

# The 404(c) Process in General

To use its Section 404(c) authority to limit or restrict mining in the Bristol Bay watershed, EPA is required to follow a systematic process, including a public comment period. Here is a simplified guide to that process:

## Intent to Issue Notice of Proposed Determination

EPA notifies project proponents, the U.S. Army Corps of Engineers, and the State of Alaska in writing that it intends to issue a public notice of **Proposed Determination** to withdraw, deny, prohibit or restrict an area for discharge of dredge and fill material.

## Notice of Proposed Determination/Public input

The Proposed Determination is published in Federal Register, beginning EPA's process to determine whether unacceptable adverse affects would occur if fill is discharged in the area. Part of this process will include a comment period of 30 to 60 days. Public hearings are likely.

## Recommended Determination

EPA prepares the Recommended Determination to withdraw or restrict the area from disposal and filling of dredge material.

OR

## Withdrawal

EPA withdraws the Proposed Determination, ending the 404(c) process.

## Corrective Action

EPA contacts the Corps, the State of Alaska, and the project proponent and gives them 15 days to take corrective action to prevent unacceptable effects.

## Final Determination

EPA affirms, modifies or rescinds the Recommended Determination and publishes notice of Final Determination.

The project developer may then legally challenge the Final Determination.

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## The 404(c) Process in Bristol Bay



Notice of Intent issued, January 2014.



Proposed Determination published July 2014, followed by public input period.

**FEDERAL JUDGE HALTS THE PROCESS WITH PRELIMINARY INJUNCTION, Nov 2014**



In July 2017, EPA begins process to withdraw Proposed Determination in accordance with a May 2017 settlement with developers.



EPA announces suspension of withdrawal process, January 2018.

## Current status

Proposed Determination remains in place while permitting proceeds. As per the May 2017 settlement agreement, EPA cannot move forward to a Recommended Determination until May 2021, or until the U.S. Army Corps of Engineers issues its final environmental impact statement, whichever comes first.