

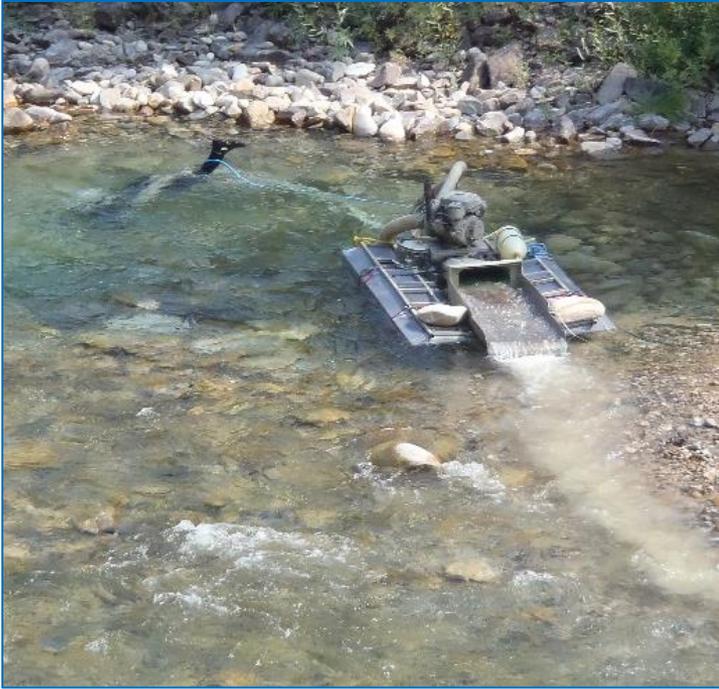
Small Suction Dredge Mining in Idaho

The Clean Water Act (NPDES) General Permit

Presented April 13, 2016

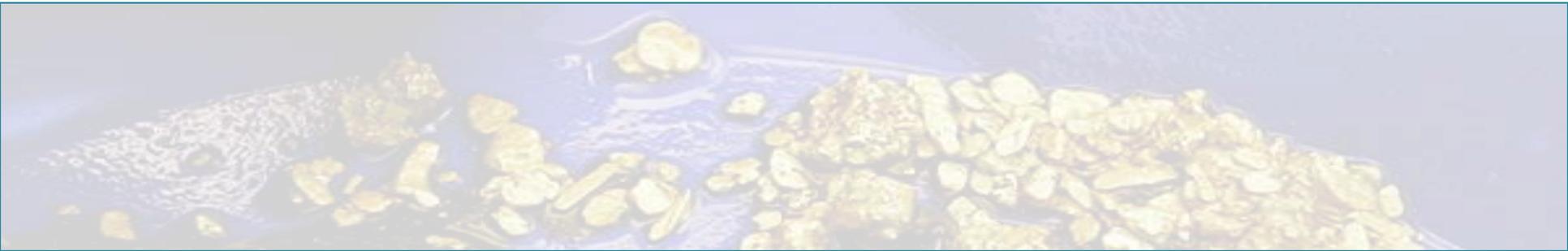


Topics Covered



EPA's Small Suction Dredge Mining General Permit

- **Clean Water Act Section 402**
- **General Permit History and Current Status**
- **Eligibility and Restrictions**
- **Ongoing and Future Efforts**
- **Compliance Strategy**
- **Planned Improvements**



Clean Water Act § 402

National Pollutant Discharge Elimination System (NPDES) Permitting Program

Is it unlawful to **discharge** a **pollutant** from a **point source** into **waters of the U.S.** without an NPDES permit.



Material separated from gold and released into a stream, during placer mine activity, constitutes a pollutant; and even though “the material discharged originally [came] from the streambed itself, [its] re-suspension [in the stream] may be interpreted to be an addition of a pollutant under the Act. (Rybachek v. U.S. EPA, 904 F.2d 1276, 1285-86 (9th Cir. 1990)).



Multiple Authorities

EPA Region 10

CWA § 402

Develops NPDES permits in Idaho, conducts inspections, enforces permit violations.

U.S. Fish & Wildlife Service NOAA Fisheries (“Services”)

Endangered Species Act (ESA) § 7

Federal agencies consult with the Services to ensure actions they authorize (suction dredging), don’t jeopardize listed species or the ecosystems they depend on.

Idaho DEQ

CWA §401

Sets state water quality standards (WQS), develop plans (TMDLs) to rectify impaired waters, and certifies EPA NPDES permits meet state WQS (401 Cert).

Idaho Dept. of Water Resources

Idaho Code § 42-3803,

IDAPA 37.03.07

Regulates the use of small suction dredge mining equipment within the mean high water mark of a channel (stream alteration).

U.S. Army Corps of Engineers

CWA § 404,

1899 Rivers and Harbors Act § 10

Regulates the discharge of dredged or fill material into waters of the U.S.* (CWA § 404) and structures and/or work in or affecting navigable waters of the U.S. (RHA § 10). *Except if the discharge is considered “de minimis”.



US Army Corps
of Engineers®

Types of NPDES Permits

1

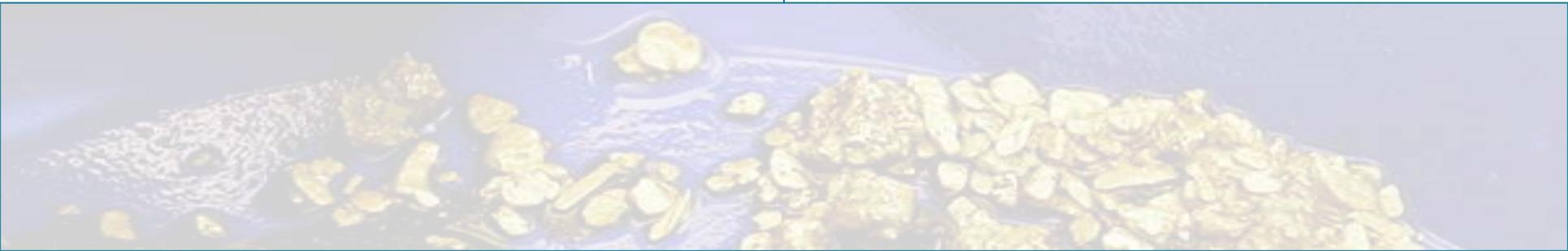
Individual Permit

- For a single facility or individual at a specific location.
- **Lengthier process.** Public Notice, ESA + Tribal Consultation, 401 Cert carried out in response to each permit application.
- Examples: Municipal wastewater treatment plants, food processing plants, large mines.

General Permit

1+

- For a similar category of activities across a large geographic area (statewide).
- **Faster permit mechanism.** Public Notice, ESA + Tribal Consultation, 401 Cert completed upfront, in advance of permit requests. Activity can be covered if terms & conditions are met.
- Examples: Pesticide applications, large CAFOs, aquaculture facilities, stormwater (industrial and construction).



General Permit History

2010

- Public Notice for **1st draft of permit**, took comments, held public meetings in Idaho.

2011

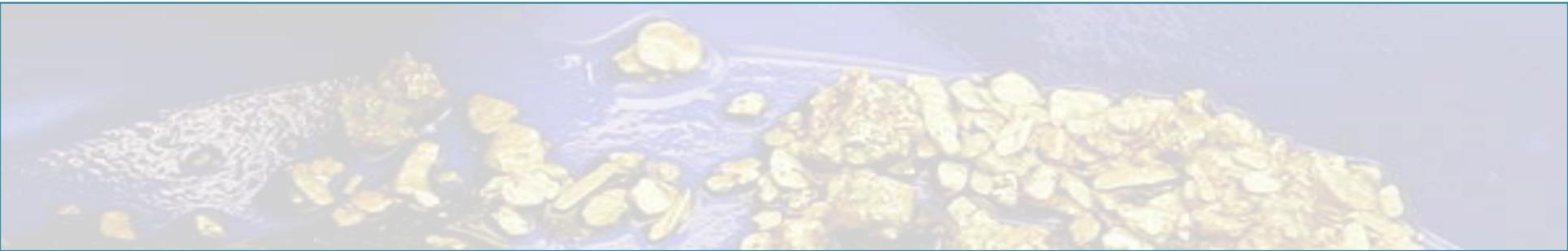
- Public Notice issued for **2nd draft permit**. **EPA received 122 different comments.*
- Completed informal ESA and Tribal consultation, received 401 Cert from IDEQ.

- Notified 1000+ miners about the proposed permit.

2013

- Outreach to Tribes, State and Federal agencies, Congressional Staff.
- **Final permit published in the Federal Register.**
- Notified 1000+ miners about the final permit. **No appeals were filed.*

- Mining Community webinar, presented to ID Gold Prospector's Association, (Boise Chapter).
- Outreach-focused inspections.
- ESA Consultation by the Forest Service results in **suction dredging allowed on Lolo and Moose Creeks**—previously closed due to critical habitat for bull trout and steelhead.



General Permit History (continued)

2013

- Public Notice for **proposed permit modification, addressing typos, minor corrections.**

**2 commenters responded.*

2014

- Presented to the Gold Prospectors Association of America (Nampa Chapter).
- **Permit modification became effective in March, 2014.**

- Spring meeting with state and federal land management agencies, IDWR, IDEQ, Tribes to discuss 2014 permit season.

- ESA Consultation by the Forest Service results in **suction dredging allowed on Orogrande and French creeks**—previously closed due to critical habitat for bull trout.

- Random, unannounced inspections.

2015

- Continue to support ESA consultation efforts to open additional waters.

2016

- Continue to support ESA consultation efforts to open additional waters.

Weekly Goals

Manage calls, emails, drop-in visits from applicants

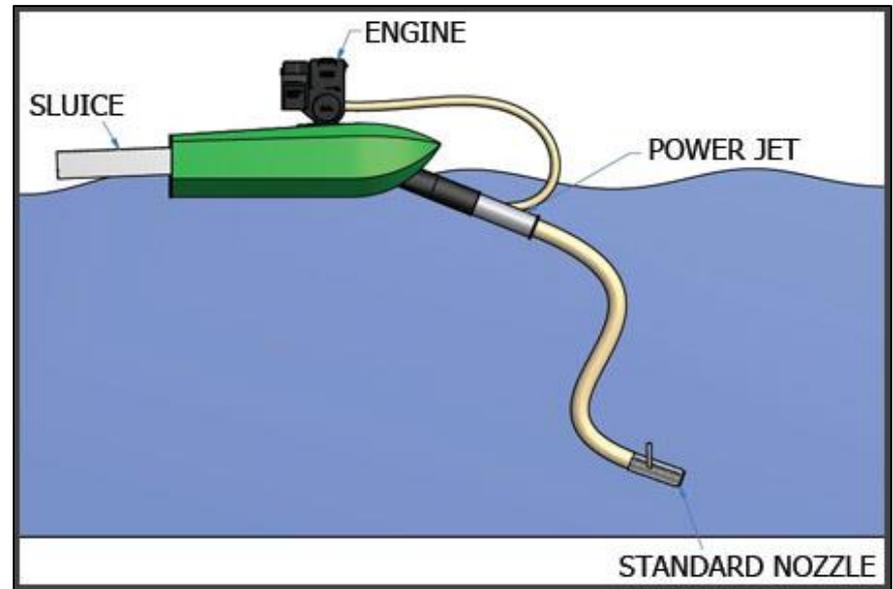
Mail permit information to individuals without internet access

Process applications as quickly as possible (< 45 days)

NPDES General Permit Eligibility

To qualify for coverage under the General Permit, a suction dredge must:

1. Have an intake nozzle size of 5 inches or less,
2. Use an engine rated at 15 horsepower or less, and
3. Be operated in EPA's open or "allowed" areas only.



No Permit
Required For

Non-motorized operations (hand panning)
Techniques preventing sediment discharge

Prohibitions

Areas Excluded From General Permit Coverage

1. Nationally Protected Areas

National Parks System Units, National Monuments, National Sanctuaries, National Wildlife Refuges, National Conservation Areas, National Wilderness Areas, National Wild and Scenic Rivers System.

UNLESS THE LAND
MANAGER APPROVES

2. ESA Areas

Areas designated as critical habitat under the Endangered Species Act (ESA), and where species that are either listed as threatened or endangered are known to occur.

UNLESS APPROVED
THROUGH CONSULTATION
WITH THE SERVICES

3. State Protected Waters

Withdrawn River Segments, State Protected Rivers, Sediment/Mercury Impaired Streams.

NO EXCEPTIONS

4. Tribal Reservations

Kootenai, Coeur d'Alene, Nez Perce, Duck Valley, Fort Hall

NO EXCEPTIONS



Best Management Practices (BMPs)



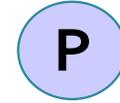
Biological

- 800 feet between operations.
- Stay 500 feet away from where fish are spawning, fish eggs exist, and allow for fish passage.
- Decontaminate dredge equipment to prevent spread of invasive species.
- Screen over pump intake.



Chemical

- Avoid silt/clay areas to reduce increase in turbidity.
- Mercury: stop work, collect and dispose of properly.
- Fuel, hazardous material must be stored 100 feet from mean high water; report spills.
- 500 foot sediment plume max.



Physical

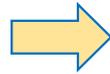
- May not alter stream channel.
- Erosion, undercutting of stream bank not allowed.
- No dams or diversions (not authorized under Section 402).
- Obstructions must be moved by hand only, no mechanized equipment in the water.



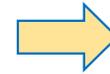
Permit requires visual monitoring only, no sampling.

Permit Numbers

Application may have
1+ location(s) listed



EPA reviews
each location



Authorization or denial letter
prepared for each location

2013

- 162 people applied for permit coverage.
- 264 requested locations were denied coverage.
- 81 requested locations were authorized.

2014

- 39 people applied for permit coverage.
- 35 requested locations were denied coverage.
- 56 requested locations were authorized.

2015

- 56 people applied for permit coverage.
- 38 requested locations were denied coverage.
- 75 requested locations were authorized.

*Grimes, Mores, Elk Creek + tributaries permitted annually

*All other open waters permitted up to 5 years

Notice of Intent

| APPENDIX A Notice of Intent (NOI) Information Sheet NPDES General Permit IDG370000 Small Suction Dredge | | | | | |
|---|--------------|----------|---|--------------------|----------------------|
| Applicant (Owner/Operator): | | | | | |
| Owner Name: | | | | | |
| Winter Address: | | | Summer Address <input type="checkbox"/> Check if same | | |
| Telephone Number: | | | Email address: | | |
| Operator Name <input type="checkbox"/> Check if same as owner | | | | | |
| Operation Name <i>(if applicable):</i> | | | | | |
| Size of Suction Dredge Nozzle: (5 inches or less) | | | Equipment rating: (15 hp or less) | | |
| Land Management Agency: | | | Contact: | | |
| | | | Phone number: | | |
| Permit Part I.D.1. requires copies of certain land management approvals be submitted with the NOI. | | | | | |
| Permit Part I.E. requires that you contact the Idaho Department of Water Resources to obtain a permit and determine whether additional restrictions may apply. | | | | | |
| Waterbody Information | | | | | |
| Waterbody* | Nearest Town | Latitude | Longitude | Dates of Operation | Hours of Operation** |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| <i>*Include a map noting each location.</i> | | | | | |
| **An NOI is required on an annual basis for facilities on Mores, Grimes and Elk creeks along with the number of dredge hours planned (See Permit Parts I.G.1. and II.B.3.) | | | | | |
| Printed Name: | | | | | |
| Signature: | | | | Date: | |
| Certification: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. | | | | | |

Other Important Information

No fee,
simple 1-page
application
form
(enter lat/long)

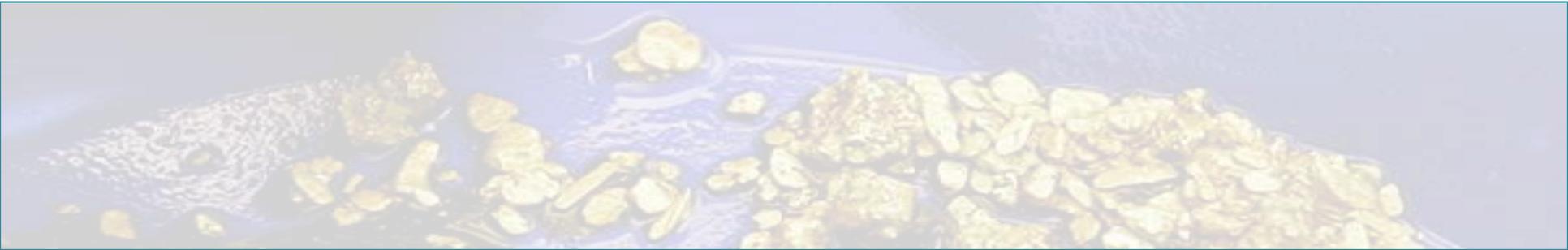
Permit linked to
dredge size and
location, not number
of people operating

Approval : Denial
ratio improving as
public becomes
familiar with the
permit

EPA and IDWR
do share some
common open
areas

EPA regularly
coordinates with
Services, land
managers,
state/federal partners

General Permits are
reissued every 5
years, incorporating
new data (e.g., ESA)



Planned Improvements

Continually provide the most current information on our website.

Highlight, upfront, open and closed waters that are the most popular.

Create an online mapping tool to allow the public to view the same GIS data layers EPA uses for permit decisions.

Region 10: the Pacific Northwest
Serving the people of Alaska, Idaho, Oregon, Washington and Native Tribes

Region 10: the Pacific Northwest
A to Z Subject Index
Air
Cleanup
Enforcement
Environmental Assessment
Toxic Substances
Waste & Recycling
Water
Regional Priorities
For Kids

Idaho Small Suction Dredge Mining General Permit

General Information

EPA issued an NPDES general permit in 2013 for small suction dredge operations in Idaho. To comply with the Clean Water Act, operators of small suction dredges must obtain NPDES permit coverage prior to operation. The general permit covers small suction dredges with an intake nozzle size of five inches in diameter or less and with equipment rated at 15 horsepower or less.

EPA modified the general permit in 2014 in order to: 1) correct typos; 2) clarify that tributaries of Elk, Grimes, and Mores Creek are also subject to annual permitting and allocated hours (Permit Part II.B.3); 3) extend the application deadline for Elk, Grimes, and Mores Creek and their tributaries to April 1 each year; and 4) create new Appendices F and G.

The general permit places conditions on the discharge of rock and sand from each mining operation to protect water quality and aquatic resources. These conditions include best management practices and prohibited areas.

The general permit will expire on **April 30, 2018**.

How do I get permit coverage?

1. Read the [Final Small Suction Dredge Mining General Permit](#) (PDF) (44 pp, 1MB).
2. Confirm that the waterbody you wish to work in is eligible for a permit from both the [Idaho Department of Water Resources](#) [Recreational Boating Permits Program](#) and the EPA for small suction dredge mining. Be aware that you will need permits from both agencies to dredge in Idaho.

Open Waters:
Mores Creek, Grimes Creek, Elk Creek, and their tributaries are permitted annually (see Permit Parts I.G. and I.B.3), with an application deadline of April 1 each year.

Elsewhere in Idaho, open waters are eligible for coverage until the permit's expiration date. Applications are welcome year-round. Please review the maps below to confirm which areas are open (represented by the color green); in some cases, the main channel is closed, but tributaries of the main channel remain open:

- [Map of allowed small suction dredging areas in northwest Idaho](#) (PDF) (1 page, 4.6MB).
- [Map of allowed small suction dredging areas in southeast Idaho](#) (PDF) (1 page, 1.7MB).
- [Map of allowed small suction dredging areas in southwest Idaho](#) (PDF) (1 page, 2.7MB).

Closed Waters:
Permit Part I.D. lists 7 categories of waters that are closed to dredging: Nationally Protected Areas, Tribal Reservations, National Wild and Scenic Rivers, Endangered Species Habitat Areas, Withdrawn Rivers, State Protected Rivers, and Impaired Streams. The following map shows all prohibited areas throughout Idaho:

- [Areas excluded from small suction dredge mining in Idaho](#) (PDF) (1 page, 2MB).

Many popular areas (e.g., Middle Fork Boise River, South Fork Payette, Salmon River, Clearwater River) have been designated as critical habitat for threatened or endangered species protected under the Endangered Species Act (ESA), and are not open to dredging at this time. A process known as ESA consultation must be completed before the EPA can authorize suction dredging in critical habitat areas, or where threatened and/or endangered species are present (see Permit Part I.D.4.a). For more information, please review the following:

- [Appendix G: Endangered Species Critical Habitat Areas](#) (PDF) (58 pp, 311K)
- [Map of Chinook Salmon Evolutionarily Significant Units](#) (PDF) (1 page, 613K)
- [ESA Fact Sheet](#) (PDF) (2 pp, 323K)
- [ESA Questions and Answers](#) (PDF) (2 pp, 291K)

Contact Us

Tracy DeGering (degering.tracy@epa.gov), Permit Authorizations, 208-378-5756
Cindi Godsey (godsey.cindi@epa.gov), Permit Writer, 907-271-6561
Eva DeMaria (demaria.eva@epa.gov), Permit Compliance, 206-553-1970

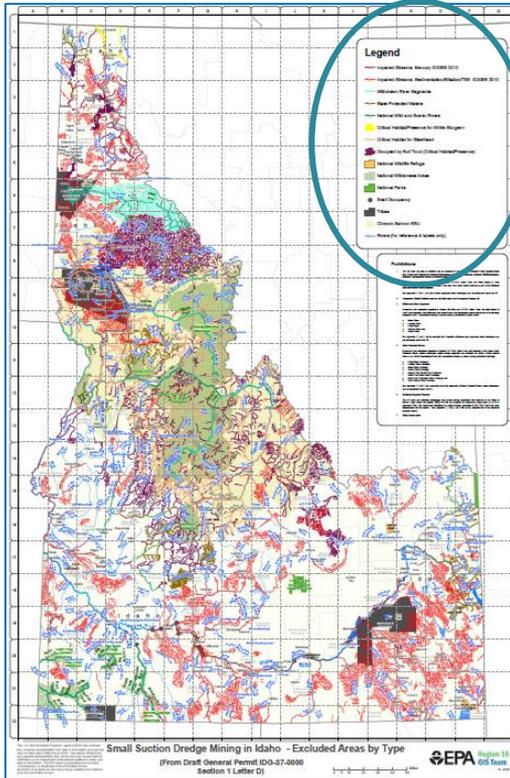
Join our mailing list to receive updates about Idaho suction dredge permits.

Application and Reporting Forms

- [Notice of Intent Form](#) (PDF) (2 pp, 107K)
- [Annual Report Form](#) (PDF) (1 page, 67K)

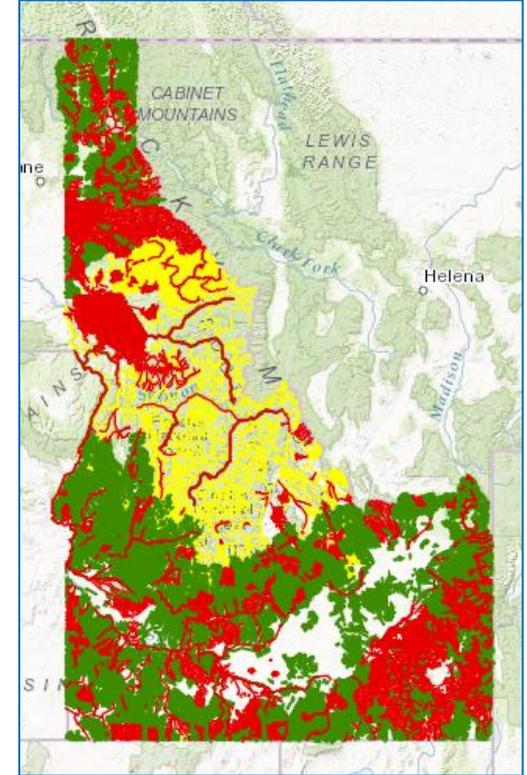
Website: <http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/idsuction-gp>

Online Mapping Tool



Legend

- Impaired Streams: Mercury ID305B 2010
- Impaired Streams: Sedimentation/Siltation/TSS ID305B 2010
- Withdrawn River Segments
- State Protected Waters
- National Wild and Scenic Rivers
- Critical Habitat/Presence for White Sturgeon
- Critical Habitat for Steelhead
- Occupied by Bull Trout (Critical Habitat/Presence)
- National Wildlife Refuge
- National Wilderness Areas
- National Parks
- Snail Occupancy
- Tribes
- Chinook Salmon ESU
- Rivers (for reference & labels only)



14 data layers
reduced to 3

No Exceptions = red

Nationally Protected + ESA Areas = yellow

All other waters = green

Contact Information

Boise, ID

Local Contact –Implementation

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degering.tracy@epa.gov

EPA Idaho Operations Office Director

Jim Werntz

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werntz.james@epa.gov

Seattle, WA

Permit Compliance/Enforcement

Jeff KenKnight

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Permit Writer

Cindi Godsey

(206) 553-1676

godsey.cindi@epa.gov

U.S. Environmental Protection Agency - Idaho Operations Office

950 W Bannock St, Suite 900 | Boise, ID 83702

Individual Permit Process

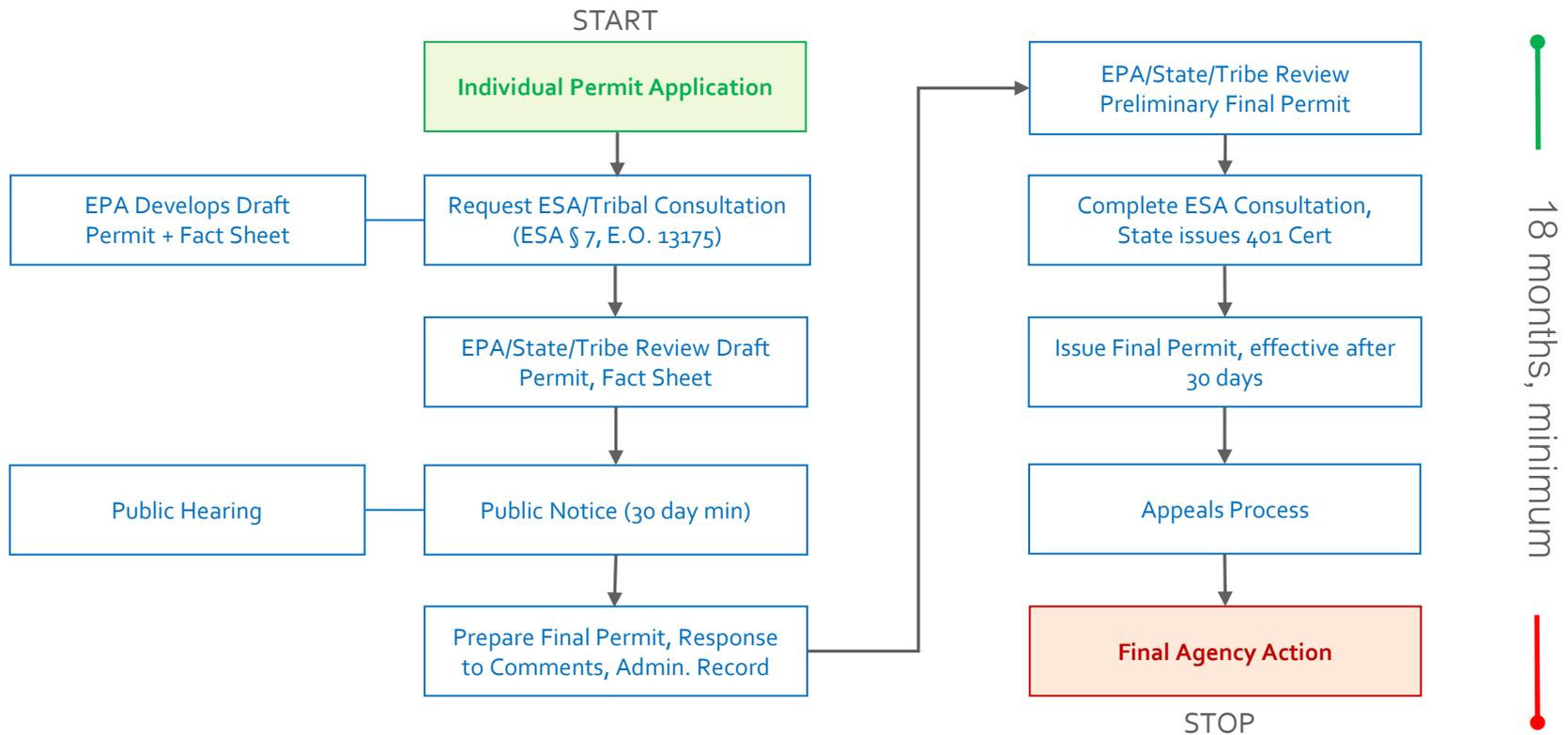
1. Review completeness of application, assign based on staff availability, workload.
2. Consult with the Services under ESA § 7 and Indian tribes if direct effect on a tribe (Executive Order 13175).
3. Prepare and share Draft Fact Sheet (technical, legal basis for permit conditions) with State for preparation of draft Water Quality Certification (401 Cert).
4. Announce 30-day public comment period (minimum), opportunity to request a hearing.
5. Prepare Response to Comments document, shaped by number, complexity of comments received.
6. Prepare, transmit Preliminary Final Permit to State for final 401 Cert, complete ESA and tribal consultation.
7. Upon receipt of 401 Cert, issue Final Permit, becomes effective after 30 days (appeals must be filed during this same 30-day period).
8. Appealed permits do not go into effect. Appeals are handled by Environmental Appeals Board, Ninth Circuit Court of Appeals.

Individual Permit
Application

Form 1 - http://www.epa.gov/npdes/pubs/form_1.pdf

Form 2D - <http://www.epa.gov/npdes/pubs/3510-2D.pdf>

Individual Permit Process



Individual Permit
Application

Form 1 - http://www.epa.gov/npdes/pubs/form_1.pdf

Form 2D - <http://www.epa.gov/npdes/pubs/3510-2D.pdf>