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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: BLUE NORTH FISHERIES, INC., Respondent. F/V Blue Ballard	DOCKET NO. CWA-10-2013-0141 **CONSENT AGREEMENT AND FINAL ORDER**

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Blue North Fisheries, Inc. (Respondent) agrees to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 has been delegated the authority to sign consent agreements between EPA and the parties against

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whom Class II penalties pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), are proposed to be assessed.

2.3. Part III of this CAFO contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" except as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the United States."

3.2. Respondent is a corporation incorporated in the State of Washington, and thus a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.3. At all times relevant to this action, Respondent owned and operated the seafood longline processing vessel, the F/V BLUE BALLARD (Vessel).

3.4. Respondent discharges seafood processing waste from the butchering of seafood from the Vessel. Seafood processing waste from the butchering of seafood is a "pollutant" which is "discharged" within the meaning of Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).

3.5. Respondent discharges seafood processing waste from the butchering of seafood from the Vessel into the Bering Sea. The Bering Sea constitutes "navigable waters" and "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

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3.6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" to include any "vessel or other floating craft, from which pollutants are or may be discharged." The Vessel is a point source under the Clean Water Act, and thus may discharge pollutants only when authorized by an NPDES permit.

3.7. On July 27, 2001, EPA issued the Seafood Processors in Alaska General NPDES Permit (the "Alaska Permit"), authorizing seafood processing facilities to discharge into waters of the United States in accordance with the requirements and conditions set forth therein. The Alaska Permit expired on July 27, 2006, and was administratively extended pursuant to 40 C.F.R. §122.6.

3.8. On March 1, 2010, EPA issued the Offshore Seafood Processors in Alaska General Permit ("Offshore Permit"), which replaced the Alaska Permit.

3.9. From July 2008 through February 2010, Respondent was discharging seafood processing waste from the Vessel without coverage under the Alaska Permit or an individual NPDES permit. Therefore, from July 2008 through February 2010, Respondent was discharging without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.10. On July 8, 2010, Respondent was authorized to discharge seafood processing waste from the Vessel into specified waters of the United States under the Offshore Permit (identifier AKG524067).

3.11. On April 17, 2012, EPA conducted an inspection of the Vessel to determine compliance with the Offshore Permit and the CWA.

3.12. Respondent violated the following Conditions of the Offshore Permit:

3.12.1. Respondent failed to conduct and keep logs of daily visual inspections of the waste conveyance for year 2010 as required by Section V.A.4 of the Offshore Permit;

3.12.2. Respondent failed to conduct and keep logs of daily inspections of the grinder system for year 2010 as required by Section V.A.5 of the Offshore Permit;

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3.12.3. Respondent failed to conduct daily monitoring of the sea surface for year 2010, including characterizing the presence or absence of foam and species of concern in violation of Section VI.C of the Offshore Permit;

3.12.4. Respondent failed to conduct quarterly influent and effluent metals sampling during the 4th quarter of 2010 and the 2nd, 3rd, and 4th quarters of 2011 in violation of Sections V.A.16, VI.B.2.j and VI.D of the Offshore Permit;

3.12.5. Respondent failed to develop and implement a Best Management Practices (BMP) Plan within 60 days of the date it received authorization to discharge in violation of Section VI.A.1 & 2 of the Offshore Permit;

3.12.6. Respondent failed to include timely summaries of noncompliance, production, and discharge and total pounds of by-catch and prohibited species in the Vessel's 2010 Annual Report, in violation of Section VI.B.2.b, c, and e of the Offshore Permit;

3.12.7. Respondent failed to include representative pictures of the grinder system while in operation, the sampling port while taking the daily sample, the effluent (showing residues size) and the outfall system in the Vessel's 2011 Annual Report in violation of Section VI.B.2.h of the Offshore Permit; and,

3.12.8. Respondent failed to submit to EPA a 2011 Annual Report by February 14, 2012, in violation of Section VI.B.5 of the Offshore Permit.

3.13. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that "any person has violated section 1311 [of the CWA], or has violated any permit condition or limitation ... in a permit issued under section 1342 [of the CWA]." Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed $11,000 per day for each violation that occurred on or

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after March 15, 2004 through January 12, 2009, and $16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of $177,500.

IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations contained in this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is FIFTY-THREE THOUSAND TWO HUNDRED AND FIFTY DOLLARS ($53,250).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-158
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chris Gebhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-133
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the effective date of the Final Order.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid

V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 11th day of September, 2013.

~~THOMAS M. JAHNKE~~ M. Socorro Rodriguez
Regional Judicial Officer, U.S. Environmental Protection Agency, Region 10

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as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

7-29-13

FOR BLUE NORTH FISHERIES, INC.:

KENNY DOWN
CEO

DATED:

8/2/2013

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

EDWARD J. KOWALSKI
Director
Office of Compliance and Enforcement

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Seattle, Washington 98101
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Blue North Fisheries, Inc. (F/V Blue Ballard), DOCKET NO.: CWA-10-2013-0141**, was filed, and served as follows, on the signature date below.

The undersigned certifies that a true and correct copy of the document was delivered to:

Endre M. Szalay
Office of Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail, certified/return receipt, to:

Kenny G. Down
President / CEO
Blue North Fisheries
2930 Westlake Ave N
Seattle, WA 98109

11th of Sept. 2013
Dated

Candace Smith
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10