

**Responses to Comments**  
**Eni NPDES Permit (AK-0053767)**  
**October 2012**

On June 18, 2012, the U.S. Environmental Protection Agency (EPA) issued a public notice for the proposed issuance of a National Pollutant Discharge Elimination System (NPDES) permit for the Eni U.S. Operating Co., Inc. (Eni) wastewater treatment plant at the Spy Island Drillsite. The public notice also served as notice of the opportunity to comment on the draft Clean Water Act (CWA) Section 401 Certification (draft 401 certification), which included an anti-degradation analysis, provided to EPA by the Alaska Department of Environmental Conservation (ADEC) on May 31, 2012.

The comment period for EPA's draft NPDES permit and the ADEC draft 401 certification closed on July 16, 2012. This response to comments document addresses the comments EPA received on the proposed permit. ADEC has responded to comments on the draft 401 certification separately.

Comments were received from the following:

Bernice Kaigelak, President, Native Village of Nuiqsut

Dora Leavitt, Native Village of Nuiqsut Board Member

Margaret Pardue, Thomas Napageak, Jr., Isaac Nukapigak for the Kuukpik Corporation, the Native Village of Nuiqsut, and the City of Nuiqsut

Johnny Aiken, George Olemaun, Charlotte E. Brower for the Alaska Eskimo Whaling Commission, Inupiat Community of the Arctic Slope, North Slope Borough

Comments from July 16, 2012 Government-to-Government Meeting

The individual comments with responses to comments are found on Table 1. Each commenter corresponds to a number and each comment is numbered as well so that a comment and its response may be traced back to the original commenter. Similar comments have been combined. Table A lists the name of each commenter along with an assigned number.

**Table A. Commenter Code #**

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| #1. Bernice Kaigelak, President of the Village of Nuiqsut  |
| #2. Dora Leavitt, Board Member Village of Nuiqsut  |
| #3. Alaska Eskimo Whaling Commission, Inupiat Community of the Arctic Slope, and North Slope Borough |
| #4. Kuukpik Corporation, Village of Nuiqsut, and City of Nuiqsut                                     |
| #5. Government-to- Government Meeting 7/16/12  |

**Table 1: Response to Comments: Eni NPDES Permit (AK-0053767)**

Commenter Code #	SUMMARY OF COMMENT	EPA RESPONSE	
1,4	Support the comments submitted by the Alaska Eskimo Whaling Commission (AEWC)	1	Thank you for your comment. EPA has responded to the comments submitted by AEWC in this Response to Comments document.
2	Industry receives too many tax and permit breaks, just so they save a few dollars and continue to drill in a timely manner.	2	EPA does not lease lands or waters for oil and gas operations nor does EPA collect royalties from exploration, development or production activities. EPA is responsible for the administration of the Clean Water Act (CWA), which includes EPA's authority to issue National Pollutant Discharge Elimination System (NPDES) permits to offshore oil and gas facilities. See e.g., 33 USC 1342, and 40 CFR 122.28(c)(1).
3	Will EPA issue the permit over Nuiqsut's objections? Has EPA already decided to move forward with issuing the permit?	3	<p>EPA recognizes that the Eni permit is of great interest to the Native Village of Nuiqsut and to other native villages of the North Slope. EPA takes seriously its responsibility to ensure that the native villages of the Arctic have a meaningful opportunity to participate in permitting decisions. EPA has considered all comments and has incorporated changes to the Eni permit based on the comments received. The final permit authorizes Eni to discharge to the Beaufort Sea provided the permit terms and conditions are met.</p> <p>The changes that EPA made to the permit in response to the concerns raised include the following: (1) The discharges of sanitary and domestic waste and desalination unit waste are only allowed under emergency situations during the broken-ice season when neither barges nor ice roads are available to transport the wastewater from the Spy Island Drillsite, i.e. discharges to the Beaufort Sea are not authorized at any other time; (2) A discharge under such emergency situations must not exceed 3 weeks (i.e. a total of 21 days) per year ; (3) For purposes of this permit, the definition of emergency is limited to circumstances beyond the control of the permittee, which eliminates maintenance and mechanical integrity tests associated with the Class I Underground Injection Control (UIC) well and any other activity that the permittee has the ability to schedule.</p>
5	AEWC would like to thank Eni for its continued participation in AEWC's Conflict Avoidance Agreement (CAA) process. AEWC thanks Eni for its work in installing an injection well to ensure its wastes do not pollute our hunting grounds.	4	EPA has forwarded this comment, along with all comments received on the draft NPDES permit to Eni. As the commenter noted, Eni injects its non-hazardous industrial wastes to a Class I Underground Injection Control (UIC) well in accordance with the Safe Drinking Water Act and EPA's UIC Permit No. AK11011-A.

4	The Draft permit needs to be supported by some more documentation regarding the potential impacts to Polar Bears and seals, which are important for either subsistence or as part of the larger ecosystem. The ESA Not Likely to Adversely Affect conclusions are not explained.	5	EPA developed a Biological Evaluation (BE) that examined the potential impacts from the discharges of treated sanitary and domestic and desalination unit wastewaters to species listed under the Endangered Species Act (ESA) as threatened and endangered and their designated critical habitat areas within the Beaufort Sea. This analysis included an evaluation of whether the habitat and food source for the threatened and endangered species would also be impacted. The BE concluded that the discharges authorized by the NPDES permit may affect, but it will not adversely affect the species or their critical habitat areas. EPA received concurrences on this determination from the National Marine Fisheries Service (NMFS) and the U.S. Fish & Wildlife Service (USFWS) for the following species under each agency's respective jurisdiction: bowhead whales, ringed seals, bearded seals, spectacled eiders, Alaska breeding Steller's eiders, and polar bears. The BE and the concurrence letters are located in the administrative record.
3,5	Concerns expressed over the volume of wastewater allowed to be discharged. EPA needs to consider including annual caps on the amount of pollution that can be discharged into the Beaufort Sea.	6	EPA has revised the permit to limit the volume of wastewater in the following ways: 1) discharge is authorized only during broken ice periods when neither ice roads nor barging options are available to transport the waste to onsite disposal locations on the North Slope; 2) a discharge during broken ice periods is restricted to emergency situations, as defined in the permit; and 3) a discharge under these restrictions must not exceed a period of three weeks per year. The NPDES permit for Eni includes limits on the volumes and concentrations authorized to be discharged.
4	There is no requirement that the injection mechanism be brought back online within a specified timeframe. What incentive does Eni have to terminate the discharge as quickly as possible?	7	Please see RTC #6. Given the three weeks per year restriction on the duration of discharge established by EPA in the final permit, Eni has the incentive to cease discharging as soon as possible to avoid violations. The Clean Water Act does not authorize EPA to address UIC requirements. Those requirements are subject to the Safe Drinking Water Act (SDWA). The Class I UIC permit issued by EPA under the authority of the SDWA to Eni contains the appropriate requirements for proper maintenance of the well.
4	Revise the permit to categorically prohibit discharges of any kind during the fall and spring bowhead whale hunting seasons, and that in the event that a discharge is allowed at all, an annual limit be established to prohibit the "routine" or "intermittent" discharges from becoming regular or consistent.	8	Eni applied for NPDES authorization to discharge under emergency situations when they cannot use ice roads or barges to transport the wastewater offsite for disposal. Discharges to the Beaufort Sea during these emergency situations will only occur when broken ice is present and no other alternatives are available. The broken ice periods occur approximately from May to July and from late October to February. These periods are generally outside the bowhead whaling season, which typically occurs during whale migration during the open water season. Please see RTC #3.
4	Support mitigation measures that are included in the final permit, rather than issuing the permit in advance and waiting to see what Eni determines will meet the BMP objectives later.	9	The primary waste disposal method at the Spy Island Drillsite is by injection to a UIC well. The UIC permit contains operations and maintenance provisions requiring Eni to have measures in place to reduce the likelihood of well breakdown and minimize downtime of the well.  The NPDES permit requires the permittee to develop a Best Management Practices (BMP) Plan within 90 days from the effective date of the permit. The purposes of the BMP Plan are to: (1) prevent or minimize the generation and the potential for the release of pollutants from the facility to the waters of the United States through normal operations and ancillary activities; and (2) ensure that discharges that cannot be prevented or reduced are recycled or treated and discharged in an environmentally safe manner. Such BMP requirements are standard provisions in NPDES permits.

4	A discharge prohibition for bowhead whale season will not address the concerns with the Arctic cisco. Eni should be required to study the potential for the discharge to deflect the cisco and the other fish from migrating to the Delta, before being allowed to discharge in this area.	<p><b>10</b> EPA understands the importance of the fisheries in the Colville River Delta Simpson Lagoon area, and in particular the Arctic cisco, to the residents of the North Slope villages. EPA has incorporated effluent limitations and requirements that are protective of this fishery resource. Also, the permit is protective of Arctic cisco and other fish and marine species because it requires the discharge effluent to meet water quality standards at the end of pipe. The water quality standards are established to protect the aquatic life in the Beaufort Sea, which includes Arctic cisco, char, salmon, broadfish, burbot and graylings. Such standards restrict the discharge's temperature, salinity, pH and bacteria. In addition, the permit prohibits the discharge of any oil, grease, toxics, floating solids, garbage, and foam, as well as prohibits anything that would cause a film, sheen, or discoloration on the water surface, seafloor, or adjoining shorelines.</p> <p>With regard to migration, based on the information reviewed, it is EPA's understanding that the Arctic cisco young of year migrate to the Colville River from the McKenzie River system of Canada during the open water season. Other fish species migrate through the Beaufort Sea during the summer open water season as well. Based on this understanding, it is not likely that potential discharge events authorized by this permit would have an impact on the migration patterns of the various fish species found in Simpson Lagoon.</p>
4	The permit does not contain substantive guidelines for determining when or how long such discharges may be allowed. Without limitations the discharges could become more common, which would undermine the premise upon which so many of the cursory conclusions in the analysis by EPA are based. Commenter suggests the permit contain long term limits in order to eliminate this possibility, if the permit is issued at all.	<p><b>11</b> As discussed in RTC #3, the permit has been revised to restrict Eni's discharge to an emergency situation occurring only during broken ice season when barging or hauling wastewater to onshore disposal locations is not possible. EPA has also included a restriction in the permit limiting the duration of an emergency discharge to no more than three weeks per year.</p>
5	Commenter requests EPA revise the permit to prohibit any discharge during bowhead hunting season (July through the end of fall whaling in Barrow) in order to prevent the disruption of the whales' migratory behavior and impact our subsistence hunt.	<p><b>12</b> Please see RTC #8.</p>
5	The permit fails to account for the important provisions of the 2012 Open Water Season Conflict Avoidance Agreement (2012 CAA), which was signed by Eni.	<p><b>13</b> The CAA is an independent agreement between the Alaska Eskimo Whaling Commission and operators on the North Slope. EPA is not a party to the agreement and the terms of the agreement are not enforceable under the Clean Water Act or under the permit.</p>

5	Request EPA prohibit any discharges during bowhead hunting season to avoid contaminating fresh and traditional foods from the ocean. Shell Oil agreed to near zero discharge program for its Camden Bay operations	<p><b>14</b> Please see RTCs #8 and #10. In addition, please note that the permit authorizes two discharges, sanitary/domestic and desalination unit wastewaters, only during emergency situations when Eni cannot transport the wastes to onshore disposal facilities. Should there be a discharge, the permit requires the wastewater to meet the Alaska water quality standards and EPA's technology treatment standards at the end of pipe. These requirements ensure the discharge will be protective of aquatic species, human health and the marine environment.</p> <p>Finally, NMFS concurred on EPA's finding that the discharges, when they occur, will result in discountable exposure to bowhead whales, and any effects may be considered insignificant. NMFS concluded that any harmful exposure to bowhead whales, bearded seals, ringed seals or their prey species will be of temporal duration. Other reasons for this conclusion include: (1) discharges will occur at relatively low volumes of effluent; (2) the discharge of chlorine or toxic chemicals is not authorized and the authorized discharges will not include constituents that are persistent or capable of long term transport or bioaccumulation; (3) the seasonal migration of bowhead whales is not expected to occur in the near shore shallow areas where the discharges occur; and (4) the outfalls are located at the water's edge, not within areas where most species have an observed preference for ice, offshore habitat, and/or deeper feeding grounds.</p>
5	Request EPA include a requirement that Eni install and use tanks to collect waste that can't be injected during well down times during bowhead whale migration periods. Or, require that Eni develop a BMP for its discharges that ensures waste is not discharged during our subsistence hunts.	<p><b>15</b> Please see RTCs #3, #8 and #14.</p>
1,2,5	Oppose any discharge because of the precedent this action would cause and the cumulative impact of multiple sources would have on the area. Request zero discharge of any kind into the Beaufort Sea.	<p><b>16</b> Please see RTCs #3 and #14. The discharges must meet end of pipe limits that are protective of the receiving water environment and will not result in unreasonable degradation to the marine environment. EPA's issuance of the permit is consistent with the requirements of the CWA and NPDES permitting regulations. The short term discharges, if and when they occur, will have a negligible contribution to the overall effects to the Beaufort Sea.</p> <p>EPA evaluated the potential effects that the short-term discharges, if and when they occur, would have on the marine environment in accordance with the Ocean Discharge Criteria Evaluation requirements at 40 CFR 125.122. Based on EPA's analyses of the ten evaluation criteria, EPA has made the determination that the discharges, with the effluent limitations and requirements established by the permit, will not result in unreasonable degradation of the marine environment. The ODC E evaluation is located in the administrative record.</p>
5	Request that EPA include a condition in the Eni permit for a zero discharge requirement during the winter if there is a possibility of waste collecting on the ice and melting during subsistence hunting in spring.	<p><b>17</b> Please see RTC #3.</p>

2	EPA cannot say it will not harm the environment. The tribe knows that it will harm the environment.	18	EPA understands the commenter's concern. EPA has developed a NPDES permit that will restrict the type of wastewater, the concentration, the volume, the timing, and duration of the discharges. The restrictions that EPA placed in the permit are protective of the aquatic life of the Beaufort Sea and the health of those dependent upon those species. The permit limits and restrictions ensure that the discharges will not result in unreasonable degradation of the marine environment. EPA has included additional conditions in the final permit responsive to the concerns and comments received during the comment period. Please see RTC #3 and #16.
1,5	A shut down for maintenance was defined as a controlled emergency. Request a condition be added to the permit requiring Eni to conduct all maintenance activities during periods when ice roads or barges are available for transporting and disposing the wastewater at existing shore based facilities.	19	Please see RTC #3.
4,5	Eni has requested the ability to discharge when the UIC well is "not available" "needed as a contingency discharge option" or "during emergency situations when the Class I injection well is not operational". None of these contingencies are defined, so it is impossible to know how frequently and under what circumstances the discharges will occur.	20	EPA revised the definition of 'emergency situations', which is limited to those situations that are beyond the control of the permittee. Activities such as mechanical integrity testing and maintenance would not be considered emergency situations. Please see RTC #3.
1,3	The Agency does not have anyone employed to monitor compliance of the permit and that samples are taken correctly.	21	EPA understands that a comprehensive and robust compliance and enforcement program is a critical component of an effective NPDES program. Industry conducted sampling and monitoring activities to comply with NPDES permits are a common practice and authorized under the CWA. EPA intends to use a number of mechanisms to ensure compliance with the permit, including reviewing and evaluating sampling and monitoring results, and conducting site inspections, as necessary.
1,2	Approving this discharge would set a precedent opening up the area to other companies. The impact of other discharges would have a tremendous affect on the ecosystem of the area.	22	As noted in RTC #9, Eni's primary method of disposal of its wastes generated at the Spy Island Drillsite is underground injection. The discharges to Simpson Lagoon, if and when they occur, must not exceed 3 weeks in duration. EPA has evaluated the potential effects of the short term discharges and has determined that they will not result in unreasonable degradation of the marine environment. Please also see RTCs #3 and #16.

3	If EPA issues the permit to Eni other oil and gas operations will have the same expectation. Issuing this permit opens the door for more activity in the area.	23	Please see RTC # 22.
4	Issuing a permit for the Beaufort Sea sets a bad precedent, even if the permit allows only intermittent discharges. Know that there are viable alternatives, so if allow a discharge anyway, sets a precedent that could easily lead many other operators to try to loosen their waste management restrictions with "intennittent exceptions."	24	Please see RTCs #3, #16, and #22.
4	With all the development looming in the Chukchi and Beaufort Seas in the coming decade, now is not the time to loosen discharge requirements.	25	Please see RTCs #3, #6, and #10
1,2,5	The fisheries of the Colville River Delta - Camden Bay - Nigliq Channel are an important food source for the tribe consistently making up about 30% of the total harvest and subsistence meat consumed. Arctic Cisco are caught by nets set under the ice in the fall; white broad fish, arctic chars, salmon and graylings are fished in the summer; and burbot is caught in the winter. Seals are also harvested within the Delta. This subsistence food source will be impacted with the beginning of offshore disposal of wastewater into the Beaufort Sea.	26	Please see RTCs #8, #10, #14, and #16.

2	The subsistence food chain in the long run will be impacted by wastewater disposal whether treated or not. Once this permit is issued, other companies are going to want the same thing.	27	Please see RTCs #8, #10, #14, #16.
3	Does EPA have studies that show what the impacts of the wastewater discharge would be to fish and wildlife in the Beaufort Sea? Has EPA done monitoring to establish a baseline to measure impacts from the discharge?	28	<p>Please see RTCs #10, #14.</p> <p>To prepare the Biological Evaluation EPA reviewed many documents and reports to ensure adequate baseline data exist to evaluate the potential fish and wildlife impacts associated with the discharges authorized by the NPDES permit. For example, EPA reviewed the documents prepared by the U.S. Army Corps of Engineers for the Kerr McGee Oil &amp; Gas Corp Nikaitchug Development Project (now the owned and operated by Eni Petroleum), and the Biological Opinion for Kerr McGee Oil and Gas Corp Nikaitchug Development Project Oliktok Point, Alaska, prepared by the USFWS, and documents prepared for similar projects located in the Beaufort Sea.</p> <p>The short term discharges from the Eni Spy Island Drillsite, if and when they occur, with the limits and requirements established by EPA, will not adversely affect fish and wildlife in the Beaufort Sea. The permit also requires monitoring to ensure the limits and requirements are met and to ensure unreasonable degradation of the marine environment will not occur.</p>
4	No resource is as important as the bowhead whale for subsistence. Whaling is an important part of Eskimo culture.	29	<p>EPA recognizes the importance of the bowhead whale to the Inupiat people and appreciates the concerns expressed by commenters to protect this subsistence resource. EPA has revised the permit to further restrict the timing and duration of the discharges.</p> <p>Please see RTCs #8 and #14.</p>
4	The draft permit fails to consider the impacts of discharges on subsistence users. Neither the Fact Sheet nor the draft permit provides a substantive discussion of the impacts of the discharge on subsistence activities. The permit does not contain any restrictions pertaining to subsistence activities.	30	<p>EPA has determined that short term discharges, if and when they occur, will not have a disproportionate adverse impact on the coastal subsistence communities. This determination was made based on the following considerations: (1) The permit authorizes two discharges of wastewater only during emergency situations when the UIC well is offline and hauling or barging alternatives are not available; (2) Emergency situation is defined as caused by 'circumstances beyond the control of the permittee,' which excludes activities such as mechanical integrity testing and routine maintenance of the UIC well; (3) A discharge under these situations is limited to no more than three weeks per year; (4) The discharge will not include toxics or pollutants that are persistent or bioaccumulative; (5) The water quality standards and effluent limits established in the permit are protective of human health and aquatic resources; and (6) The discharges must meet end of pipe limits, i.e., no mixing zone is authorized. Please also see RTC #3.</p> <p>The Environmental Justice analysis in the Fact Sheet appropriately considers the potential impacts of the discharges on subsistence users. Environmental justice considerations are an important part of agency decision making, including air and water permits, enforcement and compliance, contaminated sites cleanup, grants review and management, and NEPA project reviews. One of EPA's environmental justice goals is to ensure meaningful involvement of North Slope communities in EPA's decisions. To that end, EPA developed a specific protocol to engage the villages of the North Slope, which takes into account the communities' unique geography, culture, and environment. EPA provided early drafts of the permit and fact sheet for tribal government review and offered government to government consultation. Additionally, at the time of the public comment period, EPA again offered tribal governments the opportunity to review and comment on the draft permit and fact sheet. The Native Village of Nuiqsut requested information and consultation discussions with EPA, both of which were provided.</p> <p>EPA Region 10 also went to significant effort and expense to gather traditional</p>

			knowledge to inform permitting decisions regarding oil and gas exploration discharges in the Beaufort and Chukchi Seas. EPA used this information to inform the NPDES decisions for the Eni Spy Island Drillsite facility.
4	The permit does not identify subsistence uses as a critically important use in this area. EPA fails to make the connection between the beneficial uses identified in the Fact Sheet, and the reason for their importance, which is the food source for subsistence users	31	Please see RTC #30.
4	The fish and wildlife that grow and propagate here are not the kinds of species that can readily overcome disruptions in their migrations, feeding, and breeding patterns. EPA must consider the impacts of the discharge on these critical times of the year.	32	Please see RTCs #3, #5, #8, #16 and #14.
5	Commenters remain concerned about the possibility of Eni discharging wastewater into the Beaufort Sea during our bowhead subsistence hunts. Traditional knowledge and experience with industrial operations in the Arctic have taught us that bowhead whales are sensitive to pollution and will alter their migratory paths and swim further offshore to avoid such pollution. These alterations impact our subsistence activities and force our hunters further offshore in search of whales. Also would prevent our communities from consuming the nutritious foods.	33	Please see RTCs #8 #14, and #30.

2,3,4	<p>There are other methods to disposing of wastes such as using ice roads. Request those alternatives be used. Eni has not shown that other options are not feasible. Any time injection is not possible because of maintenance, testing or another emergency, Eni can backhaul the waste, store it, or slow or suspend its operations long enough to bring the well back online.</p>	34	Please see RTC #3 and #8.
4	<p>Eni has demonstrated that discharging its wastewater is not necessary for it to conduct operations. The incremental cost to Eni of suspending operations or arranging to haul its wastewater out pales in comparison to the risk of degrading the area around Spy Island, Simpson Lagoon, and the Colville Delta. Unless Eni demonstrates that its discharge is "necessary" or that other readily available safer options are not feasible, EPA should require Eni to continue using alternatives to discharging the wastewater.</p>	35	Please see RTCs #3 and #9.
2	<p>What authority does EPA have to authorize discharges to the ocean?</p>	36	<p>Section 301 of the CWA requires point source dischargers to obtain an NPDES permit before discharging pollutants to waters of the United States. Point sources are discrete conveyances such as pipes, tunnels and conduits. Industrial, municipal, and other facilities must obtain NPDES permits if their discharges go directly to surface waters, including the ocean. Section 402 of the CWA authorizes EPA to issue NPDES permits and section 403 sets forth specific criteria for determining when discharges to the ocean may be permitted.</p> <p>The Eni permit was developed by EPA in compliance with the CWA and NPDES permit regulations. The discharges must meet the Alaska water quality standards and EPA's technology treatment standards at the end of pipe. These requirements ensure the discharge will be protective of aquatic species, human health and the marine environment.</p> <p>See RTC #16 addressing EPA's ocean discharge criteria evaluation for this permit. See also RTC #14.</p>

4	Request EPA deny the permit to Eni because the discharge is unnecessary, ill considered from a subsistence perspective, and sets a bad precedent. Any discharge would present an unacceptable risk of contamination to the area; impacts are too great to community.	37	As described above, the Clean Water Act authorizes the discharge of pollutants into waters of the United States in compliance with the terms and conditions of an NPDES permit. The NPDES permit for Eni establishes permit limitations and requirements that govern the type and concentration of pollutants permitted in the discharge. The discharges must meet the Alaska water quality standards and EPA's technology treatment standards at the end of pipe. These requirements ensure the discharge will be protective of aquatic species, human health and the marine environment. In addition, the permit authorizes Eni to discharge only during emergency discharge situations when the UIC well is offline and transportation alternatives, such as trucking and barging, are not available due to broken ice conditions. The permit further limits the discharge under an emergency situation to no more than three weeks per year. Based on the permit provisions and the limited duration of any discharges, EPA has determined that the discharges will not result in unreasonable degradation of the marine environment. Please also see RTCs #3, #9, #14, and #16.
4,5	42 USC§1310(b) "Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner." Eni has proven that it can conduct operations without releasing any wastewater into the water around Spy Island. Eni has options other than discharging.	38	See RTC #37.
2	Think of who is impacted before issuing a permit that will harm the environment.	39	Please see RTCs #3 and #30.
2	What consideration has been given to the people who will continue to live here long past when the oil industry is over?	40	Please see RTCs #3 and #30.
4	A discharge that impacts cisco or char will not only reduce our subsistence food supplies, but may also have significant impacts on the major thread that binds our community - the bowhead whale. There is an utter lack of consideration given to subsistence users in this discharge permit.	41	Please see RTCs #10, #14, and #30.

5	EPA's EJ analysis is incomplete because it does not include an actual analysis of the impacts to our communities if bowhead whale subsistence hunting is disturbed.	42	Please see RTC #30.
5.4	Request that EPA complete a thorough MMPA analysis and incorporate it into a proper environmental justice discussion in a revised draft permit. Once revised provide a 30 day comment period.	43	<p>The Departments of Commerce and Interior have primary responsibilities for implementing the Marine Mammal Protection Act, in particular, Section 101(a)(5)(A) and (D). Authorization for incidental takings of marine mammals shall be granted if: (1) the NMFS or the USFWS, respectively, find that the taking will have a negligible impact on the species or stock(s); (2) the taking will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant); and (3) the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.</p> <p>EPA's action of issuing an NPDES permit is not subject to the requirements of the MMPA (Personal communication with the Office of Protected Resources, Silver Spring, MD, September 27, 2012).</p> <p>The USFWS developed and published in the Federal Register an Incidental Take Regulation (ITR) for the Beaufort Sea on August 3, 2011, for the Eni facility (76FR47010). The ITR authorized the non-lethal, incidental take of small numbers of polar bears and Pacific walrus during year-round oil and gas operations in the Beaufort Sea and adjacent northern coast of Alaska. This rule will be in effect through August 3, 2016. An Environmental Assessment was also prepared. As part of determining whether to issue an ITR for this area, USFWS had to assess and determine that the activities covered by the ITR would not "have unmitigable adverse impact[s] on the availability of these species for subsistence uses". The Eni facility did not receive an ITR for bowhead whales because the whales are not found in Simpson Lagoon where the potential discharges may occur and therefore, an ITR was not necessary.</p> <p>Finally, EPA disagrees that another 30-day public review and comment period is warranted as the NPDES permitting action is not subject to MMPA. In addition, the Environmental Justice analysis in the Fact Sheet considers the potential impacts of the discharges on subsistence users. See also RTCs #5 and #30.</p>
4	Eni discharge is not "necessary" for the purposes of ADEC anti-degradation analysis. ADEC analysis is flawed.	44	Please refer to the final CWA 401 certification from the Alaska Department of Environmental Conservation (DEC) and its response to comments document.
5	The ESA consultation will not satisfy the mandatory provision for unmitigable adverse impact under the MMPA.	45	Please see RTC #43
5	Commenter requests EPA include in the permit measures developed as part of the CAA. Should also include an annual adaptive decision making process	46	<p>Please see RTC #13. Additionally, EPA did not include in the permit a requirement that Eni and AEWC establish and implement an annual adaptive decision making process associated with the CAA because that is outside EPA's CWA authority.</p> <p>EPA's regulations governing permit modifications, which include a provision for new information, are set forth in 40 CFR 124.5 and 40 CFR 122.62.</p>

	whereby Eni and the AEWG come together to discuss new information and potential amendments to the mitigation measures or levels of discharge.		
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