to the Fact Sheet.

Final Certifications under Clean Water Act §401

The proposed final permit was mailed on April 10, 2009, to the Chehalis, Lummi, Makah, Spokane, and Tulalip tribes and to the Washington Department of Ecology for final certification that the permit will meet their water quality standards.

Certifications were received from the Makah and Tulalip Tribes and from the Washington Department of Ecology that did not require any changes to the proposed final permit.

Certification was received from the Lummi Nation which required submittal of some additional information to the Nation beyond what had been required. See §IV, below.

Certification was received from the Spokane Tribe which required submittal of information to the Tribe and access to the permittee's facility by the Spokane Tribe Water Control Board for inspection and sampling. See §IV, below.

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I. Permit Coverage

A. Tribally operated facilities outside Indian Country

1. **Comment:** NWIFC stated that it was discussing with Washington Department of Ecology (Ecology) its desire to see all NPDES permitting of tribal facilities not in Indian Country under EPA jurisdiction.
2. **Response:** The proposed Permit only covers federal facilities and facilities located in Indian Country. It does not cover tribally-owned facilities that are not located in Indian Country. EPA will continue discussions with these facilities and the Ecology to determine how and when such facilities will be covered by NPDES permits.
3. **Action:** We made no change in the permit.

B. Facilities smaller than federally-defined thresholds

As stated in the draft permit and fact sheet, the General Permit applies to *concentrated aquatic animal production* (CAAP) facilities, as defined in 40 CFR §122.24. This Permit only applies to facilities that produce cold water fish species. A cold water CAAP includes facilities that discharge for at least 30 days per year and that hold at least 20,000 pounds of fish at a maximum during a year and feed at least 5,000 pounds per month during the calendar month of maximum feeding. EPA may designate a smaller facility as a significant contributor of pollution to Waters of the United States based on relevant factors pursuant to 40 CFR § 122.24(c).

1. Describing thresholds differently and covering facilities that rise above one but not both of the criteria

- a. **Comment:** Ecology pointed out a significant difference between the federal definition of CAAP facilities and the State definition in WAC 173-221A-100(1)(a) of upland finfish facilities that require a wastewater discharge permit. Under the State definition, a wastewater discharge permit is required for facilities that produce more than 20,000 net pounds of finfish per year or feed more than 5,000 pounds of food in any calendar year. The State asserts that facilities meeting these criteria must be permitted under Washington State regulations.
- b. **Response:** EPA recognizes the difference between the federal definition of CAAP facilities and the State definition of upland finfish facilities. However, EPA only has jurisdiction to issue permits to those facilities that fall under the definition set forth in 40 CFR § 122.24(b) or those facilities that have been designated pursuant to 40 CFR § 122.24(c). EPA's CAAP definition requires facilities to obtain a NPDES permit if they produce more than 20,000 pounds of fish and use more than 5,000 pounds of feed during the

month of maximum feeding. EPA does not have the authority to use the State definition for upland finfish hatchery in a federal NPDES permit

c. **Action:** We made no change in the permit.

2. Fine-tuning the threshold of 20,000 pounds of production in the definition of CAAP facilities

a. **Comment:** NWIFC asserted that the “minimum pounds of production” criterion is confusing. It recommended modifying the language describing the lower production threshold to “whose maximum weight of fish during a year is more than 20,000 pounds.”

b. **Response:** The draft Permit states that the Permit applies to upland facilities “that discharge for at least 30 days per year and that hold at least 20,000 pounds of fish at a maximum during the year and feed at least....” *See* Section I.B.3. The federal definition exempts “facilities which produce less than 9,000 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year.” *See* 40 CFR Part 122, Appendix C. After reviewing the language in the Permit in response to NWIFC’s comment, EPA has determined that to ensure consistency between the federal regulations and the Permit, the Permit will be changed to reflect the wording that is set forth in the federal regulations. However, EPA has not adopted the Permit change suggested by NWIFC.

c. **Action:** EPA has changed the definition to the exact wording of 40 CFR Part 122, Appendix C in §§ I.B.3, I.E.1, and VIII (CAAP definition) of the Permit. The Permit now reads: “... facilities which produce less than 9,000 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year and”

3. Request for letter confirming that a facility does not need to be covered

a. **Comment:** NWIFC requests that, when a facility falls below the thresholds and has not been found to be a significant contributor of pollutants, the permit require EPA to send a letter to the facility confirming that it does not need coverage under the permit (§I.E.1).

b. **Response:** The permit provides conditions under which the permittee may discharge pollutants to waters of the U.S. Section I.E.1 recognizes that small facilities, *i.e.*, facilities that produce less than 20,000 pounds of fish and use less than 5,000 lbs of feed, are not required to obtain coverage under a NPDES permit pursuant to 40 CFR § 122.24(a). Section I.E.1 further allows a facility to voluntarily submit the NOI information with a request that the facility be included or excluded from permit coverage. Once EPA receives this information, it may find that such a facility is a significant contributor of pollution and require coverage under this permit; in other cases, where a facility is deemed to not be a significant contributor of pollution, EPA will

send a letter confirming that the facility does not need an NPDES permit in order to discharge to waters of the U.S.

Unless EPA specifically requests submittal of the information in an NOI, the facility is responsible for the ultimate decision of whether to apply for coverage under the Permit.

c. **Action:** We changed the permit by deleting the sentence in §I.E.1 about EPA's possible responses to submittal of the NOI information. We have included that information in the response above, but have determined that it is not appropriate in the permit itself.

4. Clarification on whether small facilities need permit coverage and how they get it

a. **Comment:** FWS Portland pointed out that it isn't clear what small facilities that produce less than 20,000 lbs maximum and feed less than 5,000 lbs. of feed in the maximum month need to do to ensure they have proper permit coverage. If they don't fall under this permit, it's not clear if they need some other permit. It's also not clear if and how a facility applies for coverage under this permit even if it does not need to, e.g. if it is below the thresholds and EPA has not required it to be covered.

WFC Beardslee asked if smaller facilities must apply for an individual permit and asserts that the Fact Sheet implies that they must.

b. **Response:** According to 40 CFR § 122.24(a), concentrated aquatic animal production facilities, as defined in 40 CFR § 122.24(b), are point sources subject to the NPDES program. If a facility does not meet the federal definition of a CAAP, then the facility is not a point source and a NPDES permit is not required, unless EPA exercises its authority under 40 C.F.R. § 122.24(c) to designate it as a CAAP. Therefore, if EPA does not specifically designate the small facilities referenced in FWS Portland's comments as CAAPs, these facilities would not require NPDES permit coverage for their discharges.

In § II.C of the Fact Sheet, we included the statement, which WFC noted: "A facility with any of the following types of discharges cannot be covered under this permit and must apply for an individual NPDES permit." One of the types of facilities that was listed are the small facilities that do not meet the production and feed thresholds set forth in the Permit and the federal designation. This reference was an error with respect to the category of small facilities that do not meet the production and feed thresholds, though it does apply to the rest of the facilities in the list.

A small facility discharger may submit the information required in a Notice of Intent and request in a cover letter that it be covered under the General Permit. In such a case, EPA would evaluate the situation on a case by case basis in

accordance with the provisions of 40 CFR §122.24(c) and would notify the discharger of its determination.

On the other hand, a small facility discharger may submit information required in a Notice of Intent and request in a cover letter that EPA confirm that it does not need permit coverage. After evaluating the situation, EPA would notify the facility of its determination.

c. **Action:** EPA modified language in §I.E.1 of the permit to clarify that smaller facilities submitting an NOI should include a cover letter either requesting coverage or requesting a letter confirming that they do not need permit coverage. We also modified §II.A to allow those seeking coverage, even if they are not required to do so, to submit an NOI.

5. Determination that small facilities do not need a permit

a. **Comment:** WFC used recent actions with respect to Quilcene National Fish Hatchery (NFH) to make a broader point—that it thinks that EPA should inspect supposed “small” facilities before determining that they do not need a permit or, as in the case of Quilcene NFH, issuing an NOI to terminate a permit.

b. **Response:** 40 CFR § 122.24(c)(1) allows EPA to designate “small” facilities as CAAPs if EPA determines that they are significant contributors of pollution. However, until EPA conducts an on-site inspection of a facility and formally designates it as a CAAP after that inspection, the facility is not required to submit a NPDES permit application (or NOI) pursuant to 40 CFR §122.24 (c)(2). EPA does not have the resources to inspect all potential CAAP facilities and relies on the self-reporting requirements of the CWA and CWA implementing regulations, such as the requirement to apply for an NPDES permit if a facility meets the definition of a CAAP.

With respect to Quilcene NFH, EPA is not required to conduct a site inspection before terminating a permit. (40 CFR §124.5) EPA has issued a Notice of Intent to terminate the NPDES Permit for the Quilcene National Fish Hatchery. WFC did not request a change in the permit.

c. **Action:** We made no change in the permit.

C. Reporting changes in production or feeding maximum levels

1. Reporting on NOI

a. **Comment:** FWS Portland asked if the NOI can be completed with a range of production or feeding numbers as well as a range of species, in order to allow flexibility

b. **Response:** EPA needs the most accurate and up-to-date information that the discharger can provide, including estimates of ranges of production or maximum amount of feed, as appropriate. Therefore, EPA has changed the NOI to allow for a range of production and/or feeding numbers as well as a range of species.

c. **Action:** We modified the NOI contents in Appendix A of the permit to allow a facility to include a range of values for production and/or feeding numbers and species.

2. Reporting a change in production or feed level that may affect permit requirements

a. **Comment:** FWS Portland asked for a process and timeline for reporting changes in production levels that would affect permitting or monitoring requirements.

b. **Response:** The draft Permit requires facilities that produce more than 20,000 lbs of fish and use more than 5,000 lbs of feed in the month of maximum feed use to apply for coverage under this Permit.

With respect to permitting issues, if facilities that are not initially covered under the general permit increase their production and amount of feed used in the maximum month so that both 20,000 pounds of harvestable weight of fish are produced in a year and 5,000 pounds of feed are used in the maximum month of feeding, they will be CAAP facilities that require NPDES permit coverage (See 40 CFR § 122.24(b)). They will not be authorized to discharge until they have submitted a Notice of Intent and have received from EPA an Authorization to Discharge.

If facilities that are covered under the general permit drop below either or both of the thresholds, they will still be covered by the permit and subject to permit requirements until they submit a revised Notice of Intent with a cover letter requesting termination and including information on projected levels of production and feed for the following five years. Permit coverage and requirements continue until EPA formally terminates the permit coverage.

Changes in production or feed levels that do not involve the permitting thresholds (*i.e.*, the 20,000 lbs of fish/5,000 lbs of feed criteria) only need to be reported in annual reports and in subsequent NOIs, when they are required for other purposes. These changes will not trigger a requirement to submit a revised NOI.

With respect to monitoring issues, the comment refers to production increasing or decreasing across the thresholds of 100,000 lbs/year and 500,000 lbs/year. The draft Permit required monitoring frequencies that varied according to annual production levels.

As a result of other comments, EPA has modified the monitoring frequency for smaller facilities to monthly (*i.e.*, facilities that produce less than 500,000 lbs of fish). This monitoring frequency is now the same as the monitoring frequency for larger facilities (*i.e.*, facilities that produce 500,000 lbs of fish or more). (See RTC §III.B, below). Therefore, changing production levels no longer affects monitoring frequency. So no action or notification is needed when facilities cross these thresholds.

c. **Action:** We have modified the permit as follows:

(1) To accommodate the possible drop in production or feed levels that is expected to remain below the thresholds in §I.B.3 of the permit, we have added a section at §II.C.2.b, allowing submittal of a revised NOI with a cover letter requesting termination of coverage and including information on projected levels of production and feed for the following five years.

(2) To accommodate the possible increase in production and feed levels to exceed both the thresholds in §I.B.3 of the permit, thus, requiring the facility to obtain permit coverage, we have inserted a requirement at §II.A.2.b of the permit that allows a facility to submit an NOI within 30 days of knowing it will exceed or has exceeded both thresholds. It is not authorized to discharge until it has received a formal Authorization to Discharge from EPA.

D. Net pens

1. **Comment:** FWS Portland asked what process net pen programs need to go through since they are not included under this general permit. No change was requested in the permit.
2. **Response:** We have not determined whether net pens that are large enough to require NPDES permit coverage will be covered under individual permits or a general permit. Existing facilities should submit a permit application as soon as possible if they have not done so previously, so that we may consider them in our workload planning.
3. **Action:** We made no change in the permit.

E. Stormwater

1. **Comment:** FWS Portland noted that this permit does not address stormwater discharges and asked if facilities need to take additional actions to address stormwater discharges that occur from the facility. It did not request a change in the permit.
2. **Response:** In general, NPDES permits for stormwater discharges are required for designated municipal stormwater, industrial stormwater and construction stormwater (See CWA Section 402(p), 33 U.S.C. § 1342(p)).

Stormwater discharges from CAAPs do not fall within any of these types of stormwater discharges. In particular, stormwater discharges are not included within the definition of “stormwater discharge associated with industrial activity.” 40 CFR § 122.16(b)(14). Therefore, stormwater discharges from CAAPs are not subject to the NPDES stormwater permitting requirements. However, it should be noted that stormwater discharges associated with certain construction activities must be covered by a NPDES permit. Specifically, stormwater discharges associated with any clearing, grading or excavation activities that disturb one or more acres (or less than one acre, but is part of a larger common plan of development that ultimately disturbs one or more acres) must obtain NPDES permit coverage. 40 CFR §§ 122.26(b)(14)(x) and (15). Federal and tribal operators who are engaged in construction activity that disturbs more than one acre at a CAAP within Washington State should seek permit coverage from EPA under the NPDES General Permit for Stormwater from Construction Activities, NPDES Permit Nos. WAR10-000F or WAR10-000I. More information on the EPA construction stormwater permitting requirements can be found online at <http://www.epa.gov/npdes/stormwater/cgp> or by contacting EPA Region 10 at (206) 553-2752.

3. **Action:** We made no change in the permit.

F. Permit should address all activity on site, not just the discharge

1. **Comment:** WFC asserted that EPA should consider not only the discharge from facilities but also “the entire suite of activities of those hatcheries.” It stated that EPA’s decision to exempt facilities because of size would “affect Ecology’s ability to ensure that these facilities comply with state water quality standards and other applicable requirements of state law.” It also pointed out problems associated with blocking fish migration, which may affect listed species. WFC went on to describe letters between FWS and EPA regarding the status of Quilcene National Fish Hatchery (NFH).

2. **Response:** EPA only has the authority to impose conditions related to the discharge of the effluent from the outfall. Specifically, EPA imposes conditions and limitations at the outfall that ensure compliance with technology-based requirements and any more stringent requirements necessary to meet state water quality standards. As such, EPA does not have the authority to regulate activities such as the effect of a fish ladder on fish migration. EPA has prepared a Biological Evaluation for this permit and has concluded that the permitted discharges are not likely to adversely affect listed salmonid species. Consultation with the Services is ongoing.....

With regard to the Quilcene NFH, the FWS has withdrawn its NPDES permit application for Quilcene NFH because it does not meet the definition of a CAAP. Furthermore, EPA has issued a Notice of Intent to terminate the existing NPDES permit for Quilcene NFH and expects to terminate the permit in the near future.

3. **Action:** We made no change in the permit.

G. Site specific factors

1. **Comment:** WFC comments that it is unclear whether the factors listed in §§ I.E.2—11 are the site-specific factors mentioned in 40 CFR 122.24(c). It did not request a change in the permit.
2. **Response:** The site-specific factors set forth in 40 CFR §122.24(c) are factors that must be considered in determining whether to designate a facility as a CAAP if that facility does not already meet the regulatory definition set forth in 40 CFR Part 122, Appendix C. §§ I.E.2-11 of the Permit set forth the types of facilities and discharges that are excluded from coverage under the General Permit. These exclusions concern factors that would exclude a CAAP facility from coverage under the General Permit; in most cases, such facilities would require an individual permit. The factors listed in §§ I.E.2-11 of the Permit are not the same as the site-specific factors set forth in 40 CFR §122.24(c).
3. **Action:** We made no change in the permit.

H. Facilities list

EPA included in the Fact Sheet two lists of facilities: Table A-1 of the facilities expected to be covered under the permit and Table A-2 of facilities we know about that we think are below the production and/or feed thresholds requiring permit coverage.

1. Proactive investigation of facilities

- a. **Comment:** WFC stated that the draft permit is silent on what proactive measures EPA will take to ensure that facilities that need an individual permit actually receive one; it further asserted that EPA should have investigated facilities to determine if any of the factors in §§I.E.2—11 are present.
- b. **Response:** NPDES permits do not specify EPA activities. At this time, we do not have the specific information that we need to determine whether a facility would be excluded from coverage under the GP under the exclusions set forth in §§I.E.2-11 of the Permit. Any facility that wants to be covered under this Permit is required to submit a Notice of Intent (NOI) as set forth in §II.2 of the Permit. We expect to receive much of the relevant information in the NOIs. If the information in the NOI indicates that one of the factors set forth in §§I.E.2-11 are met, then EPA will either require submittal of supplementary information, conduct an on-site inspection, or will require the facility to apply for an individual NPDES permit.
- c. **Action:** We made no change in the permit.

2. Recent production and feed information

- a. **Comment:** WFC asserted that EPA should have published (in the Fact Sheet?) the most recent production and feeding information it has on the facilities.
- b. **Response:** We do not have recent information for many of the facilities; we expect to receive up-to-date information in the NOIs that facilities will submit to receive coverage.
- c. **Action:** We did not change the permit.

3. List Fisheries Research Center Seattle under USGS

- a. **Comment:** FWS Portland pointed out that Fisheries Research Center in Seattle (WA0025798) is a USGS facility, not a USFWS facility as it is listed in Table A-2 of the Fact Sheet.
- b. **Response:** We appreciate the correction and will make the change in our records. As noted above, the Fact Sheet is a final document and will not be changed. We do not expect this facility to be large enough to warrant coverage under this permit.
- c. **Action:** We made no change in the permit.

4. List all federal and tribal facilities including Leavenworth NFH

- a. **Comment:** FWS Portland requested a correction to Table A-2 of the Fact Sheet to include both Willard NFH and Leavenworth NFH.
- b. **Response:** Willard National Fish Hatchery was deleted from earlier drafts of the list of facilities because of information received from Speros Doulos of FWS on 10/28/08 that the hatchery's effluent is discharged to ground and does not discharge to waters of the United States. As such, it does not require an NPDES permit. If this information is incorrect and the facility does discharge to waters of the U.S, FWS should submit an NOI for coverage under this permit.

Leavenworth National Fish Hatchery is being covered under an individual permit, which was published for public comment in 2006. It is awaiting completion of the Total Maximum Daily Load for the Wenatchee River and tributaries before it can be issued as a final permit. It was not in the universe of facilities that were being considered for the General Permit, since other considerations dictated its coverage under an individual permit.

- c. **Action:** We made no change in the permit.

II. Limits

A. Disinfectants other than chlorine

1. **Comment:** Ecology made a brief comment with no elaboration that monitoring and limits are needed for disinfectants other than chlorine.
2. **Response:** We included quarterly monitoring for disinfectants other than chlorine in the draft permit and are retaining that in the final permit. Lacking data on quantities of other disinfectants in the effluent, the receiving water, and water quality criteria for them, we do not have enough information nor justification for setting limits for other disinfectants.
3. **Action:** We did not change the permit.

B. Off-Line Settling Basins (OLSBs)

1. **Comment:** Ecology asserted that the off-line settling basin limits for total suspended solids and settleable solids in Table 2 on page 22 of the Fact Sheet should not be net limits. The table lists limits in Ecology's Upland Fin-fish Hatchery General Permit.
2. **Response:** We acknowledge that we made an error in listing the limits in Table 2 of the Fact Sheet as net limits. The intent was to apply limits in this general permit similar to those in the State's Upland Fin-fish Hatchery General Permit, where possible. We did, in fact, insert the same limits as the State's permit, which are not net limits, in the draft permit and have retained them for the final permit.
3. **Action:** We made no change in the permit.

C. Copper Limit

1. **Comment:** During consultation with US Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) staff about the potential effect of this permit on threatened and endangered species, the Services (FWS and NMFS) asked how much copper was being used in the facilities that were expected to obtain coverage under the Permit
2. **Response:** We checked with NWIFC, the Colville Tribes and the Spokane Tribe and found that copper is not used in any of the tribal hatcheries. FWS checked with its hatcheries and found that it is not being used in any of them either.

Therefore, we determined that the permit limits and monitoring requirements for copper were not needed and that copper discharges would be prohibited.

3. **Action:** We removed monitoring for copper and hardness in §§ III.B.1, III.B.7.b, and III.C.5.e(10). We also added a prohibition on copper discharges at §I.E.7.

D. Total Residual Chlorine Limit Compliance Level

1. **Comment:** During internal review of the permit and fact sheet, we discovered a discrepancy between the value of the chlorine compliance level stated in the draft permit (footnote 3 of Table 1) and that in the Fact Sheet (footnote 3 of Table 3).
2. **Response:** The correct level – 10 µg/L – was in the draft permit. This statement serves as a correction of the Fact Sheet, which is a final document and will not be modified.
3. **Action:** We made no change in the permit.

III. Monitoring

A. Drawdown

1. Definition of Drawdown

- a. **Comment:** FWS asked for clarification of the definition of drawdown and commented that monitoring every lowering of water is excessive since many are small drawdowns for cleaning. It asked if we meant only during complete drawdowns, such as that for fish release or transfer.
- b. **Response:** The intent was to require limits and monitoring on drawdowns for fish release.
- c. **Action:** We modified Tables 2 and 5 in the permit and the introductory text in § II.A.3.c to specify that these limits and monitoring apply to drawdowns for fish release only.

2. When and where to monitor drawdowns

- a. **Comment:** FWS asked how we meant for them to monitor during the last ¼ of the drawdown when the effluent routes to a settling pond.
- b. **Response:** If the effluent routes to a settling pond, we would expect the facility to estimate when the final ¼ of the discharge is being released to the settling pond, to delay the monitoring by the residence time calculated for the pond, and then monitor as the effluent discharges from the pond to the receiving water. Where there is no settling pond, the sampling would take place directly on the effluent during the last ¼ of its discharge.

- c. **Action:** We modified footnote 18 on Table 5 of the permit to provide this additional instruction on where and when to monitor if the discharge is to a settling pond.

3. When to report

- a. **Comment:** FWS asked when drawdown monitoring needs to be reported.
- b. **Response:** Reporting of monitoring results is specified in §V.B of the permit; the discharge monitoring report is due by the 15th of the month following the month in which the monitoring was conducted. This applies to all effluent monitoring including drawdown monitoring.
- c. **Action:** We did not make any change in the permit.

B. Frequency

1. Frequency is too little

- a. **Comment:** Ecology commented that the frequency of monitoring is not adequate to monitor best management practices and impacts to receiving waters.
- b. **Response:** Although the frequency of monitoring proposed in the draft permit was consistent with the frequencies that were set in the Idaho aquaculture general permits, EPA recognizes the value of gathering more frequent data to evaluate performance and environmental impact, especially from sources that have not monitored and reported in the past (many tribal facilities). With increased monitoring frequency, the facilities will incur some added cost compared to quarterly or semi-annual monitoring for the smaller facilities. However, the total cost will not be large since the cost of analysis for suspended solids and settleable solids is in the range of \$10 -- \$15 per sample. Also, the federal facilities have been required to monitor monthly or more often in the past. Therefore, we have modified the monitoring frequencies for solids to once per month.
- c. **Action:** We modified the permit in Tables 3 and 4 to require monthly monitoring for total suspended solids and settleable solids for all permittees.

2. Timing of monitoring

- a. **Comment:** Ecology commented that timing of monitoring is not sufficiently defined to require sampling during periods of highest discharge.
- b. **Response:** Since the monitoring frequency has been changed to monthly monitoring, this has become a moot point. We believe that that adjustment will address this issue also. We did add footnotes to Tables 3 and 4 to clarify when monitoring must begin under the permit.

c. **Action:** We added a footnote to Table 3 (Hatchery Effluent Monitoring Requirements) and Table 4 (Off-Line Settling Basin Effluent Monitoring Requirements) to clarify that monthly monitoring must begin in the first full calendar month of permit coverage and that quarterly monitoring must begin in the first full calendar quarter of permit coverage.

3. Average Monthly Limits

a. **Comment:** Ecology asked how EPA would evaluate compliance with an average monthly limit if the monitoring was less frequent, i.e. quarterly or semi-annually.

b. **Response:** Whenever sampling is less frequent than the averaging time for a permit limit, the measured value is compared with those limits directly. For instance, sampling once a quarter, the value would be considered as the value representing the month in which the sample was taken and compared directly with the average monthly limit; it would also be considered in relation to the instantaneous maximum limit. If other samples were taken in the same calendar month, they would be averaged together with the first one before comparing them with the average monthly limit for compliance purposes. They would also be compared individually with the instantaneous maximum limit.

c. **Action:** No change has been made to the permit.

4. Off-line settling basin (OLSB) monitoring frequency

a. **Comment:** Ecology asserted that the potentially higher loading in solids and nutrients in discharges from OLSBs justifies sampling more frequent than twice a year for these units.

b. **Response:** As noted in §III.B.1, above, we have changed the monitoring frequency to monthly, which coincides with the frequency required in the State's general permit.

c. **Action:** We made no further change in the permit.

C. Rearing vessel disinfection water

1. **Comment:** Ecology pointed out that the Fact Sheet states that monitoring is required for whatever disinfectant is used for rearing vessels but that the permit does not reflect this statement in the Fact Sheet.

2. **Response:** We appreciate discovering this discrepancy and have made the appropriate changes in the permit.

3. **Action:** We modified the permit in §III.B.5 and Table 6 to include monitoring for other disinfectants too.

D. Influent Monitoring

1. **Comment:** Bill St.Jean, Chief Enhancement Biologist, Nisqually Tribe, asked to include an option to forego the requirement to sample influent to calculate net pollutant levels in the effluent. He described a situation in which the influent pollutant concentrations are quite low and the measured effluent concentrations are consistently below the limits, even without subtracting influent pollutant concentrations.
2. **Response:** In considering this request, we realized that applying the net effluent limits to the gross effluent concentrations, without the “benefit” of subtracting influent pollutant concentrations, actually was more protective of the receiving water. Therefore, we determined that the option to forego influent monitoring would be a reasonable option to include.
3. **Action:** In footnote 9 of Table 3 on page 15 of the permit, we added the clause: “unless the permittee chooses to assume that the pollutant concentration in the influent is zero”; this allows the permittee to forego influent monitoring if it chooses to exercise this option

IV. Reporting

A. Monthly Reporting

1. **Comment:** FWS asked why we are requiring monthly reporting when their previous permits only required that discharge monitoring reports be submitted quarterly.
2. **Response:** Most of the previous permits for FWS hatcheries were issued in the 1970s. We have modified our reporting policy since then. Monthly reporting gives us the opportunity to monitor compliance with the permit and potential environmental impact more closely and to respond to problems more appropriately.
3. **Action:** We did not change the permit.

B. pH Reporting

1. **Comment:** Ecology asserted that pH should not be averaged, but should be reported as single values or a range of values on DMRs.
2. **Response:** We agree with this comment and appreciate having this mistake pointed out.
3. **Action:** We changed footnote 17 in Table 4 to require reporting the range of values of the samples rather than an average.

C. Reporting to the Lummi Nation

1. **Comment:** In its final certification of the permit, the Lummi Nation included the condition that, in addition to requirements for reporting to the Lummi Nation already required in the permit, that these additional requirements be included for operators of facilities discharging to Lummi Nation Waters:
 - a. Submittal to the Lummi Nation Natural Resources Department of QA and BMP Plans for review and approval prior to submitting certification to EPA that the plans have been developed and implemented.
 - b. Submittal to the Lummi Nation Natural Resources Department of surface water monitoring reports, spill reports, and certifications that BMP and QA Plans have been developed and implemented.
 - c. Immediate notification by telephone to the Lummi Nation Natural Resources Department Director of any spills to Lummi Nation Waters of oil or hazardous materials, or of the non-compliance reports required in §V.G.1.
2. **Response:** Pursuant to CWA Section 401(d), EPA must include conditions set forth in a 401 certification. The conditions set forth above were included in the 401 certification provided by the Lummi Nation. As such, EPA added these requirements for facilities that discharge to Lummi Nation Tribal Waters.
3. **Action:** We changed the permit as follows:
 - a. In §IV.C.2.c, we added a section requiring immediate notification to the Lummi Nation Natural Resources Department Director whenever an operator of a facility is aware of any spill of oil or hazardous material to Lummi Nation Waters.
 - b. In §V.B.1.b, we changed the requirements to apply to an operator of a facility (as requested in the certification) and added to the submittal requirements, surface water monitoring reports, BMP and QA Plans, and spill reports.
 - c. In §V.G.1, we added reporting by telephone to the Lummi Nation of certain instances of non-compliance.

D. Reporting to the Spokane Tribe

1. **Comment:** In its final certification of the permit, the Spokane Tribe included the condition that that these requirements be included for operators of facilities discharging to waters of the Spokane Tribe:
 - a. The owner/operator must also submit the information in Appendix A to the Spokane Tribe, WCB (Water Control Board), (pg 10, #1) and;

- b. The permittee shall submit its QA Plan to the Spokane Tribe, WCB within 90-days of receiving authorization to discharge under this permit (pg 19) and;
 - c. The permittee shall submit its BMP Plan to the Spokane Tribe, WCB within 90-days of receiving authorization to discharge under this permit (pg 20-21) and;
 - d. The permittee shall notify the Spokane Tribe, WCB of any spills or hazardous material to waters of the Reservation (pg 25) and;
 - e. The permittee shall submit the annual report to the Spokane Tribe, WCB (pg 26) and;
 - f. The permittee shall submit DMR's annual reports, NOI, BMP plans, QA plans and any non-compliance reports to the Spokane Tribe, WCB (pg 27) and;
 - g. The permittee shall allow the Tribal Water Control Board or its designee to inspect and sample at the facility as needed
2. **Response:** Pursuant to CWA Section 401(d), EPA must include conditions set forth in a 401 certification. The conditions set forth above were included in the 401 certification provided by the Spokane Tribe. As such, EPA added these requirements for facilities that discharge to Spokane Tribe Tribal Waters.
3. **Action:** We changed the permit as follows:
- a. We added §II.A.1.c, requiring submittal of the NOI to the Spokane Tribe Water Control Board.
 - b. We added §III.B.7.b.(3), requiring submittal of the QA plan to the Spokane Tribe Water Control Board.
 - c. We added §III.C.3.c, requiring submittal of the BMP plan to the Spokane Tribe Water Control Board.
 - d. We added §IV.C.2.d, requiring immediate notification to the Spokane Tribe Water Control Board whenever an operator of a facility is aware of any spill of hazardous material to Spokane Tribe Waters.
 - e. We added §IV.E.3, requiring submittal of the annual report to the Spokane Tribe Water Control Board.
 - f. We added §V.G.2, requiring oral notification of certain non-complying discharges to the Spokane Tribe Water Control Board.
 - g. We added §V.G.3.c, requiring written notification of certain non-complying discharges to the Spokane Tribe Water Control Board.
 - h. In §VII.G, we added a requirement for dischargers to the waters of the Spokane Tribe to allow access to the facility for inspection and sampling for authorized representatives of the Spokane Tribe Water Control Board or its designee.

V. Drug use

A. Prophylactic drug use

1. **Comment:** NWIFC asked why we included a requirement to not use drugs prophylactically when the permit already requires that drugs be approved by the Food and Drug Administration (FDA) or EPA and be used according to label directions. If this requirement is retained, the commenter requests a definition of prophylactic use.
2. **Response:** After discussing this issue with FDA staff, EPA has concluded that stating in the permit that drugs must be applied in accordance with label directions is sufficient to cover the proper use of drugs.
3. **Action:** We deleted the sentence referring to prophylactic use of drugs in §IV.A.1.b of the Permit.

B. Schedule of Submissions

1. **Comments:** NWIFC pointed out that item #5 in the Schedule of Submissions at the front of the permit concerning the notification requirement for signing up to participate in an Investigational New Animal Drug (INAD) study or receiving a prescription for extralabel drug use was inconsistent with the requirement in §IV.A.2 in that it did not restrict the requirement to those cases where a drug had not been previously disclosed in an NOI or where the drug was being used at a higher dosage than previously approved by FDA. NWIFC also noted the same inconsistency in #6 of the Schedule of Submissions
2. **Response:** The Schedule of Submissions summarizes the reporting requirements in the body of the permit. We appreciate learning of these inconsistencies.
3. **Action:** We changed the Schedule of Submissions by restricting the reporting requirement to those cases where the drug has not been reported on an NOI or where the dosage was higher than previously approved by FDA.

C. Low Regulatory Priority and Deferred Regulatory Priority compounds

1. **Comment:** FWS Brunson forwarded a comment from Joy Evered (FWS) that no mention was made in the permit of Low Regulatory Priority (LRP) compounds, such as sodium chloride and sodium bicarbonate, or Deferred Regulatory Priority compounds. Mr. Brunson stated that they would like to ensure that such use would be allowed under the proposed permit.
2. **Response:** It was not our intent to exclude use of these drugs and compounds.

The Low Regulatory Priority (LRP) list includes compounds, such as salt, that are called drugs because their intended uses meet the definition of “drugs.” They are easily obtained, commonly used, and the human food safety and environmental risk associated with their use appears low. A compound on the LRP list must be used following the conditions specified on the list¹. EPA has decided to allow the use of LRP compounds under the permit, subject to the same reporting requirements as apply to other chemicals and drugs.

Deferred Regulatory Priority (DRP) drugs may have a higher potential to impact the environment. Only two have been designated: copper sulfate and potassium permanganate. Since EPA has prohibited discharges of copper in §I.E.7 of the General Permit, only potassium permanganate will be allowed, subject to the same reporting requirements that apply to INADs and extralabel drug use.

3. **Action:** We have added a section at §IV.A.1.a(2) to allow use of LRP drugs under the conditions stated in the FDA policy 1240.4200 *Enforcement Priorities For Drug Use In Aquaculture* (08/09/2002; 4/26/07 minor revisions).² The policy has been added to the permit as Appendix F.

We have added potassium permanganate to the section allowing use (§IV.A.1.a.3) and requiring reporting on the NOI, annual reports, and first use if it was not reported on the NOI (§IV.A.1.a.3).

We have added a section at §IV.A.2.b requiring that first use of LRPs and potassium permanganate be reported orally within seven days and in writing within thirty days.

D. Human and terrestrial animal drugs

1. **Comment:** FWS Brunson forwarded a comment from Joy Evered (FWS) that the permit doesn’t allow extralabel prescription of human or terrestrial animal drugs though these are considered legitimate uses by FDA.

2. **Response:** It was not our intent to restrict the use of these drugs, but rather to include them under the extralabel drug use provisions.

3. **Action:** We added a definition for *extralabel drug use* in §VII of the permit. We also deleted the phrase “aquatic animal” in §IV.A.2 of the permit in order to remove that restriction on extralabel drug use.

¹ http://www.fda.gov/cvm/Policy_Procedures/4200.pdf

² http://www.fda.gov/cvm/Policy_Procedures/4200.pdf

VI. Definitions

A. Outfall

- 1. Comment:** FWS asked for definition and clarification of the term *outfall*. In particular, it wanted to know if operation of a fish ladder resulted in an outfall point for a hatchery.
- 2. Response:** The term *outfall* is defined in the permit as “a discrete point or outlet where the discharge is released to the receiving water.” The term *discharge* means “any addition of any pollutant or combination of pollutants from any point source to waters of the U.S.” For purposes of this permit, a fish ladder would be regarded as an outfall if it is adding pollutants to waters of the U.S.
- 3. Action:** We added definitions for *discharge* and for *pollutant* in §VII of the permit.

B. Prohibited Discharge contributing to a violation of water quality standards

- 1. Comment:** FWS asserted that the phrase “contribute to” in §III.A.1.a “*Discharges from aquaculture facilities must not cause or contribute to a violation of a Washington State water quality standard or to a tribal water quality standard*” is ambiguous and warrants additional clarification.
- 2. Response:** The Permit states in §III.A.1.a that “Discharges from aquaculture facilities must not cause or contribute to a violation of a Washington State water quality standard or to a tribal water quality standard.” 40 CFR §122.44(d)(1)(i) requires the permitting authority to include limitations in the permit that “*control all pollutants which . . . may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard.*” §III.A.1.of the Permit a is a narrative requirement that implements 40 CFR §122.44(d)(1)(i). EPA does not believe that any additional clarification is required for this section.
- 3. Action:** We made no change in the permit.

C. Composite Sample

- 1. Comment:** FWS asked for clarification of the term *composite* in relation to multiple drawdown events.
- 2. Response:** We agree that the term *composite* should be defined, especially in relation to multiple discharge points or drawdown events. If several rearing vessels are being drawn down simultaneously, the samples from each can be composited proportionally to their flows. However, if they are drawn down sequentially or on different days, a sample should be grabbed and analyzed from each discharge event.
- 3. Action:** We added a definition of the term *composite* to §VII of the permit. We also modified footnote 18 on Table 5 to clarify that grab samples from

multiple discharge points should be composited proportionally to their flows and that sequential drawdown events should have separate samples grabbed and analyzed.

VII. Permit Administration

A. EPA reminder to reapply

- 1. Comment:** FWS asked if EPA would notify applicants before the deadline for NOIs, 180 days before the expiration of the general permit. It also asked whether it can still submit an NOI after the deadline or whether it will have to seek an individual permit.
- 2. Response:** The permit requirement is to submit the NOI at least 180 days before the expiration of the permit, unless the Regional Administrator has granted permission to submit the Notice of Intent at a later date in accordance with 40 CFR §122.21(d). If a facility submits an NOI by the due date and a new permit is not issued by the expiration date, the facility can continue to discharge under the administratively extended General Permit until a new NPDES permit has been issued. See 40 CFR §§122.6, 122.21(d), and 122.28(b)(2)(iii). EPA may send a reminder before the due date to submit the NOI. However, it is the responsibility of the permittee to comply with the due date as set forth in the permit in §VII.B and in the Schedule of Submissions in the front of the permit. This responsibility is not contingent on any reminders from EPA.
- 3. Action:** We made no change in the permit directly based on this comment; however, in developing our response, we discovered an incorrect reference to the regulation in §VII.B; we have corrected the reference to 40 CFR §122.28(b)(2)(iii).

VIII. Impaired waters

A. Entiat National Fish Hatchery (NFH) eligibility for coverage

- 1. Comment:** FWS stated that Entiat National Fish Hatchery discharges to the Entiat River, a pH-impaired water with no TMDL. It asked if it is disqualified from coverage on that basis.
- 2. Response:** §I.E.6 of the permit excludes from coverage facilities that discharge to “*impaired waters*, designated pursuant to Section 303(d) of the Clean Water Act (CWA), which are water-quality limited for a pollutant of concern evaluated in the development of this permit (BOD₅, total suspended solids, settleable solids, nutrients, ammonia, copper, chlorine), unless a wasteload allocation has been assigned to the discharge and is applied in this permit.” Since pH was not a pollutant of concern from the fish hatcheries, Entiat NFH is not restricted from coverage on the basis of the 303(d) listing of the Entiat River for pH.

3. **Action:** We made no change in the permit.

B. Quilcene NFH eligibility for coverage

1. **Comment:** WFC stated that Quilcene National Fish Hatchery discharges to the Big Quilcene River, a temperature-impaired water on the State's 303(d) list. It asserted that the hatchery's withdrawal of water upstream for hatchery use and discharging it lower in the basin may contribute to the temperature impairment.

2. **Response:** §I.E.6 of the permit excludes from coverage dischargers to "*impaired waters*, designated pursuant to Section 303(d) of the Clean Water Act (CWA), which are water-quality limited for a pollutant of concern evaluated in the development of this permit (BOD₅, total suspended solids, settleable solids, nutrients, ammonia, copper, chlorine), unless a wasteload allocation has been assigned to the discharge and is applied in this permit."

Since temperature was not a pollutant of concern from the outfalls at fish hatcheries, Quilcene NFH is not restricted from coverage on the basis of the 303(d) listing of the Big Quilcene River for temperature.

However, it should be noted that the Quilcene NFH has withdrawn its NPDES permit application and that EPA has recently issued a notice of intent to terminate the existing NPDES permit for the Quilcene NFH because the hatchery no longer meets the definition of a CAAP and anticipates terminating the permit in the near future. EPA could designate the Quilcene NFH as a CAAP at a later date if the factors in 40 CFR §122.24(c) are met.

3. **Action:** We did not change the permit.

C. Facilities discharging impaired waters

1. **Comment:** Ecology stated that several of the hatcheries listed are discharging into waters on the draft 2008 impaired water list or [that] have a TMDL. It further asserted that "facilities that discharge to a 202(d) [*sic*] listed water for the parameters of concern with this permit need to be identified."

2. **Response:** Ecology did not provide the names of specific hatcheries nor the specific waters on the draft impaired water list. EPA does not have information concerning the specific location of many of the facilities. Therefore, we have not been able to make a determination about whether a specific facility is discharging into a 303(d)-listed portion of a particular water body. This information will be included when the facilities submit their NOIs for coverage under the permit. At that time, EPA will check the status of receiving waters and determine whether coverage should be authorized.

3. **Action:** We did not change the permit.

IX. Nutrient Enhancement—carcass placement in streams

A. Statement approving the practice

- 1. Comment:** NWIFC described the practice of returning killed spawned or surplus adult carcasses to the stream of origin to enhance nutrients. It requested a statement in the permit approving of this activity or recognizing that it is occurring under tribal and state oversight.
- 2. Response:** The NPDES permit only applies to the discharge of process wastewater from the specified outfalls at a permitted facility.
- 3. Action:** We did not change the permit.

B. Definition of “nuisance” or “objectionable condition”

- 1. Comment:** NWIFC asked for a better definition of *nuisance* or *objectionable condition* as they relate to the discharge prohibitions in §III.A.1.b(5) of the permit. It also related this to its concern about the practice of returning killed spawned or surplus adult carcasses back to the stream of origin to enhance nutrients.
- 2. Response:** The terms *nuisance* and *objectionable condition* are subjective in nature and cannot be precisely defined beyond the dictionary definitions. The condition that may be objectionable or a nuisance will be judged by the enforcement agency. These terms derive from federal water quality criteria relating to aesthetic values³, which, in turn, form the basis of water quality standards adopted by the states and tribes.
- 3. Action:** We did not change the permit.

X. Listed species

A. Blocking fish passage

- 1. Comment:** WFC commented that the Quilcene NFH adversely affects listed species by handling them and also blocks fish migration through deliberate design and also its failure to properly maintain fish passage structures. It further asserts that QNFH contributes to a violation of an applicable water quality standard. It also comments that “EPA has apparently not done any evaluation on which facilities may block fish migration and thereby contribute to . . . a violation of an applicable water quality standard.” It further asserts that EPA should be conducting an assessment of the potential for the impairment of designated uses at every federal and tribal aquaculture facility in Washington, pointing out that Wild Fish Conservancy doesn’t have the resources to do so.
- 2. Response:** The general permit is issued under the authority of the NPDES program, which addresses process wastewater discharges from hatcheries. The NPDES program does not have authority to address issues of fish passage. The

³ U.S. Environmental Protection Agency. 1976. *Quality Criteria for Water*, p.6.

claim of violation of a water quality standard was not specific nor substantiated. Although the commenter implies that blocking fish passage may constitute a violation of water quality standard, the claimed impairment is not caused by a wastewater discharge from the facility and therefore is not within the scope of the NPDES permit program.

Specific to the Quilcene NFH, we have information that it is below the feeding threshold for definition as a *concentrated aquatic animal production* facility and therefore is not considered a point source and does not need an NPDES permit. At the facility's request, we initiated the process to terminate its 1974 permit that was administratively extended in 1981; we have determined that the 1981 extension of the permit did not comply with the regulations governing administrative extension of permits. Therefore, there is no permit to terminate. Because it does not need permit coverage, its situation is not relevant to the action on this permit.

3. Action: We did not change the permit.

B. Puget Sound Steelhead listing

1. Comment: WFC Hersh commented on the omission of Puget Sound steelhead (listed as threatened 5/11/07, 72 FR 26722) from Table 10 on page 34 of the Fact Sheet. He asserted that it should be considered in the Biological Evaluation as this species is adversely affected by hatchery operations.

2. Response: Puget Sound steelhead was inadvertently omitted from the Fact Sheet. We have included it in the Biological Evaluation, which forms the basis of our consultation with the Services.

3. Action: We did not change the permit.

XI. Anti-degradation analysis

A. Lack of Tier II analysis

1. Comment: Ecology asserted that a Tier II antidegradation analysis is needed.

2. Response: The proposed permit excludes coverage for facilities discharging to Tier II waters in §I.E.7. Therefore, no Tier II analysis is required. As stated in the Fact Sheet, the information we have does not indicate that there are new or expanded facilities, but if there are and they do not discharge to Tier II waters, an antidegradation analysis does not appear to be required. We have clarified that the restriction from discharging to Tier II waters applies to those waters that are Tier II for a pollutant limited by the permit.

3. Action: We changed the permit in §I.E.7-8 of the permit to clarify this point. It now states that it *“does not apply to new or expanded discharges to Tier II waters for pollutants limited by this permit.”*

B. New or Expanded Facilities

1. **Comment:** Ecology states that there is not supporting evidence that no new or expanded facilities exist.
2. **Response:** As stated in the Fact Sheet, the information we have does not indicate that there are new or expanded facilities. We will gather current information when the Notices of Intent for coverage are submitted by the facilities. Since the permit does not apply to dischargers to Tier II waters, whether there are new or expanded dischargers is a moot point, since the requirement applies to dischargers to Tier II waters.
3. **Action:** We did not change the permit.

C. Previous permit status

1. **Comment:** Ecology asked for verification:
 - a. that permits for each facility have been repeatedly renewed and are currently valid or the provision of continuance of federally issued expired permit (CWA Title 40:122.6)[sic] have been met.
 - b. that no expansion, as defined in that state guidance has occurred since the last permit was issued for each facility that would be covered by the General Permit.
2. **Response:** Only four facilities are subject to the State's jurisdiction for §401 certification: These facilities were issued NPDES permits effective on the following dates:

Carson NFH,	1/30/75
Little White Salmon NFH	1/30/75
Spring Creek NFH	4/5/79
Winthrop NFH.	1/30/75

Many other facilities have never had a permit, though they are tribal facilities outside the scope of the State's authority to provide certification. The issue of expansion is related to discharges to Tier II waters, which, as stated above and in the permit, is not allowed under the permit. Since we have excluded discharges to Tier II waters, the expansion that might trigger a Tier II analysis is no longer an issue.

3. **Action:** We did not change the permit.

D. Responsibility for Antidegradation Analysis

1. **Comment:** Ecology asserts that the permit authority (in this case, EPA) is responsible for anti-degradation analysis (in Washington State guidance).
2. **Response:** The comment addresses a Tier II antidegradation analysis. This is no longer relevant to this permit because facilities that discharge to Tier II waters are excluded from coverage under this permit.
3. **Action:** We did not change the permit.