AUTHORIZATION TO DISCHARGE UNDER THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Clean Water Act as amended, (33 U.S.C. § 1251 et seq.; the "CWA"), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, § 26-53),

Chatham Pier Fish Market, Inc.

is authorized to discharge from the facility located at

Chatham Pier Fish Market, Inc.
45 Barcliff Ave. Ext.
Chatham, MA 02633

to receiving water named

Chatham Harbor (MA96-10)

in accordance with conditions set forth herein.

This permit shall become effective on the date of signature.

This permit and the authorization to discharge expire at midnight, five (5) years from the effective date.

This permit supersedes the permit issued on May 5, 2005.

This permit consists of 7 pages in Part I including effluent limitations, monitoring requirements, and 25 pages in Part II, Standard Conditions.

Signed this 19th day of May, 2011

/S/SIGNATURE ON FILE

Stephen S. Perkins Director
Office of Ecosystem Protection
Environmental Protection Agency
Boston, MA

David Ferris, Director
Massachusetts Division of
Wastewater Management
Department of Environmental Protection
Commonwealth of Massachusetts
Boston, MA

Part I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning the effective date and lasting through expiration, the permittee is authorized to discharge from outfall serial number 001, flow-through water to Chatham Harbor. Such discharges shall be monitored as specified below.

	Effluent Limitations		Monitoring Requirements[1]	
Parameter	Average Monthly	Maximum Daily	Measurement Frequency	Sample Type
Flow (gpd)	--	80,000	Monthly	Estimate
pH (s.u.)[2]	6.5 – 8.5		Monthly	Grab

Footnotes

(1) Samples taken in compliance with the monitoring requirements specified above shall be taken at a point representative of the discharge through the outfall, prior to mixing with the receiving waters.

(2) The pH of the effluent shall not be less than 6.5 nor greater than 8.5 standard units (s.u.) and not more than 0.2 s.u. outside of the natural background range. There shall be no change from natural background conditions that would impair any assigned use Class SA waters.

Part I.A. (cont.)

2. The discharge shall not cause a violation of the water quality standards of the receiving waters.

3. The discharge shall not cause objectionable discoloration of the receiving waters.

4. The effluent shall contain neither a visible oil sheen, foam, nor floating solids at any time.

5. The results of sampling for any parameter above its required frequency must also be reported.

6. The permittee shall not discharge any chemicals, feed, or medications from the wet storage tanks. If any chemicals need to be used in the future, the permittee shall notify EPA and MassDEP for their use and effect of toxicity in the receiving water. The permit will be modified, if needed. The wet storage tanks shall be cleaned in accordance with the FDA Sanitation Control Procedures 21 CFR § 123.11 and the procedures outlined in the Tank Room Sanitation Policy.

7. This permit shall be modified, or revoked and reissued to comply with any applicable effluent standard or limitation issued or approved under Sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act, if the effluent standard or limitation so issued or approved:

   a. contains different conditions or is otherwise more stringent than any effluent limitation in this permit; or

   b. controls any pollutant not limited by this permit.

   If the permit is modified or reissued, it shall be revised to reflect all currently applicable requirements of the Act.

8. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

   a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

      (1) One hundred micrograms per liter (100 ug/l);

      (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2- methyl-4, 6- dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

      (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. § 122.21(g)(7); or

      (4) Any other notification level established by the Director in accordance with 40 C.F.R. § 122.44(f).

   b. That any activity has occurred or will occur which would result in the discharge, on a non- routine or infrequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels:"

      (1) Five hundred micrograms per liter (500 ug/l);

      (2) One milligram per liter (1 mg/l) for antimony;

(3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 C.F.R. § 122.21(g)(7); or

(4) Any other notification level established by the Director in accordance with 40 C.F.R. § 122.44(f).

c. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

B. Best Management Practices Plan

The permittee shall keep an updated copy of the Best Management Practices (BMP) Plan at the facility and available to EPA and MassDEP for review at all times. The BMP plan shall, at a minimum, provide for the following practices consistent with the effluent limitations guidelines for flow-through and recirculating systems at 40 CFR Part 451, Subpart A.

1. In order to minimize the discharge of accumulated solids from holding tanks, indentify and implement procedures for routine cleaning of holding tanks and procedures to minimize any discharge of accumulated solids during the inventorying, grading, and harvesting of aquatic animals.

2. Remove and dispose of aquatic animal mortalities properly on a regular basis to prevent discharge to waters of the U.S.

3. Inspect the holding tanks and wastewater treatment system on a routine basis in order to identify and promptly repair any damage.

4. Conduct regular maintenance of the holding tanks and the wastewater treatment system to ensure their proper function.

5. Keep records documenting the frequency of cleaning, maintenance, and repairs.

6. Train personnel on the proper operation and cleaning of holding tanks and wastewater treatment systems including proper use of equipment.

C. Monitoring and Reporting

1. **For a period of one year from the effective date of the permit**, the permittee may either submit monitoring data and other reports to EPA in hard copy form or report electronically using NetDMR, a web-based tool that allows permittees to electronically submit discharge monitoring reports (DMRs) and other required reports via a secure internet connection. **Beginning no later than one year after the effective date of the permit**, the permittee shall begin reporting using

NetDMR, unless the facility is able to demonstrate a reasonable basis that precludes the use of NetDMR for submitting DMRs and reports. Specific requirements regarding submittal of data and reports in hard copy form and for submittal using NetDMR are described below:

a. Submittal of Reports Using NetDMR

NetDMR is accessed from: http://www.epa.gov/netdmr. **Within one year of the effective date of this permit**, the permittee shall begin submitting DMRs and reports required under this permit electronically to EPA using NetDMR, unless the facility is able to demonstrate a reasonable basis, such as technical or administrative infeasibility, that precludes the use of NetDMR for submitting DMRs and reports ("opt-out request").

DMRs shall be submitted electronically to EPA no later than the 15th day of the month following the completed reporting period. All reports required under the permit shall be submitted to EPA as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it will no longer be required to submit hard copies of DMRs or other reports to EPA and will no longer be required to submit hard copies of DMRs to MassDEP. However, permittees shall continue to send hard copies of reports other than DMRs to MassDEP until further notice from MassDEP.

b. Submittal of NetDMR Opt-Out Requests

Opt-out requests must be submitted in writing to EPA for written approval at least sixty (60) days prior to the date a facility would be required under this permit to begin using NetDMR. This demonstration shall be valid for twelve (12) months from the date of EPA approval and shall thereupon expire. At such time, DMRs and reports shall be submitted electronically to EPA unless the permittee submits a renewed opt-out request and such request is approved by EPA. All opt-out requests should be sent to the following addresses:

Attn: NetDMR Coordinator
U.S. Environmental Protection Agency, Water Technical Unit
5 Post Office Square, Suite 100 (OES04-1)
Boston, MA 02109-3912

And

Massachusetts Department of Environmental Protection
Surface Water Discharge Permit Program
627 Main Street, 2nd Floor
Worcester, Massachusetts 01608

c. Submittal of Reports in Hard Copy Form

Monitoring results shall be summarized for each calendar month and reported on separate hard copy Discharge Monitoring Report Form(s) (DMRs) postmarked no later than the 15th day of the month following the completed reporting period. All reports required under this permit shall be submitted as an attachment to the DMRs. Signed and dated originals of the DMRs, and all other reports or notifications required herein or in Part II shall be submitted to the Director at the following address:

U.S. Environmental Protection Agency
Water Technical Unit (OES04-SMR)
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Duplicate signed copies of all reports or notifications required above shall be submitted to the State at the following addresses:

MassDEP – Southeast Region
Bureau of Waste Prevention
20 Riverside Drive
Lakeville, MA 02347

And

Massachusetts Department of Environmental Protection
Surface Water Discharge Permit Program
627 Main Street, 2nd Floor
Worcester, Massachusetts 01608

Any verbal reports, if required in **Parts I** and/or **II** of this permit, shall be made to both EPA-New England and to MassDEP.

D. State Permit Conditions

1. This authorization to discharge includes two separate and independent permit authorizations. The two permit authorizations are (i) a federal National Pollutant Discharge Elimination System permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Clean Water Act, 33 U.S.C. §§1251 et seq.; and (ii) an identical state surface water discharge permit issued by the Commissioner of the Massachusetts Department of Environmental Protection (MassDEP) pursuant to the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53, and 314 C.M.R. 3.00. All of the requirements contained in this authorization, as well as the standard conditions contained in 314 CMR 3.19, are hereby incorporated by reference into this state surface water discharge permit.

2. This authorization also incorporates the state water quality certification issued by MassDEP under § 401(a) of the Federal Clean Water Act, 40 C.F.R. 124.53, M.G.L. c. 21, § 27 and 314 CMR 3.07. All of the requirements (if any) contained in MassDEP's water quality certification for the permit are hereby incorporated by reference into this state surface water discharge permit as special conditions pursuant to 314 CMR 3.11.

3. Each agency shall have the independent right to enforce the terms and conditions of this permit. Any modification, suspension or revocation of this permit shall be effective only with respect to the agency taking such action, and shall not affect the validity or status of this permit as issued by the other agency, unless and until each agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this permit is declared invalid, illegal or otherwise issued in violation of state law such permit shall remain in full force and effect under federal law as a NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this permit is declared invalid, illegal or otherwise issued in violation of federal law, this permit shall remain in full force and effect under state law as a permit issued by the Commonwealth of Massachusetts.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

FACT SHEET

DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES PURSUANT TO THE CLEAN WATER ACT (CWA)

NPDES PERMIT NUMBER: MA0040215

NAME AND MAILING ADDRESS OF APPLICANT:

Chatham Pier Fish Market, Inc.
P.O. Box 682
Chatham, MA 02633

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Chatham Pier Fish Market, Inc.
45 Barcliff Ave. Ext.
Chatham, MA 02633

RECEIVING WATER(S):

Chatham Harbor - Cape Cod Watershed (MA96-10)

RECEIVING WATER CLASSIFICATION(S): Class SA, Outstanding Resource Water

SIC CODE: 5421

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I. Proposed Action, Type of Facility, and Discharge Location

Chatham Pier Fish Market, Inc (CPFM or the permittee) operates a retail fish market and lobster holding facility in Chatham, MA (see Attachment A for site location). According to the permit application, CPFM holds up to 200,000 pounds of lobster and 30,000 pounds of shellfish each year. CPFM has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of its NPDES permit to discharge into the designated receiving water. The last permit was issued on May 5, 2005 and expired on May 5, 2010. EPA received a permit renewal application from CPFM dated January 29, 2010. Since the permit renewal application was deemed timely and complete by EPA, the permit has been administratively continued.

CPFM is designated as a concentrated aquatic animal production (CAAP) facility based on criteria found in 40 C.F.R. § 122.24(b) and 40 C.F.R. Part 122 Appendix C (a facility that contains, grows, or holds "cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include facilities that produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year"). According to their permit application (dated January 29, 2010), CPFM reported an estimated total of 200,000 lbs of lobster, 10,000 pounds of eastern oysters, 10,000 pounds of quahogs, and 10,000 pounds of mussels held at the facility yearly. Based on their application and monthly Discharge Monitoring Reports (DMRs), the facility will continue to discharge more than 30 days in a given year and produce more than 20,000 lbs harvest weight of fish per year during the next

permit cycle.

II. Description of Discharge

The discharge consists of flow-through water from the live lobster and shellfish wet storage tanks. The facility does not use feed, medicines, or other chemicals in the storage system. In their permit application, CPFM reported a daily maximum flow of 86,000 gallons from Outfall 001 to Chatham Harbor. The current permit limits the daily maximum flow to 80,000 gallons per day (gpd).

Discharges from CAAP operations, such as CPFM, typically contain organic and inorganic solids, nutrients, and chemicals used in the prevention and treatment of various diseases. Solids in the culture water are generally attributed to uneaten feed and feces. Because CPFM does not feed any of the shellfish held at the facility, nor administer any chemicals or medicines at the facility, the discharge to Outfall 001 is unlikely to impair the water quality in the receiving water.

III. Receiving Water Description

Chatham Harbor is a Class SA waterbody under the Massachusetts Surface Water Quality Standards (314 CMR 4.06). Class SA waters are designated as an excellent habitat for fish, other aquatic life, and wildlife, and for primary and secondary contact recreation. In approved areas they shall be suitable for shellfish harvesting without depuration (called Open Shellfish Areas). These waters shall have excellent aesthetic value. [314 CMR 4.05(4)(a)].

Chatham Harbor is also listed as an Outstanding Resource Water (ORW). According to the Antidegradation provisions of the Massachusetts Surface Water Quality Standards (314 CMR 4.04(3), ORWs "include Class A Public Water Supplies (314 CMR 4.06(1)(d)1.) and their tributaries, certain wetlands as specified in 314 CMR 4.06(2) and other waters as determined by the Department based on their outstanding socio-economic, recreational, ecological and/or aesthetic values."

Section 303(d) of the Federal Clean Water Act (CWA) requires states to identify those waterbodies that are not expected to meet surface water quality standards after the implementation of technology-based controls. Chatham Harbor is listed as a Category 2 waterbody (attaining some uses, others not assessed) in the current and draft 303(d) lists (Massachusetts Year 2008 and 2010 Integrated List of Waters). According to the Massachusetts Department of Environmental Protection's (MassDEP) 2002 Water Quality Assessment, Chatham Harbor supports shellfishing, primary contact recreation, and secondary contact recreation. Aquatic life, fish consumption, and aesthetic uses were not assessed. The Massachusetts Division of Marine Fisheries (DMF) reports that the shellfish growing areas in the vicinity of the discharge (SC52.0, SC61.0, and OC1.0) are approved for harvesting (as of September 10, 2009 according to DMF's Shellfish Growing Area maps).

IV. Limitations and Conditions

The effluent limitations and monitoring requirements may be found in the draft NPDES permit.

V. Permit Basis: Statutory and Regulatory Authority

1. General Requirements

The Clean Water Act (CWA) prohibits the discharge of pollutants to waters of the United States without a NPDES permit unless such a discharge is otherwise authorized by the CWA. The NPDES permit is the mechanism used to implement technology and water quality-based effluent limitations and other requirements including monitoring and reporting. This draft permit was developed in accordance with various statutory and regulatory requirements established pursuant to the CWA and applicable State regulations. During development, EPA considered the most recent technology-based treatment requirements, water quality-based requirements, and all limitations and requirements in the current/existing permit. The regulations governing the EPA NPDES permit program are generally found at 40 CFR Parts 122, 124, 125, and 136. The general conditions of the draft permit are based on 40 CFR §122.41 and consist primarily of management requirements common to all permits. The effluent monitoring requirements have been established to yield data representative of the discharge under authority of Section 308(a) of the CWA in accordance with 40 CFR §122.41(j), §122.44(i) and §122.48.

2. Technology-Based Requirements

Subpart A of 40 CFR §125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under Section 301(b) of the CWA, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under Section 402(a)(1) of the CWA.

Technology-based treatment requirements represent the minimum level of control that must be imposed under Sections 301(b) and 402 of the CWA (see 40 CFR §125 Subpart A) to meet best practicable control technology currently available (BPT) for conventional pollutants and some metals, best conventional control technology (BCT) for conventional pollutants, and best available technology economically achievable (BAT) for toxic and non-conventional pollutants.

On August 23, 2004, EPA promulgated technology-based effluent limitations guidelines (ELGs) for the Concentrated Aquatic Animal Production (CAAP) Point Source Category at 40 CFR Part 451, Subpart A, Flow-through and Recirculating Systems Subcategory for facilities that contain, hold, or produce more than 100,000 pounds of aquatic animals per year (69 FR 51906). Because CPFM holds more than 100,000 pounds of lobster and shellfish annually in the shellfish storage tanks, the ELGs are applicable to this facility. The promulgated ELGs contain narrative effluent limitations with specific provisions for solids control, materials storage, structural maintenance, recordkeeping, and training. The draft permit applies these ELGs through requirements to implement best management practices (BMPs). Compliance with the newly promulgated effluent limitations guidelines for fish hatcheries is, effectively, from date of permit issuance [See 69 Federal Register 162, August 23, 2004 Part I.E].

The effluent monitoring requirements have been established to yield data representative of the discharges under the authority of Section 308(a) of the CWA, according to regulations set forth at 40 CFR §§ 122.41(j), 122.44(i) and 122.48. The approved analytical procedures are to be found in 40 CFR §136 unless other procedures are explicitly required in the permit.

3. Water Quality-Based Requirements

Water quality-based criteria are required in NPDES permits when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state

or federal water-quality standards (See Section 301(b) (1)(C) of the CWA). Water quality-based criteria consist of three (3) parts: 1) beneficial designated uses for a water body or a segment of a water body; 2) numeric and/or narrative water quality criteria sufficient to protect the assigned designated use(s) of the water body; and 3) anti-degradation requirements to ensure that once a use is attained it will not be degraded. The Massachusetts State Water Quality Standards, found at 314 CMR 4.00, include these elements. The State Water Quality Regulations limit or prohibit discharges of pollutants to surface waters and thereby assure that the surface water quality standards of the receiving water are protected, maintained, and/or attained. These standards also include requirements for the regulation and control of toxic constituents and require that EPA criteria, established pursuant to Section 304(a) of the CWA, be used unless site-specific criteria are established. EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 CFR §122.44(d).

Section 101(a)(3) of the CWA specifically prohibits the discharge of toxic pollutants in toxic amounts. The Commonwealth of Massachusetts has a similar narrative criteria in their water quality regulations that prohibits such discharges [See Massachusetts 314 CMR 4.05(5)(e)]. The effluent limits established in the draft permit assure that the surface water quality standards of the receiving water are protected, maintained, and/or attained.

4. Antibacksliding

EPA's anti-backsliding provision as identified in Section 402(o) of the Clean Water Act and at 40 CFR §122.44(l) prohibits the relaxation of permit limits, standards, and conditions unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued. Anti-backsliding provisions apply to effluent limits based on technology, water quality, BPJ and State Certification requirements. Relief from antibacksliding provisions can only be granted under one of the defined exceptions (see 40 CFR §122.44(l)(2)(i)). Effluent limits for flow and pH in the draft permit are as stringent as or more stringent than the current permit limits.

5. Antidegradation

Federal regulations found at 40 CFR §131.12 require states to develop and adopt a statewide antidegradation policy which maintains and protects existing instream water uses and the level of water quality necessary to protect the existing uses, and maintains the quality of waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water. The Massachusetts Antidegradation Regulations are found at 314 CMR §4.04.

As an ORW, Chatham Harbor is designated for additional protection under the antidegradation provisions at 314 CMR 4.04(3). For existing discharges to ORWs, the antidegradation regulation at 314 CMR 4.04(3)(a) requires that "any person having an existing discharge to these waters shall cease said discharge and connect to a Publicly Owned Treatment Works (POTW) unless it is shown by said person that such a connection is not reasonably available or feasible." In this case, CPFM discharges wastewater to a Title V septic system. As such, no POTW is available to accept the discharge from this facility. For existing discharges not connected to a POTW, the antidegradation regulations require that the discharge "shall be provided with the highest and best practical method of waste treatment determined by the Department as necessary to maintain the outstanding resource." EPA has applied the ELGs for CAAP facilities to CPFM, which include practices to minimize the

potential for discharge of solids. In addition, the draft permit prohibits the discharge of feed, chemicals, and medications at CPFM. Finally, the use of a salt water well to supply salt water for the flow-through system minimizes the potential for pollutants to enter the facility because the water is naturally filtered prior to being pumped into the system. Therefore, EPA expects that the discharge will maintain water quality close to natural background consistent with the provisions under the antidegradation requirements in the Massachusetts Water Quality Standards.

EPA anticipates that the MassDEP shall make a determination that there shall be no significant adverse impacts to the receiving water and no loss of existing uses as a result of the discharge authorized by this permit.

6. State Certification

Under Section 401 of the CWA, EPA is required to obtain certification from the state in which the discharge is located that all water quality standards or other applicable requirements of state law, in accordance with Section 301(b)(1)(C) of the CWA, are satisfied. EPA permits are to include any conditions required in the state's certification as being necessary to ensure compliance with state water quality standards or other applicable requirements of state law. See CWA Section 401(a) and 40 CFR §124.53(e). Regulations governing state certification are set out at 40 CFR §124.53 and §124.55. EPA regulations pertaining to permit limits based upon water quality standards and state requirements are contained in 40 CFR §122.44(d).

VI. Explanation of the Permit's Effluent Limitation(s)

1. Facility Information

CPFM operates a 10-tank flow-through lobster and shellfish wet storage facility. Salt water is drawn from a salt water well and pumped to the flow-through system at a maximum rate of 55 gallons per minute (gpm) or 79,200 gallons per day (gpd). Salt water from Chatham Harbor is naturally filtered by sand before being pumped to the facility. The water is oxygenated before being circulated through the wet storage area. The water entering the system is generally low in oxygen with minimal solids or bacteria present. Other than oxygenation, no feed, medications, or chemicals are added to the wet storage system at CPFM.

The wet storage area has eight 500-gallons tanks and the retail store operates a show tank and shellfish purging tank. Water is pumped continuously to each tank and the overflow is transported to a central trench, which flows to a collection box and then to Chatham Harbor via Outfall 001.

The Tank Room Sanitation Policy includes procedures for cleaning the wet storage room. All wastewater for the wet storage room is required to go to the on-site Title V septic system when a cleaning agent (a foam cleaner and food grade sanitizer) is used. In this case, the flow-through system is shutdown, the tanks are emptied, and the drain to Outfall 001 is plugged. The tanks are scrubbed and rinsed with fresh water, and the discharge is pumped to the septic system using a sump pump in the collection box. Once all the wastewater is pumped to the septic system, the flow-through system is then re-started and the drain to Outfall 001 is unplugged. According to the permittee, the wet storage tanks are also occasionally hand scrubbed without use of a chemical agent. In this case, the flow-through system is undisturbed and the water continues to discharge through Outfall 001.

2. Derivation of Effluent Limits

The draft permit authorizes the discharge of flow-through water subject to the effluent limitations and best management practices described below. A brief summary of discharge data from the facility's discharge monitoring reports from July 2005 to December 2007 is included in Attachment B.

Flow - The effluent limitation for a maximum daily flow of 80,000 gallons per day is continued from the current permit. This flow limitation is based on the rated maximum capacity of the pump from the salt water well (55 gallons per minute or 79,200 gallons per day).

pH - The effluent limitation for pH within the range of 6.5 to 8.5 standard units (s.u.) is continued from the current permit. The current permit allows exceedances of pH outside this range if the exceedance was the result of an approved treatment process. CPFM does not treat their effluent prior to discharge, therefore, the draft permit has eliminated this allowance. The draft permit has updated the pH limitation from the current permit to reflect the most updated version of the Massachusetts Water Quality Standards for Class SA waters at 314 CMR 4.05(4)(a)(3), which states that the pH "shall be within the range 6.5 through 8.5 standard units and not more than 0.2 standard units outside the of the natural background range. There shall be no change from natural background conditions that would impair any use assigned to this Class."

Best Management Practices - The ELGs contained in 40 CFR § 451.11 are narrative limitations that describe BMPs to which the facility must adhere. The current permit requires the development of a BMP plan and specifies BMPs to target pollution control, solids buildup, cleaning practices, and use of medications and chemicals. The draft permit prohibits the discharge of feed (generally a primary source of solids at CAAP facilities), medications, and chemicals, which is consistent with the ELGs for minimizing the discharge of these pollutants. The draft permit also requires that CPFM maintain a BMP plan to develop and employ methods for management and removal of accumulated solids, storage of chemicals, spill prevention, maintaining accurate records, and ensuring that all personnel receive proper training, consistent with the BMP requirements in the current permit.

VII. Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Services (NMFS) if EPA's action or proposed actions that it funds, permits, or undertakes, may adversely impact any essential fish habitat (EFH) as: waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (16 U.S.C. § 1802(10)). Adversely impact means any impact which reduces the quality and/or quantity of EFH (50 CFR § 600.910(a)). Adverse effects may include direct (e.g., contamination or physical disruption), indirect (e.g., loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

EFH is only designated for species for which federal fisheries management plans exist (16 U.S.C. § 1855(b)(1)(A)). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

CPFM discharges into Chatham Harbor, which is designated by NMFS as EFH for the following

species and applicable life stages:

Species	Eggs	Larvae	Juveniles	Adults
Atlantic cod *(Gadus morhua)*	X	X	X	X
haddock *(Melanogrammus aeglefinus)*			X	X
whiting *(Merluccius bilinearis)*	X	X	X	X
red hake *(Urophycis chuss)*	X	X	X	X
redfish *(Sebastes fasciatus)*	n/a	X	X	X
winter flounder *(Pleuronectes americanus)*	X	X	X	X
yellowtail flounder *(Pleuronectes ferruginea)*				X
windowpane flounder *(Scopthalmus aquosus)*				X
American plaice *(Hippoglossoides platessoides)*				X
ocean pout *(Macrozoarces americanus)*	X	X	X	X
Atlantic halibut *(Hippoglossus hippoglossus)*	X	X	X	X
Atlantic sea scallop *(Placopecten magellanicus)*	X	X	X	X
Atlantic sea herring *(Clupea harengus)*			X	X
monkfish *(Lophius americanus)*	X	X		X
bluefish *(Pomatomus saltatrix)*				X
long finned squid *(Loligo pealei)*	n/a	n/a	X	X
short finned squid *(Illex illecebrosus)*	n/a	n/a	X	X
Atlantic butterfish *(Peprilus triacanthus)*	X	X	X	X
Atlantic mackerel *(Scomber scombrus)*	X	X	X	X
summer flounder *(Paralicthys dentatus)*	X	X	X	X
scup *(Stenotomus chrysops)*	n/a	n/a	X	X
black sea bass *(Centropristus striata)*	n/a	X	X	X
surf clam *(Spisula solidissima)*	n/a	n/a	X	X
spiny dogfish *(Squalus acanthias)*	n/a	n/a	X	X
blue shark (*Prionace glauca)*				X

bluefin tuna *(Thunnus thynnus)*			X	X
little skate *(Leucoraja erinacea)*			X	X
winter skate*(Leucoraja ocellata)*			X	X

EPA has concluded that the limits and conditions in the draft permit minimize adverse effects to EFH for the following reasons:

- The discharge effluent consists of flow-through water that supports wet storage of lobster and other shellfish.
- The draft permit prohibits the use of food, chemicals, and/or medicines in the wet storage tanks.
- The draft permit prohibits the discharge from causing violations of the state water quality standards in the receiving water.
- The draft permit requires the permittee to continue to follow best management practices consistent with the effluent limitations guidelines for concentrated aquatic animal production facilities.

EPA believes that the draft permit limits and requirements adequately protect EFH for the managed species, and therefore additional mitigation is not warranted. If adverse effects do occur as a result of this permit action, or if new information becomes available that changes the basis for this conclusion, EPA will notify NMFS and consultation will be promptly initiated. NMFS has been notified of this assessment and the agency has been provided with a copy of the draft permit and Fact Sheet for review and comment.

VIII. Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA) grants authority to and imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants ("listed species") and habitat of such species that has been designated as critical (a "critical habitat"). The ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to insure that any action it authorizes, funds, or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. The United States Fish and Wildlife Service (USFWS) administers Section 7 consultations for freshwater species, where as the National Marine Fisheries Service (NMFS) administers Section 7 consultations for marine species and anadromous fish.

As the federal agency charged with authorizing the discharge from this facility, EPA has reviewed available habitat information developed by the Services to determine if one or more federally endangered or threatened species of fish, wildlife, or plants may be present within the influence of the discharge. According to the Massachusetts Division of Fisheries and Wildlife Natural Heritage and Endangered Species Program, both the piping plover (*Charadrius melodus*), a federally threatened species, and roseate tern (*Sterna dougallii*), a federally endangered species, may be present in the town of Chatham. The area around Chatham has some of the highest numbers of piping plover breeding pairs and chicks on Cape Cod. In 2003, piping plovers near Chatham were most abundant

at South Beach (27 pairs) and South Monomoy Island (31 pairs), but were also observed at North Monomoy Island, Nauset Beach, Harding Beach, Tern Island, and Ridgevale Beach.[1] The Minimoy colony in Chatham holds most of the roseate terns on Cape Cod (22 pairs).[2] Other breeding areas around Chatham (Tern Island, Nauset Beach, Monomoy, South Beach Island) held one or fewer pairs of roseate terns in 2004. The salt marsh and mudflat habitats prevalent in Chatham Harbor are particularly suitable feeding habitat for shorebirds.

EPA has concluded that discharge from the facility will not result in adverse effects on piping plovers, roseate terns, or intertidal feeding habitat. Discharge from the facility is relatively low volume (maximum 80,000 gallons per day) and supports the survival of lobster and other shellfish in the wet storage tanks. The draft permit also requires that the discharge meet Massachusetts Surface Water Quality Standards for Class SA waters and effluent limitations guidelines for CAAP facilities. If adverse effects do occur as a result of this permit action, or if new information becomes available that changes the basis for this conclusion, EPA will notify and consultation will be promptly initiated with both the USFWS and NOAA. A copy of the draft permit and Fact Sheet has been provided to both USFWS and NMFS for review and comment.

IX. Monitoring

The effluent monitoring requirements have been established to yield data representative of the discharge under authority of Section 308 (a) of the CWA in accordance with 40 CFR §§ 122.41(j), 122.44(l), and 122.48.

The draft permit includes new provisions related to Discharge Monitoring Report (DMR) submittals to EPA and the State. The draft permit requires that, no later than one year after the effective date of the permit, the permittee submit all monitoring data and other reports required by the permit to EPA using NetDMR, unless the permittee is able to demonstrate a reasonable basis, such as technical or administrative infeasibility, that precludes the use of NetDMR for submitting DMRs and reports ("opt out request").

In the interim (until one year from the effective date of the permit), the permittee may either submit monitoring data and other reports to EPA in hard copy form, or report electronically using NetDMR.

NetDMR is a national web-based tool for regulated CWA permittees to submit DMRs electronically via a secure Internet application to EPA through the Environmental Information Exchange Network. NetDMR allows participants to discontinue mailing in hard copy forms under 40 CFR § 122.41 and § 403.12. NetDMR is accessed from the following url: http://www.epa.gov/netdmr Further information about NetDMR, including contacts for EPA Region 1, is provided on this website.

EPA currently conducts free training on the use of NetDMR, and anticipates that the availability of this training will continue to assist permittees with the transition to use of NetDMR. To participate in upcoming trainings, visit http://www.epa.gov/netdmr for contact information for Massachusetts.

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1 Melvin, S.M., C.S. Mostello. 2007. Summary of 2003 Massachusetts Piping Plover Census Data. Natural Heritage and Endangered Species Program. Massachusetts Division of Fisheries and Wildlife. Westborough, MA.
2 C.S. Mostello. 2006. Inventory of Terns, Laughing Gulls, and Black Skimmers Nesting in Massachusetts in 2005. Natural Heritage and Endangered Species Program. Massachusetts Division of Fisheries and Wildlife. Westborough, MA.

The draft permit requires the permittee to report monitoring results obtained during each calendar month using NetDMR no later than the 15th day of the month following the completed reporting period. All reports required under the permit shall be submitted to EPA as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it will no longer be required to submit hard copies of DMRs or other reports to EPA and will no longer be required to submit hard copies of DMRs to MassDEP. However, permittees must continue to send hard copies of reports other than DMRs to MassDEP until further notice from MassDEP.

The draft permit also includes an "opt out" request process. Permittees who believe they can not use NetDMR due to technical or administrative infeasibilities, or other logical reasons, must demonstrate the reasonable basis that precludes the use of NetDMR. These permittees must submit the justification, in writing, to EPA at least sixty (60) days prior to the date the facility would otherwise be required to begin using NetDMR. Opt-outs become effective upon the date of written approval by EPA and are valid for twelve (12) months from the date of EPA approval. The opt-outs expire at the end of this twelve (12) month period. Upon expiration, the permittee must submit DMRs and reports to EPA using NetDMR, unless the permittee submits a renewed opt out request sixty (60) days prior to expiration of its opt out, and such a request is approved by EPA.

Until electronic reporting using NetDMR begins, or for those permittees that receive written approval from EPA to continue to submit hard copies of DMRs, the draft permit requires that submittal of DMRs and other reports required by the permit continue in hard copy format. Hard copies of DMRs and other reports must be postmarked no later than the 15th day of the month following the completed reporting period.

X. State Certification Requirements

EPA may not issue a permit in the Commonwealth of Massachusetts unless MassDEP certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate State Water Quality Standards. MassDEP has reviewed the draft permit. EPA has requested permit certification by the State pursuant to 40 CFR § 124.53 and expects that the draft permit will be certified.

XI. Comment Period, Hearing Requests, and Procedures for Final Decisions

All persons, including applicants, who believe any condition of the draft permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to the U.S. EPA, Office of Ecosystem Protection Attn: Danielle Gaito, 5 Post Office Square, Suite 100 (OEP06-4), Boston, Massachusetts 02109-3912 or via email to gaito.danielle@epa.gov. Any person, prior to such date, may submit a request in writing for a public hearing to consider the draft permit to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public meeting may be held if the criteria stated in 40 CFR § 124.12 are satisfied. In reaching a final decision on the draft permit, the EPA will respond to all significant comments and make these responses available to the public at EPA's Boston office.

Following the close of the comment period, and after any public hearings, if such hearings are held, the EPA will issue a Final Permit decision and forward a copy of the final decision to the applicant

and each person who has submitted written comments or requested notice. Within 30 days following the notice of the Final Permit decision, any interested person may submit a petition for review of the permit to EPA's Environmental Appeals Board consistent with 40 CFR § 124.19.

XII. EPA and MassDEP Contacts

Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays from:

Danielle Gaito
EPA Office of Ecosystem Protection
5 Post Office Square, Suite 100 (OEP06-4)
Boston, MA 02109-3912
Tel: (617) 918-1297 Fax: (617)918 -0297
email: gaito.danielle@epa.gov

Kathleen Keohane
MassDEP Division of Watershed Management
627 Main Street, 2nd Floor
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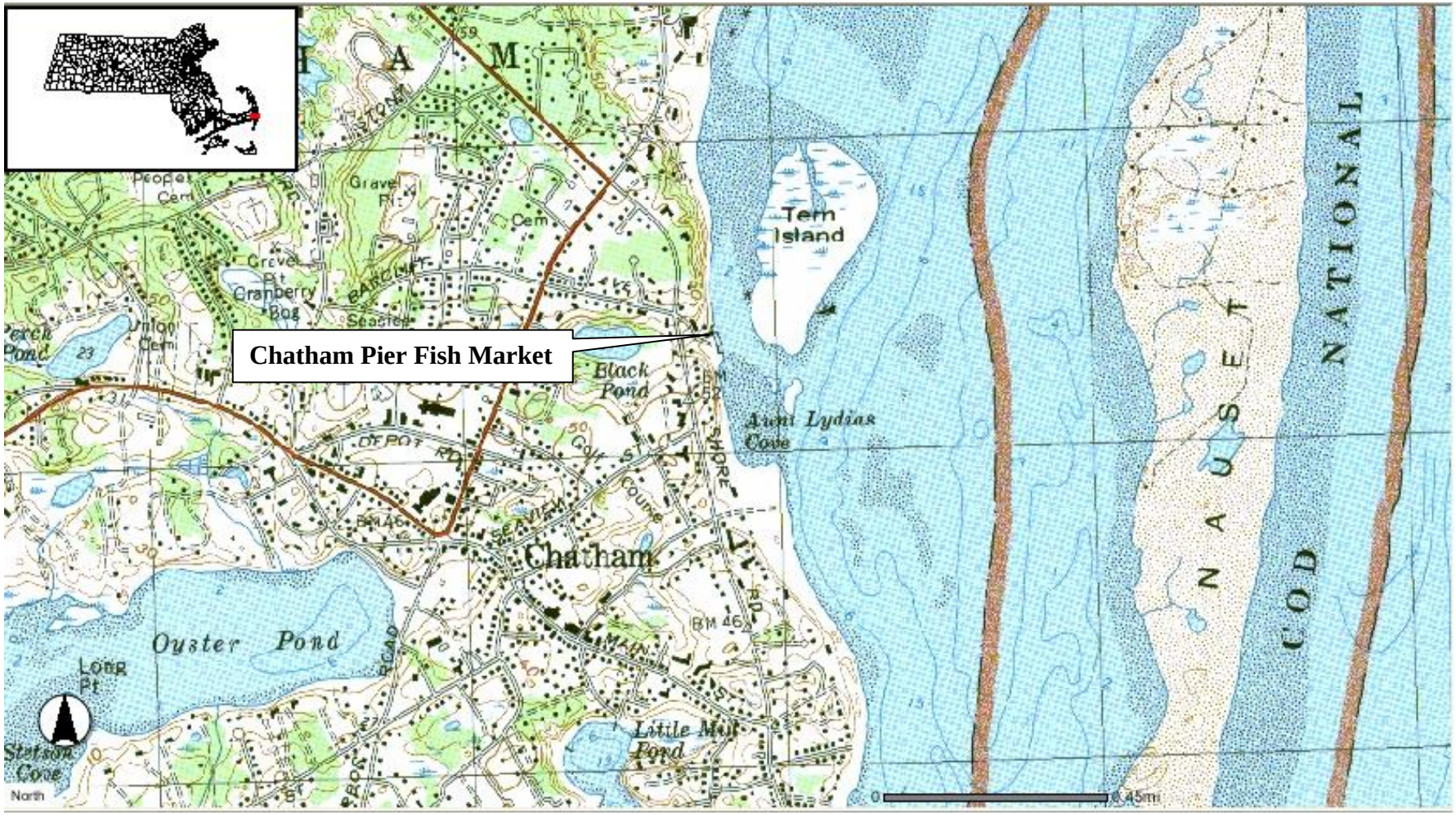
Tel: (508) 767-2856 Fax: (508) 791-4131
kathleen.keohane@state.ma.us

Stephen S. Perkins, Director
Office of Ecosystem Protection
U.S. Environmental Protection Agency

Attachment A
Site Location



Attachment A (cont.)

Attachment B
Discharge Monitoring Report Summary

Discharge data from the facility's discharge monitoring reports from July 2005 to December 2007. An entry of C represents no discharge for the month. A blank entry represents no data available.

MP Date	Flow (gpd)	pH (s.u.)	
	DAILY MX	MINIMUM	MAXIMUM
Limit	*80000*	*6.5*	*8.5*
7/31/2005	64800.	8	8
8/31/2005	64800.	8	8
9/30/2005	64800.	8	8
10/31/2005			
11/30/2005			
12/31/2005	64800.	8	8
1/31/2006	C	C	C
2/28/2006	C	C	C
3/31/2006	C	C	C
4/30/2006	C	C	C
5/31/2006	C	C	C
6/30/2006	64800.	8	8
7/31/2006	64800.	6.5	8.5
8/31/2006	64800.	6.5	8.5
9/30/2006	64800.	6.5	8.5
10/31/2006	64800.	6.5	8.5
11/30/2006	64800.	6.5	8.5
12/31/2006	64800.	6.5	8.5
1/31/2007		6.5	8.5
2/28/2007		6.5	8.5
3/31/2007		6.5	8.5
4/30/2007	64800.	6.5	8.5
5/31/2007	64800.	6.5	8.5
6/30/2007	64800.	6.5	8.5
7/31/2007	64800.	6.5	8.5
8/31/2007	64800.	6.5	8.5
9/30/2007	64800.	6.5	8.5
10/31/2007	64800.	6.5	8.5
11/30/2007	64800.	6.5	8.5
12/31/2007	64800.	6.5	8.5