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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2010-0138
	)	
Highland Light Seafoods, LLC, Seattle, WA	)	CONSENT AGREEMENT AND FINAL ORDER
	)	
Respondent.	)	

**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 Highland Light Seafoods, LLC ("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 ("Complainant") has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is 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. Section 402 of the Act, 33 U.S.C. § 1342, provides that EPA may issue NPDES permits for the discharge of any pollutant into waters of the United States upon such specific terms and conditions as EPA may prescribe.

3.2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as authorized by an NPDES permit or other specified statutory sections.

3.3. At all times relevant to this action, Respondent owned and operated the seafood processing vessel, the M/V Westward Wind ("Facility").

3.4. Respondent, Highland Light Seafoods, LLC is a corporation, and thus, a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3.5. Respondent is authorized to discharge seafood processing waste into specified waters of the United States under general NPDES Permit No. AK-G52-0000 ("Permit"). The M/V Westward Wind operates under the unique identifier, AK-G52-0408.

3.6. Respondent discharged seafood processing waste from the butchering of seafood from the M/V Westward Wind. Seafood processing waste from the butchering of seafood is a

“pollutant” which is “discharged” within the meaning of Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).

3.7. Respondent discharged seafood processing waste from the butchering of seafood from the M/V Westward Wind into the receiving waters within three nautical miles of the Pribilof Islands, as well as Nazan Bay, Cannery Bay, Makushin Bay, and Wide Bay, and more than one mile offshore of Alaska in the Bering Sea. The receiving waters within three nautical miles of the Pribilof Islands, as well as Nazan Bay, Cannery Bay, Makushin Bay, and Wide Bay, and more than one mile offshore the coast of Alaska in the Bering Sea constitute “navigable waters” and “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1326(7).

#### **Violation 1**

3.8. Section III.E.2 of the Permit states that a permittee shall not discharge pollutants to the receiving waters within three (3) nautical miles of the Pribilof Islands.

3.9. On at least thirty-one (31) different occasions from January through March 2006, Respondent discharged seafood processing waste from the M/V Westward Wind into the receiving waters within three nautical miles of the Pribilof Islands.

3.10. Respondent did not have coverage under its NPDES Permit for these discharges, in violation of the Permit and the Act.

#### **Violation 2**

3.11. Section III.B.1 of the Permit states that a permittee shall not discharge pollutants to an at-risk waterbody with a water depth of less than 60 feet mean lower low water (“MLLW”) that has or is likely to have poor flushing. Section V.B.1.f of the Permit states that a permittee shall discharge seafood processing wastes through an outfall line or through the hull port at a

depth of three (3) feet or more below the sea surface and to the receiving water at least minus 60 foot depth MLLW.

3.12. On October 31, November 1, and December 8, 10, and 11, 2005, Respondent discharged pollutants from the M/V Westward Wind to Nazan Bay, which has a water depth of less than 60 feet MLLW and the potential for poor flushing.

3.13. Respondent discharged pollutants from the M/V Westward Wind to Nazan Bay, in violation of the Permit and Act.

### **Violation 3**

3.14. Sections V.A.1.a., V.B.1.a. and V.C.1.a of the Permit all state that a permittee shall not discharge a volume or weight of seafood processing waste residues on a daily or annual basis which exceeds the amount reported in the permittee's Notice of Intent ("NOI") to be covered under the Permit.

3.15. On at least sixteen (16) different occasions in October 2004, January, February and November 2005, and March 2006, Respondent discharged seafood processing waste, including Opilio Tanner crab, Bairdi Tanner crab, Red King crab, and Brown King crab, that exceeded the volume or weight reported in Respondent's NOI.

3.16. Respondent discharged a volume or weight of seafood processing waste residues that exceeded the amount reported in the NOI, in violation of the Permit and the Act.

### **Violation 4**

3.17. Sections IV.C.6. and 7(d) of the Permit require that a permittee include projected production data in the NOI, including the name and quantity in pounds of the product.

3.18. On at least sixteen (16) different occasions from October 2005 through January 2006, Respondent discharged Bairdi Tanner crab and Brown King crab even though Respondent failed to identify them, by name or quantity, in its NOI.

3.19. Respondent failed to include projected production data in the NOI, in violation of the Permit and the Act.

#### **Violation 5**

3.20. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), requires the owner or operator of any point source to “provide such other information as [the Administrator] may reasonably require” in order to carry out the objectives of the CWA.

3.21. EPA issued an Information Request pursuant to Section 308(a) of the CWA to Respondent on February 15, 2008. Respondent did not respond timely to the Information Request issued pursuant to Section 308(a) of the CWA.

3.22. Respondent failed to respond to a CWA Section 308 Information Request, in violation of the Act.

#### **Violation 6**

3.23. Section IV.A.5 of the Permit requires a permittee to submit to EPA and ADEC an updated and amended NOI when there is any material change in the information submitted within its original NOI. Section VI.B.d of the Permit requires a permittee to provide in its annual report a statement of any changes to its NOI, especially changes in process, locations and production levels.

3.24. In January, 2005, 2006, and 2007, Respondent submitted annual reports with location information showing that it operated as a shore-based or near-shore facility. At these

times, Respondent failed to amend its NOI to reflect these changes as it characterized the Westward Wind as operating solely as an off-shore processor.

3.25. Respondent failed to submit to EPA an updated and amended NOI when there was a material change in the information submitted within its original NOI or to state this material change in its annual reports to EPA, in violation of the Permit and the Act.

#### **Violation 7**

3.26. Section IV.C.3 of the Permit requires a permittee to submit information in the NOI on the receiving water including: the name of the waterbodies receiving the discharges; areas within three nautical miles that are excluded from coverage under the Permit; a bathymetric map of the receiving water within one nautical mile of the discharge; and current and tidal information.

3.27. On at least fifty-two (52) different occasions from October 2004 through November 2006, Respondent failed to submit an NOI that contained any of this information.

3.28. Respondent failed to submit a NOI to EPA with adequate or accurate information regarding the receiving waters, in violation of the Permit and the Act.

#### **Violation 8**

3.29. Section VI.B.2.c.(6) of the Permit requires a permittee to submit information in its annual report on the location of the discharge, including both the name of the receiving water and the latitude and longitude with a precision of at least 15 seconds of a degree.

3.30. In January 2005, 2006 and 2007 and November of 2007, Respondent submitted an annual report that did not contain the latitude and longitude of its discharge within at least 15 seconds of a degree.

3.31. Respondent failed to submit to EPA a complete annual report, in violation of the Permit and the Act.

**Violation 9**

3.32. Sections V.A.1.b. and c. of the Permit require a permittee to conduct daily monitoring of ground seafood waste to ensure size is ½ inch or less and to maintain logs of the daily inspections.

3.33. On at least one hundred (100) different occasions from October 2004 through January of 2007, Respondent did not conduct daily monitoring of ground seafood waste to ensure size is ½ inch or less or maintain logs of the daily inspection.

3.34. Respondent failed to conduct daily monitoring or maintain logs of the daily grind size inspections, in violation of the Permit and the Act.

**Violation 10**

3.35. Section V.A.1.d. of the Permit requires a permittee to conduct a daily visual inspection of the waste conveyance system and to maintain logs of the daily inspection on-board the vessel.

3.36. On at least one hundred (100) different occasions from October 2004 through January 2007, Respondent did not conduct daily monitoring of the waste conveyance systems or maintain logs of the daily inspections.

3.37. Respondent failed to conduct daily monitoring or maintain logs of the conveyance systems inspections, in violation of the Permit and the Act.

## **Violation 11**

3.38. Sections V.B.5., V.C.5, and VI.D of the Permit require a permittee to conduct daily sea surface and shoreline monitoring when operating as a shore-based or near-shore processor and to maintain logs of the daily inspections.

3.39. On at least twenty-eight (28) different occasions from October 2004 through December 2005, Respondent operated as a shore-based or nearshore processor but did not conduct daily monitoring of the sea surface and shoreline or maintain logs of the daily inspections.

3.40. Respondent failed to conduct daily monitoring of the sea surface and shoreline or maintain logs of the daily inspections, in violation of the Permit and the Act.

3.41. Respondent's discharge of seafood wastes into waters of the United States from October through February of 2004, 2005, 2006, and 2007 constitutes at least three hundred fifty (350) days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Consequently, under Section 309(g)(2)(B) of the Act, Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$177,500.

## **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in Part III of 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 ONE HUNDRED THIRTY-FIVE THOUSAND DOLLARS (\$135,000.00).

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within thirty (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 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.

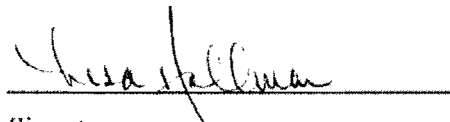
4.12. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

4/19/10

FOR RESPONDENT:



Signature

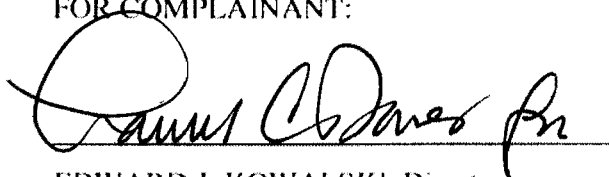
Print Name: Lisa Hallman

Title: Chief Financial Officer

DATED:

6/23/10

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

## **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.

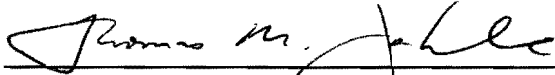
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 Quality 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 28<sup>th</sup> day of June, 2010.



THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10



CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Highland Light Seafoods, LLC, DOCKET NO.: CWA-10-2010-0138** was filed with the Regional Hearing Clerk on June 28, 2010.

On June 28, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Cara Steiner-Riley, Esquire  
US 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 on June 28, 2010, to:

Highland Light Seafoods, LLC  
2440 West Commodore Way  
Seattle, WA 98199

DATED this 28<sup>th</sup> day of June 2010.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10

