**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"),

**Little Bay Seafood LLC and Lordco Pier Associates**

is authorized to discharge from a facility located at

**158 Shattuck Way**
**Newington, NH 03801**

to receiving water named

**Piscataqua River**
**Piscataqua Watershed**

in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

This Permit shall become effective on [*the first day of the calendar month immediately following 60 days after signature*].[1]

This Permit expires at midnight on [*five years from the last day of the month preceding the effective date*].

This Permit supersedes the Permit issued on September 22, 2008.

This Permit consists of this **cover page**, **Part I** and **Part II** (NPDES Part II Standard Conditions, April 2018).

Signed this day of

_____
Ken Moraff, Director
Water Division
Environmental Protection Agency
Region 1
Boston, MA

[1] Pursuant to 40 Code of Federal Regulations (CFR) § 124.15(b)(3), if no comments requesting a change to the Draft Permit are received, the Permit will become effective upon the date of signature. Procedures for appealing EPA's Final Permit decision may be found at 40 CFR § 124.19.

**PART I**

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

1. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish wetting wastewater through Outfall Serial Number 002A to the Piscataqua River. The discharge shall be limited and monitored as specified below.

| Effluent Characteristic | Effluent Limitations | | Monitoring Requirements[1,2,3] | |
|---|---|---|---|---|
| | Average Monthly | Maximum Daily | Measurement Frequency[4] | Sample Type[5] |
| Effluent Flow[6] | Report GPD | Report GPD | 1/Day | Meter |
| Baitfish Processing | Report lbs/day | Report lbs/day | 1/Day | Estimate |
| pH[7] | 6.5 – 8.0 S.U. | | 1/Quarter[8] | Grab |
| Total Suspended Solids (TSS) | Report mg/L | Report mg/L | 1/Quarter[8] | Grab |
| Biochemical Oxygen Demand | Report mg/L | Report mg/L | 1/Quarter[8] | Grab |
| Ammonia Nitrogen | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month[8] | Grab |
| Total Nitrogen[9] | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month[8] | Grab |
| Total Kjeldahl Nitrogen (TKN)[9] | Report mg/L | Report mg/L | 1/Month[8] | Grab |
| Nitrate + Nitrite[9] | Report mg/L | Report mg/L | 1/Month[8] | Grab |
| Total Phosphorus | Report mg/L | Report mg/L | 1/Quarter[8] | Grab |
| Oil and Grease | Report mg/L | Report mg/L | 1/Quarter[8] | Grab |

2. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge baitfish storage rinse water through Outfall Serial Number 002B to Piscataqua River. The discharge shall be limited and monitored as specified below.

| **Effluent Characteristic** | **Effluent Limitations** | | **Monitoring Requirements[1,2,3]** | |
|---|---|---|---|---|
| | **Average Monthly** | **Maximum Daily** | **Measurement Frequency[4]** | **Sample Type[5]** |
| Effluent Flow[6] | Report GPD | Report GPD | 1/Day | Meter |
| pH[7] | 6.5 – 8.0 S.U. | | 1/Quarter | Grab |
| Total Suspended Solids (TSS) | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Biochemical Oxygen Demand | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Ammonia Nitrogen | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Nitrogen[9] | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Kjeldahl Nitrogen (TKN)[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Nitrate + Nitrite[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Total Phosphorus | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Oil and Grease | Report mg/L | Report mg/L | 1/Quarter | Grab |

3. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge wastewater from lobster holding and grading operations through Outfall Serial Number 003A to Piscataqua River. The discharge shall be limited and monitored as specified below.

| **Effluent Characteristic** | **Effluent Limitations** | | **Monitoring Requirements[1,2,3]** | |
|---|---|---|---|---|
| | **Average Monthly** | **Maximum Daily** | **Measurement Frequency[4]** | **Sample Type[5]** |
| Effluent Flow[6] | Report GPD | Report GPD | 1/Day | Estimate |
| pH[7] | 6.5 – 8.0 S.U. | | 1/Quarter | Grab |
| Total Suspended Solids (TSS) | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Biochemical Oxygen Demand | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Ammonia Nitrogen | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Nitrogen[9] | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Kjeldahl Nitrogen (TKN)[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Nitrate + Nitrite[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Total Phosphorus | Report mg/L | Report mg/L | 1/Quarter | Grab |

4. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge wastewater from truck storage rinse water through Outfall Serial Number 003B to Piscataqua River. The discharge shall be monitored as specified below.

| **Effluent Characteristic** | **Effluent Limitations** | | **Monitoring Requirements[1,2,3]** | |
|---|---|---|---|---|
| | **Average Monthly** | **Maximum Daily** | **Measurement Frequency[4]** | **Sample Type[5]** |
| Effluent Flow[6] | Report GPD | Report GPD | 1/Day | Estimate |
| pH[7] | Report S.U. | | 1/Quarter | Grab |
| Total Suspended Solids (TSS) | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Biochemical Oxygen Demand | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Ammonia Nitrogen | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Nitrogen[9] | Report mg/L<br>Report lbs/d | Report mg/L | 1/Month | Grab |
| Total Kjeldahl Nitrogen (TKN)[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Nitrate + Nitrite[9] | Report mg/L | Report mg/L | 1/Month | Grab |
| Total Phosphorus | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Oil and Grease | Report mg/L | Report mg/L | 1/Quarter | Grab |

5. During the period beginning on the effective date and lasting through the expiration date, the Permittee is authorized to discharge drainage from the building foundation comingled with groundwater through Outfall Serial Number 005 to Piscataqua River. The discharge shall be limited and monitored as specified below.

| **Effluent Characteristic** | **Effluent Limitations** | | **Monitoring Requirements[1,2,3,10]** | |
|---|---|---|---|---|
| | **Average Monthly** | **Maximum Daily** | **Measurement Frequency[4]** | **Sample Type[5]** |
| pH[7] | Report S.U. | | 1/Quarter | Grab |
| Oil and Grease | Report mg/L | Report mg/L | 1/Quarter | Grab |
| Volatile Organic Compounds (VOCs) | Report mg/L | Report mg/L | 1/Quarter | Grab |

**Footnotes:**

1. Effluent samples shall yield data representative of the discharge. A routine sampling program shall be developed in which samples are taken prior to co-mingling with any other wastestream. The Permittee shall collect two independent samples from the Outfall 002 sampling port: when baitfish wetting activity is occurring (002A) and when baitfish storage containers are being rinsed (002B). The Permittee shall sample lobster holding water from the drain to Outfall 003 prior to mixing with any other wastestream (003A). The Permittee shall sample truck storage rinse water as it drains from the vehicles and before mixing with any other wastestream (003B). Changes in sampling location must be approved in writing by the Environmental Protection Agency Region 1 (EPA). The Permittee shall report the results to EPA and the State of any additional testing above that required herein, if testing is done in accordance with 40 CFR Part 136.

2. In accordance with 40 CFR § 122.44(i)(1)(iv), the Permittee shall monitor according to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O, for the analysis of pollutants or pollutant parameters (except WET). A method is "sufficiently sensitive" when: 1) The method minimum level (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or 2) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter. The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor.

3. When a parameter is not detected above the ML, the Permittee must report the data qualifier signifying less than the ML for that parameter (e.g., < 50 µg/L, if the ML for a parameter is 50 µg/L). For calculating and reporting the average monthly concentration when one or more values are not detected, assign a value of zero to all non-detects and report the average of all the results. The number of exceedances shall be enumerated for each parameter in the field provided on every Discharge Monitoring Report (DMR).

4. Measurement frequency of 1/day is defined as the recording of one measurement for each 24-hour period. Measurement frequency of 1/month is defined as the sampling of one discharge event in each calendar month. Measurement frequency of 1/quarter is defined as the sampling of one discharge event during each calendar quarter. Calendar quarters are defined as January through March, inclusive, April through June, inclusive, July through September, inclusive and October through December, inclusive. If no

sample is collected during the measurement frequencies defined above, the Permittee must report an appropriate No Data Indicator Code.

5. A "grab" sample is an individual sample collected over a period of less than 15 minutes. Grab samples shall be collected from the sampling port in the Outfall 002 pipe separately for baitfish wetting and bait storage container rinsing activities. Grab samples for the lobster holding effluent (003A) shall be collected from the drain to Outfall 003 prior to comingling with river water and truck rinse water. Grab samples for truck rinse water (003B) shall be collected from the runoff of the truck rinse water prior to comingling with river water and lobster holding water.

6. Effluent flow shall be reported in gallons per day (GPD). Effluent flow of lobster holding water for Outfall 003A shall be estimated based on the daily recording of intake volume used to adjust the levels of the reservoirs. The daily effluent flow of truck rinse water for Outfall 003B shall be estimated based on the volume of rinse water used per truck and the number of trucks rinsed per day. The Permittee shall report the estimated maximum daily effluent flow and the monthly average effluent flow during each monthly reporting period based on the daily estimated flow.

7. The pH shall be within the specified range at all times. The minimum and maximum pH sample measurement values for the month shall be reported in standard units (S.U.). See Part I.C.1 below for a provision to modify the pH range.

8. The Permittee shall sample twice per year when there is a discharge from Outfall 002A but when no baitfish wetting or container rinsing is occurring (e.g., runoff from wet weather) in addition to the monthly or quarterly effluent sampling. The Permittee shall sample for pH, TSS, BOD, Ammonia Nitrogen, Total Nitrogen, TKN, Nitrate + Nitrite, Total Phosphorus, and Oil and Grease. To the extent practicable, samples of runoff shall be collected within 60 minutes of the beginning of the discharge. One sample shall be collected during the months of January to June and a second sample collected during the months of July to December.

9. Total nitrogen concentration shall be calculated from the sum of the total Kjeldahl nitrogen (TKN) and nitrate + nitrite analyses of concurrently collected samples. The method use for each parameter must have a minimum level (ML) less than or equal to 0.25 mg/L. If nay results are below the ML, a value of zero for that parameter shall be used for calculating total nitrogen. The average monthly mass loading of total nitrogen and ammonia nitrogen shall be calculated as follows: Average monthly Load (lbs/day) = average monthly concentration (mg/L) * average monthly flow (million gallons per day) * 8.345. Note that the effluent flow reported in gallons per day must be converted to million gallons per day for this calculation.

10. Measurement frequency for Outfall 005 shall be 1/Quarter. Based on the results of three years of monitoring (or 12 quarterly samples) the Permittee may request a reduction in frequency or elimination of monitoring at Outfall 005. The request must be

made in writing to EPA and NHDES in accordance with Part I.D.3.a and I.D.5 of this permit. Monitoring frequency must remain 1/Quarter until written notification authorizing a reduction or elimination of monitoring is received.

**Part I.A. continued.**

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

7. The discharge shall be free from substances in kind or quantity that settle to form harmful benthic deposits; float as foam, debris, scum or other visible substances; produce odor, color, taste or turbidity that is not naturally occurring and would render the surface water unsuitable for its designated uses; result in the dominance of nuisance species; or interfere with recreational activities.

8. Tainting substances shall not be present in the discharge in concentrations that individually or in combination are detectable by taste and odor tests performed on the edible portions of aquatic organisms.

9. The discharge shall not result in toxic substances or chemical constituents in concentrations or combinations in the receiving water that injure or are inimical to plants, animals, humans or aquatic life; or persist in the environment or accumulate in aquatic organisms to levels that result in harmful concentrations in edible portions of fish, shellfish, other aquatic life, or wildlife that might consume aquatic life.

10. The discharge shall not result in benthic deposits that have a detrimental impact on the benthic community. The discharge shall not result in oil and grease, color, slicks, odors, or surface floating solids that would impair any existing or designated uses in the receiving water.

11. The discharge shall not result in an exceedance of the naturally occurring turbidity in the receiving water by more than 10 NTUs.

12. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify EPA as soon as they know or have reason to believe (40 CFR § 122.42):

    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) 100 micrograms per liter (µg/L);
        (2) 200 µg/L for acrolein and acrylonitrile; 500 µg/L for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (mg/L) for antimony;
        (3) Five times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
        (4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.

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) 500 μg/L;
(2) One mg/L for antimony;
(3) 10 times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR § 122.21(g)(7); or
(4) Any other notification level established by EPA in accordance with 40 CFR § 122.44(f) and State regulations.

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. UNAUTHORIZED DISCHARGES

1. This permit authorizes discharges only from the outfall(s) listed in Part I.A.1, in accordance with the terms and conditions of this permit. Discharges of wastewater from any other point sources are not authorized by this permit and shall be reported in accordance with Part D.1.e.(1) of the Standard Conditions of this permit (24-hour reporting).

2. Outfall 004 shall be permanently sealed and no discharge from the outfall is authorized by this permit.

3. No chemicals or additives may be discharged, including, but not limited to, chemicals associated with lobster tank cleaning, prophylactic bacterial medication, and pharmaceuticals.

4. The Permittee shall not utilize nor discharge pentachlorophenol or trichlorophenol.

5. There shall be no discharge from any truck or vehicle washing other than the discharge of rinse water from the storage area of vehicle used to transport baitfish and lobster. No chemicals, detergents, or additives may be discharged from the truck storage rinsing activity.

## C. SPECIAL CONDITIONS

1. The pH range may be modified if the Permittee satisfies conditions set forth in Part I.E.3 below. Upon notification of an approval by the State, EPA will review and, if acceptable, will submit written notice to the Permittee of the permit change. The modified pH range will not be in effect until the Permittee receives written notice from EPA.

2. Best Management Practices (BMPs)

The Permittee shall design, install, and implement control measures to minimize the discharge of pollutants from the operations at the Facility to the receiving water. At a minimum, the Permittee

must implement control measures, both structural controls (e.g., OWS, containment areas, holding tanks) and non-structural (e.g., operational procedures and operator training).

a. Select, design, implement, and maintain control measures designed to minimize the discharge of total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding, baitfish wetting, and cleaning operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.

b. Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.

c. Design good housekeeping measures to maintain areas that are potential sources of pollutants including, but not limiting to, maintaining the area around the outfall drainage and catch basins free of debris, fish scales, or fish parts;

d. Implement preventative maintenance programs for pollution control equipment (e.g., screens at catch basins to prevent solids from being discharged) to ensure that equipment is maintained, and to avoid leaks, spills, and other releases of pollutants to receiving waters;

e. Implement spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur;

f. Perform routine inspections of the control measures, discharge points, and areas where industrial materials, potential pollutant sources, or activities are exposed to runoff or wastewater;

g. Minimize dust generation and vehicle tracking of industrial materials;

h. Develop standard procedures for handling solids and other wastes collected at pollution control equipment.

3. Best Management Practices Plan

a. The Permittee shall develop, implement, and maintain a Best Management Practices (BMP) Plan designed to reduce or prevent the discharge of pollutants in wastewater to waters of the United States. The BMP Plan shall be a written document that is consistent with the terms of the permit and identifies and describes the BMPs employed by the Facility to control wastewater discharges. The BMP Plan must be reviewed at least once per permit term (i.e., five years) and re-evaluated if any significant changes to the operations occur or if monitoring indicates that BMPs are not effectively controlling the discharge of pollutants to the receiving water.

b. The BMP Plan shall be complete (or updated) and certified by the Permittee within 90 days after the effective date of this permit. The Permittee shall certify that the BMP plan

has been prepared, that it meets the requirements of the permit, and that it prevents or reduces pollutants discharged from the outfalls to the extent practicable. The BMP Plan and certification shall be signed in accordance with the requirements identified in 40 CFR § 122.22. A copy of the BMP Plan and certification shall be maintained at the Facility and made available to EPA and the State upon request.

c. The BMP Plan shall include, at a minimum, the following elements:

(1) A site description and summary of potential pollutant sources;
(2) Documentation of the selection, design, installation, implementation, and maintenance of control measures designed to prevent or reduce the discharge of pollutants in wastewater generated from lobster holding, baitfish wetting, truck bed rinsing, and rinsing containers used to hold baitfish;
(2) A description of the pollution control equipment and preventative maintenance procedures, including frequency of inspections, used to prevent or reduce the discharge of pollutants; and
(3) Documentation of the procedures for handling wastes generated from the baitfish wetting, truck rinsing, lobster holding, and fish container rising operations, including schedules for removal, handling and disposal of materials, and a description of where solids removed using pollution control equipment are stored and/or disposed. If solids are removed from the site, include a description of the destination and method of disposal and/or reuse.

d. The Permittee shall amend and update the BMP Plan within 14 days for any changes at the Facility affecting the Plan. Such changes may include, but are not limited to: changes in the design, construction, operation, or maintenance of the Facility which affect the potential for the discharge of pollutants to the waters of the United States; a release of a reportable quantity of pollutants as described in 40 CFR § 302; a determination by the Permittee or EPA that the BMPs appear to be ineffective in achieving the general objective of controlling pollutants; and revisions or improvements are made to the BMPs based on new information and experiences. Any amended or new versions of the BMP Plan shall be re-certified by the Permittee. Such re-certifications shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit.

e. The Permittee shall certify annually that the Facility is in compliance with the BMPs specified in Part I.C.2 of this permit, including recording and maintaining results of any required inspections and training activities. If the facility is not in compliance with any limitations and/or BMPs, the annual certification shall state the non-compliance and the remedies that are or will be undertaken. The annual certification shall list any changes to control measures over the past year and describe the reason for the changes. Annual certification shall be signed in accordance with the requirements identified in Part II.D.2 of this Permit. The Permittee shall keep a copy of the current BMP Plan and all certifications signed during the effective period of this Permit at the Facility and shall make them available to EPA and the State upon request.

4. Optimization of Nitrogen Removal

a. Within one year of the effective date of the Permit, the Permittee shall complete an assessment of new BMPs or alternatives to current BMPs to optimize the removal of nitrogen in order to minimize the annual average mass discharge of total nitrogen. The Permittee shall submit a report to EPA and the State documenting the results of this evaluation and presenting a description of recommended operational changes (including an implementation timeline) within 15 months of the effective date of the Permit. Following the assessment, the Permittee shall implement the recommended operational changes.

b. Following the initial report outlined in Part 4.b, the Permittee shall submit annual reports to EPA and the State by February 1st of each subsequent year that summarizes activities related to optimizing nitrogen discharge load and tracks trends in nitrogen load relative to the previous year. The annual report shall include a detailed description of any operational changes and include all supporting data.

5. Effluent Diffuser Maintenance and Inspection

a. Effluent diffusers shall be maintained when necessary to ensure proper operation. Proper operation means that the plumes from each port will be balanced relative to each other and that they all have unobstructed flow. Maintenance may include dredging in the vicinity of the diffuser, clean out of solids in the diffuser header pipe, removal of debris and repair/replacement of riser ports and pinch valves.

b. Any necessary maintenance dredging must be performed only after receiving all necessary permits from the NHDES Wetlands Bureau and other appropriate agencies.

c. To determine if maintenance will be required the Permittee shall have a licensed diver or licensed marine contractor inspect and videotape the operation of the diffuser. The inspections and videotaping shall be performed in accordance with the following schedule.

(1) Every year if no pinch valves have been installed on the riser ports; or
(2) Every 2 years if pinch valves have been installed on the riser ports.

d. The video of the diffuser inspection and a copy of a report summarizing the results of the inspection shall be submitted to EPA and NHDES-WD on a USB drive within 60 days of each inspection. A schedule for cleaning, repairs, or other necessary maintenance shall be included in the report if the inspection indicates that it is necessary. Necessary cleaning, repairs, or other maintenance should be documented with a photo or video taken after the action is completed.

## D. REPORTING REQUIREMENTS

Unless otherwise specified in this Permit, the Permittee shall submit reports, requests, and information and provide notices in the manner described in this section.

1. Submittal of DMRs Using NetDMR

   The Permittee shall continue to submit monitoring data in discharge monitoring reports (DMRs) to EPA and the State electronically using NetDMR no later than the 15th day of the month following the monitoring period. When the Permittee submits DMRs using NetDMR, it is not required to submit hard copies of DMRs to EPA or the State. NetDMR is accessible through EPA's Central Data Exchange at https://cdx.epa.gov/.

2. Submittal of Reports as NetDMR Attachments

   Unless otherwise specified in this Permit, the Permittee shall electronically submit all reports to EPA as NetDMR attachments rather than as hard copies. Because the due dates for reports described in this Permit may not coincide with the due date for submitting DMRs (which is no later than the 15th day of the month following the monitoring period), a report submitted electronically as a NetDMR attachment shall be considered timely if it is electronically submitted to EPA using NetDMR with the next DMR due following the particular report due date specified in this Permit.

3. Submittal of Requests and Reports to EPA Water Division (WD)

   a. The following requests, reports, and information described in this Permit shall be submitted to the NPDES Applications Coordinator in EPA WD:

      (1) Transfer of Permit notice;
      (2) Request for changes in sampling location;
      (3) BMP and Nitrogen Optimization reports and certifications;
      (4) Request to discharge new chemicals or additives; and
      (5) Request for pH Effluent Limitation Adjustment; and
      (6) Request for reduction in monitoring frequency at Outfall 005.

   b. These reports, information, and requests shall be submitted to EPA WD electronically at R1NPDESReporting@epa.gov or by hard copy mail to the following address:

**U.S. Environmental Protection Agency**
**Water Division**
**NPDES Applications Coordinator**
**5 Post Office Square - Suite 100 (06-03)**
**Boston, MA 02109-3912**

4. Submittal of Reports in Hard Copy Form

   a. The following notifications and reports shall be signed and dated originals, submitted in hard copy, with a cover letter describing the submission:

      (1) Written notifications required under Part II, Standard Conditions. Beginning December 21, 2025, such notifications must be done electronically using EPA's NPDES Electronic Reporting Tool ("NeT"), or another approved EPA system, which will be accessible through EPA's Central Data Exchange at https://cdx.epa.gov/.

   b. This information shall be submitted to EPA ECAD at the following address:

**U.S. Environmental Protection Agency**
**Enforcement and Compliance Assurance Division**
**Water Compliance Section**
**5 Post Office Square, Suite 100 (04-SMR)**
**Boston, MA 02109-3912**

5. State Reporting

Unless otherwise specified in this Permit or by the State, duplicate signed copies of all reports, information, requests or notifications described in this Permit, including the reports, information, requests or notifications described in Parts I.D.3 through I.D.6 shall also be submitted to the New Hampshire Department of Environmental Services, Water Division (NHDES–WD) electronically to the Permittee's assigned NPDES inspector at NHDES-WD or as a hardcopy to the following address:

**New Hampshire Department of Environmental Services**
**Water Division**
**Wastewater Engineering Bureau**
**29 Hazen Drive, P.O. Box 95**
**Concord, New Hampshire 03302-0095**

6. Verbal Reports and Verbal Notifications

   a. Any verbal reports or verbal notifications, if required in Parts I and/or II of this Permit, shall be made to both EPA and to the State. This includes verbal reports and notifications which require reporting within 24 hours (e.g., Part II.B.4.c. (2), Part II.B.5.c. (3), and Part II.D.1.e.).

   b. Verbal reports and verbal notifications shall be made to EPA's Enforcement and Compliance Assurance Division at:

**617-918-1510**

c. Verbal reports and verbal notifications shall also be made to the State's Regional NPDES inspector at:

**603-271-1493**

## E. STATE 401 CERTIFICATION CONDITIONS

1. This Permit is in the process of receiving state water quality certification issued by the State under § 401(a) of the CWA and 40 CFR § 124.53. EPA will incorporate by reference all State water quality certification requirements (if any) into the Final Permit.

2. This NPDES Discharge Permit is issued by the EPA under Federal law. Upon final issuance by the EPA, the NHDES–WD may adopt this permit, including all terms and conditions, as a State permit pursuant to RSA 485-A:13. 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 the Permit as issued by the other Agency, unless and until each Agency has concurred in writing with such modification, suspension or revocation.

3. The pH range of 6.5 to 8.0 Standard Units (S.U.) must be achieved in the final effluent unless the Permittee can demonstrate to NHDES–WD: 1) that the range should be widened due to naturally occurring conditions in the receiving water; or 2) that the naturally occurring receiving water pH is not significantly altered by the Permittee's discharge. The scope of any demonstration project must receive prior approval from NHDES–WD. In no case, shall the above procedure result in pH limits outside the range of 6.0 to 9.0 S.U., which are federal technology-based effluent limitation guidelines for pH commonly found in 40 CFR subchapter N Parts 405 through 471.

# NPDES PART II STANDARD CONDITIONS
(April 26, 2018)[1]

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[1] Updated July 17, 2018 to fix typographical errors.

## A. GENERAL REQUIREMENTS

1. Duty to Comply

The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act (CWA or Act) and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

a. The Permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

b. Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (83 Fed. Reg. 1190-1194 (January 10, 2018) and the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note. See Pub. L.114-74, Section 701 (Nov. 2, 2015)). These requirements help ensure that EPA penalties keep pace with inflation. Under the above-cited 2015 amendments to inflationary adjustment law, EPA must review its statutory civil penalties each year and adjust them as necessary.

(1) Criminal Penalties

(a) *Negligent Violations.* The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to criminal penalties of not less than $2,500 nor more than $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation or by imprisonment of not more than 2 years, or both.

(b) *Knowing Violations.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

(c) *Knowing Endangerment.* The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he or she is placing another person in imminent danger of death or serious bodily injury shall upon conviction be subject to a fine of not more than $250,000 or by imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing

endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in Section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(d) *False Statement.* The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(2) *Civil Penalties*. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

(3) *Administrative Penalties*. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty as follows:

(a) *Class I Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act, the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

(b) *Class II Penalty.* Not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act the 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19. *See* Pub. L.114-74, Section 701 (Nov. 2, 2015); 83 Fed. Reg. 1190 (January 10, 2018).

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit

condition.

3. Duty to Provide Information

The Permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The Permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the Permittee from responsibilities, liabilities or penalties to which the Permittee is or may be subject under Section 311 of the CWA, or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

5. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

6. Confidentiality of Information

a. In accordance with 40 C.F.R. Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 C.F.R. Part 2 (Public Information).

b. Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or Permittee;
(2) Permit applications, permits, and effluent data.

c. Information required by NPDES application forms provided by the Director under 40 C.F.R. § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

7. Duty to Reapply

If the Permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the Permittee must apply for and obtain a new permit. The Permittee shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

8. State Authorities

Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity

covered by the regulations in 40 C.F.R. Parts 122, 123, and 124, whether or not under an approved State program.

9. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

## B. OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a Permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need to Halt or Reduce Not a Defense

It shall not be a defense for a Permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty to Mitigate

The Permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions

(1) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.

(2) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The Permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (c) and (d) of this Section.

c. Notice

(1) *Anticipated bypass*. If the Permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass. As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by state law.

(2) *Unanticipated bypass*. The Permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e. of this part (24-hour notice). As of December 21, 2020 all notices submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or required to do so by law.

d. *Prohibition of bypass.*

(1) Bypass is prohibited, and the Director may take enforcement action against a Permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

(c) The Permittee submitted notices as required under paragraph 4.c of this Section.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 4.d of this Section.

5. Upset

a. *Definition*. *Upset* means an exceptional incident in which there is an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or

improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph B.5.c. of this Section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A Permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the Permittee can identify the cause(s) of the upset;
(2) The permitted facility was at the time being properly operated; and
(3) The Permittee submitted notice of the upset as required in paragraph D.1.e.2.b. (24-hour notice).
(4) The Permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the Permittee seeking to establish the occurrence of an upset has the burden of proof.

## C. MONITORING REQUIREMENTS

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the Permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least 5 years (or longer as required by 40 C.F.R. § 503), the Permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;
(2) The individual(s) who performed the sampling or measurements;
(3) The date(s) analyses were performed;
(4) The individual(s) who performed the analyses;
(5) The analytical techniques or methods used; and
(6) The results of such analyses.

d. Monitoring must be conducted according to test procedures approved under 40 C.F.R. § 136 unless another method is required under 40 C.F.R. Subchapters N or O.

e. The Clean Water Act provides that any person who falsifies, tampers with, or

knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The Permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

## D. REPORTING REQUIREMENTS

1. Reporting Requirements

a. *Planned Changes*. The Permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 C.F.R. § 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements at 40 C.F.R. § 122.42(a)(1).

(3) The alteration or addition results in a significant change in the Permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance*. The Permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the Permittee and incorporate such other requirements as may be necessary under the Clean Water Act. *See* 40 C.F.R. § 122.61; in some cases, modification or revocation and reissuance is mandatory.

d. *Monitoring reports*. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices. As of December 21, 2016 all reports and forms submitted in compliance with this Section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to report electronically if specified by a particular permit or if required to do so by State law.

(2) If the Permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. § 136, or another method required for an industry-specific waste stream under 40 C.F.R. Subchapters N or O, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(3) Calculations for all limitations which require averaging or measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

e. *Twenty-four hour reporting.*

(1) The Permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the Permittee becomes aware of the circumstances. A written report shall also be provided within 5 days of the time the Permittee becomes aware of the circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described above (with the exception of time of discovery) as well as the type of event (combined sewer overflows, sanitary sewer overflows, or bypass events), type of sewer overflow structure (e.g., manhole, combined sewer overflow outfall), discharge volumes untreated by the treatment works treating domestic sewage, types of human health and environmental impacts of the sewer overflow event, and whether the noncompliance was related to wet weather. As of December 21, 2020 all

reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases Subpart D to Part 3), § 122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. *See* 40 C.F.R. § 122.41(g).
(b) Any upset which exceeds any effluent limitation in the permit.
(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. *See* 40 C.F.R. § 122.44(g).

(3) The Director may waive the written report on a case-by-case basis for reports under paragraph D.1.e. of this Section if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The Permittee shall report all instances of noncompliance not reported under paragraphs D.1.d., D.1.e., and D.1.f. of this Section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e. of this Section. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in paragraph D.1.e. and the applicable required data in Appendix A to 40 C.F.R. Part 127. As of December 21, 2020 all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this section must be submitted electronically by the Permittee to the Director or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this Section and 40 C.F.R. Part 3 (including, in all cases, Subpart D to Part 3), §122.22, and 40 C.F.R. Part 127. Part 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part 127, Permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit or if required to do so by state law. The Director may also require Permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this Section.

h. *Other information.* Where the Permittee becomes aware that it failed to submit any

relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

i. *Identification of the initial recipient for NPDES electronic reporting data*. The owner, operator, or the duly authorized representative of an NPDES-regulated entity is required to electronically submit the required NPDES information (as specified in Appendix A to 40 C.F.R. Part 127) to the appropriate initial recipient, as determined by EPA, and as defined in 40 C.F.R. § 127.2(b). EPA will identify and publish the list of initial recipients on its Web site and in the FEDERAL REGISTER, by state and by NPDES data group (see 40 C.F.R. § 127.2(c) of this Chapter). EPA will update and maintain this listing.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Director shall be signed and certified. *See* 40 C.F.R. §122.22.

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports.

Except for data determined to be confidential under paragraph A.6. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Director. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statements on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

## E. DEFINITIONS AND ABBREVIATIONS

1. General Definitions

For more definitions related to sludge use and disposal requirements, see EPA Region 1's NPDES Permit Sludge Compliance Guidance document (4 November 1999, modified to add regulatory definitions, April 2018).

*Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

*Applicable standards and limitations* means all, State, interstate, and federal standards and limitations to which a "discharge," a "sewage sludge use or disposal practice," or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," pretreatment standards, and "standards for sewage sludge use or disposal" under Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the CWA.

*Application* means the EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms; or forms approved by EPA for use in

"approved States," including any approved modifications or revisions.

*Approved program* or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

*Average monthly discharge limitation* means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

*Average weekly discharge limitation* means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

*Best Management Practices ("BMPs")* means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*Bypass* see B.4.a.1 above.

*C-NOEC* or *"Chronic (Long-term Exposure Test) – No Observed Effect Concentration" means* the highest tested concentration of an effluent or a toxicant at which no adverse effects are observed on the aquatic test organisms at a specified time of observation.

*Class I sludge management facility* is any publicly owned treatment works (POTW), as defined in 40 C.F.R. § 501.2, required to have an approved pretreatment program under 40 C.F.R. § 403.8 (a) (including any POTW located in a State that has elected to assume local program responsibilities pursuant to 40 C.F.R. § 403.10 (e)) and any treatment works treating domestic sewage, as defined in 40 C.F.R. § 122.2, classified as a Class I sludge management facility by the EPA Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sewage sludge use or disposal practice to affect public health and the environment adversely.

*Contiguous zone* means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

*Continuous discharge* means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or similar activities.

*CWA* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483and Public Law 97-117, 33 U.S.C. 1251 *et seq*.

*CWA and regulations* means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

*Daily Discharge* means the "discharge of a pollutant" measured during a calendar day or any

other 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

*Direct Discharge* means the "discharge of a pollutant."

*Director* means the Regional Administrator or an authorized representative. In the case of a permit also issued under Massachusetts' authority, it also refers to the Director of the Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts.

*Discharge*

(a) When used without qualification, *discharge* means the "discharge of a pollutant."

(b) As used in the definitions for "interference" and "pass through," *discharge* means the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.

*Discharge Monitoring Report ("DMR")* means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by Permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

*Discharge of a pollutant* means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

*Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

*Effluent limitation guidelines* means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

*Environmental Protection Agency ("EPA")* means the United States Environmental Protection

Agency.

*Grab Sample* means an individual sample collected in a period of less than 15 minutes.

*Hazardous substance* means any substance designated under 40 C.F.R. Part 116 pursuant to Section 311 of CWA.

*Incineration* is the combustion of organic matter and inorganic matter in sewage sludge by high temperatures in an enclosed device.

*Indirect discharger* means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

*Interference* means a discharge (see definition above) which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

(b) Therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including title II, more commonly referred to as the Resources Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SDWA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

*Landfill* means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

*Land application* is the spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

*Land application unit* means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

$LC_{50}$ means the concentration of a sample that causes mortality of 50% of the test population at a specific time of observation. The $LC_{50}$ = 100% is defined as a sample of undiluted effluent.

*Maximum daily discharge limitation* means the highest allowable "daily discharge."

*Municipal solid waste landfill (MSWLF) unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 C.F.R. § 257.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, very small quantity generator waste and industrial solid waste. Such a landfill may be

publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

*Municipality*

(a) When used without qualification *municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.

(b) As related to sludge use and disposal, *municipality* means a city, town, borough, county, parish, district, association, or other public body (including an intermunicipal Agency of two or more of the foregoing entities) created by or under State law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management Agency under Section 208 of the CWA, as amended. The definition includes a special district created under State law, such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity, or an integrated waste management facility as defined in Section 201 (e) of the CWA, as amended, that has as one of its principal responsibilities the treatment, transport, use or disposal of sewage sludge.

*National Pollutant Discharge Elimination System* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under Sections 307, 402, 318, and 405 of the CWA. The term includes an "approved program."

*New Discharger* means any building, structure, facility, or installation:

(a) From which there is or may be a "discharge of pollutants;"

(b) That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979;

(c) Which is not a "new source;" and

(d) Which has never received a finally effective NPDES permit for discharges at that "site."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be in an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. §§ 125.122 (a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

*New source* means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under Section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

*NPDES* means "National Pollutant Discharge Elimination System."

*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES programs.

*Pass through* means a Discharge (see definition above) which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).

*Pathogenic organisms* are disease-causing organisms. These include, but are not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

*Permit* means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of Parts 122, 123, and 124. "Permit" includes an NPDES "general permit" (40 C.F.R § 122.28). "Permit" does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or "proposed permit."

*Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

*Person who prepares sewage sludge* is either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

*pH* means the logarithm of the reciprocal of the hydrogen ion concentration measured at 25° Centigrade or measured at another temperature and then converted to an equivalent value at 25° Centigrade.

*Point Source* means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff (see 40 C.F.R. § 122.3).

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials

(except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq*.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by the authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

*Primary industry category* means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of 40 C.F.R. Part 122.

*Privately owned treatment works* means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

*Process wastewater* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

*Publicly owned treatment works (POTW)* means a treatment works as defined by Section 212 of the Act, which is owned by a State or municipality (as defined by Section 504(4) of the Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

*Regional Administrator* means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

*Secondary industry category* means any industry which is not a "primary industry category."

*Septage* means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or a holding tank when the system is cleaned or maintained.

*Sewage Sludge* means any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 C.F.R. Part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

*Sewage sludge incinerator* is an enclosed device in which only sewage sludge and auxiliary fuel are fired.

*Sewage sludge unit* is land on which only sewage sludge is placed for final disposal. This does

not include land on which sewage sludge is either stored or treated. Land does not include waters of the United States, as defined in 40 C.F.R. § 122.2.

*Sewage sludge use or disposal practice* means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

*Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substance designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

*Significant spills* includes, but is not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the CWA (see 40 C.F.R. §§ 110.10 and 117.21) or Section 102 of CERCLA (*see* 40 C.F.R. § 302.4).

*Sludge-only facility* means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under 40 C.F.R. § 122.1(b)(2).

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an Indian Tribe as defined in the regulations which meets the requirements of 40 C.F.R. § 123.31.

*Store or storage of sewage sludge* is the placement of sewage sludge on land on which the sewage sludge remains for two years or less. This does not include the placement of sewage sludge on land for treatment.

*Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

*Storm water discharge associated with industrial activity* means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

*Surface disposal site* is an area of land that contains one or more active sewage sludge units.

*Toxic pollutant* means any pollutant listed as toxic under Section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing Section 405(d) of the CWA.

*Treatment works treating domestic sewage* means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under Section 405(f) of the CWA, the Director may designate any person subject to the standards for sewage sludge use and

disposal in 40 C.F.R. Part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 C.F.R. Part 503.

*Upset* see B.5.a. above.

*Vector attraction* is the characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

*Waste pile* or *pile* means any non-containerized accumulation of solid, non-flowing waste that is used for treatment or storage.

*Waters of the United States or waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands", sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

    (1) Which are or could be used by interstate or foreign travelers for recreational or other purpose;

    (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

    (3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 C.F.R. § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland.

Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

*Wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

*Whole Effluent Toxicity (WET)* means the aggregate toxic effect of an effluent measured directly by a toxicity test.

*Zone of Initial Dilution (*ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

2. Commonly Used Abbreviations

| | |
|---|---|
| BOD | Five-day biochemical oxygen demand unless otherwise specified |
| CBOD | Carbonaceous BOD |
| CFS | Cubic feet per second |
| COD | Chemical oxygen demand |
| Chlorine | |
| $Cl_2$ | Total residual chlorine |
| TRC | Total residual chlorine which is a combination of free available chlorine (FAC, see below) and combined chlorine (chloramines, etc.) |
| TRO | Total residual chlorine in marine waters where halogen compounds are present |
| FAC | Free available chlorine (aqueous molecular chlorine, hypochlorous acid, and hypochlorite ion) |
| Coliform | |
| Coliform, Fecal | Total fecal coliform bacteria |
| Coliform, Total | Total coliform bacteria |
| Cont. | Continuous recording of the parameter being monitored, i.e. flow, temperature, pH, etc. |
| Cu. M/day or $M^3$/day | Cubic meters per day |
| DO | Dissolved oxygen |

| | |
|---|---|
| kg/day | Kilograms per day |
| lbs/day | Pounds per day |
| mg/L | Milligram(s) per liter |
| mL/L | Milliliters per liter |
| MGD | Million gallons per day |
| Nitrogen | |
| Total N | Total nitrogen |
| NH3-N | Ammonia nitrogen as nitrogen |
| NO3-N | Nitrate as nitrogen |
| NO2-N | Nitrite as nitrogen |
| NO3-NO2 | Combined nitrate and nitrite nitrogen as nitrogen |
| TKN | Total Kjeldahl nitrogen as nitrogen |
| Oil & Grease | Freon extractable material |
| PCB | Polychlorinated biphenyl |
| Surfactant | Surface-active agent |
| Temp. °C | Temperature in degrees Centigrade |
| Temp. °F | Temperature in degrees Fahrenheit |
| TOC | Total organic carbon |
| Total P | Total phosphorus |
| TSS or NFR | Total suspended solids or total nonfilterable residue |
| Turb. or Turbidity | Turbidity measured by the Nephelometric Method (NTU) |
| µg/L | Microgram(s) per liter |
| WET | "Whole effluent toxicity" |
| ZID | Zone of Initial Dilution |

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**NEW ENGLAND - REGION 1**
**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:** NH0020923

**PUBLIC NOTICE START AND END DATES:**

**NAME AND MAILING ADDRESS OF APPLICANT:**

Little Bay Seafood LLC and Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

**NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:**

Little Bay Seafood
158 Shattuck Way
Newington, NH 03801

**RECEIVING WATER AND CLASSIFICATION:**

Lower Piscataqua River (USGS Basin No. 01060003)
Piscataqua River Watershed
Class B

**SIC CODE:** 5146 (Fish and Seafoods)

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## Appendices

## 1.0 Proposed Action

Little Bay Seafood and Lordco Pier Associates (LBS or the Permittee) has applied to the U.S. Environmental Protection Agency (EPA) for reissuance of a National Pollutant Discharge Elimination System (NPDES) permit to discharge from Little Bay Seafood (the Facility) into the Lower Piscataqua River.

The permit currently in effect was issued on September 22, 2008 with an effective date of December 1, 2008 and expired on December 1, 2013 (the 2008 Permit). The Permittee filed an application for permit reissuance with EPA dated June 27, 2013 as required by 40 Code of Federal Regulations (CFR) § 122.6. Since the permit application was deemed timely and complete by EPA on November 6, 2013, the Facility's 2008 Permit has been administratively continued pursuant to 40 CFR § 122.6 and § 122.21(d). EPA and the State conducted a site visit on March 23, 2021.

This NPDES Permit is issued by EPA under federal law. New Hampshire construes Title L, Water Management and Protection, Chapters 485-A, Water Pollution and Waste Disposal, to authorize the New Hampshire Department of Environmental Services (NHDES) to "consider" a federal NPDES permit to be a State surface water discharge permit. As such, all the terms and conditions of the permit may, therefore, be incorporated into and constitute a discharge permit issued by NHDES.

## 2.0 Statutory and Regulatory Authority

Congress enacted the Federal Water Pollution Control Act, codified at 33 U.S.C. § 1251 – 1387 and commonly known as the Clean Water Act (CWA), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." CWA § 101(a). To achieve this objective, the CWA makes it unlawful for any person to discharge any pollutant into the waters of the United States from any point source, except as authorized by specific permitting sections of the CWA, one of which is § 402. *See* CWA §§ 301(a), 402(a). Section 402(a) established one of the CWA's principal permitting programs, the NPDES Permit Program. Under this section, EPA may "issue a permit for the discharge of any pollutant or combination of pollutants" in accordance with certain conditions. CWA § 402(a). NPDES permits generally contain discharge limitations and establish related monitoring and reporting requirements. *See* CWA § 402(a)(1) and (2). The regulations governing EPA's NPDES permit program are generally found in 40 CFR §§ 122, 124, 125, and 136.

"Congress has vested in the Administrator [of EPA] broad discretion to establish conditions for NPDES permits" in order to achieve the statutory mandates of Section 301 and 402. *Arkansas v. Oklahoma,* 503 U.S. 91, 105 (1992). *See also* 40 CFR §§ 122.4(d), 122.44(d)(1), and 122.44(d)(5). CWA §§ 301 and 306 provide for two types of effluent limitations to be included in NPDES permits: "technology-based" effluent limitations (TBELs) and "water quality-based" effluent limitations (WQBELs). *See* CWA §§ 301 and 304(b); 40 CFR §§ 122, 125, and 131.

## 2.1 Technology-Based Requirements

Technology-based treatment requirements represent the minimum level of control that must be imposed under CWA §§ 301(b) and 402 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. *See* 40 CFR § 125 Subpart A.

Subpart A of 40 CFR Part 125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under § 301(b) of the CWA, including the application of EPA promulgated Effluent Limitation Guidelines (ELGs) and case-by-case determinations of effluent limitations under CWA § 402(a)(1). EPA promulgates New Source Performance Standards (NSPS) under CWA § 306 and 40 CFR § 401.12. *See also* 40 CFR §§ 122.2 (definition of "new source") and 122.29.

In general, ELGs for non-POTW facilities must be complied with as expeditiously as practicable but in no case later than three years after the date such limitations are established and in no case later than March 31, 1989. *See* 40 CFR § 125.3(a)(2). Compliance schedules and deadlines not in accordance with the statutory provisions of the CWA cannot be authorized by a NPDES permit. In the absence of published technology-based effluent guidelines, the permit writer is authorized under CWA § 402(a)(1)(B) to establish effluent limitations on a case-by-case basis using best professional judgment (BPJ).

## 2.2 Water Quality-Based Requirements

The CWA and federal regulations require that effluent limitations based on water quality considerations be established for point source discharges when such limitations are necessary to meet state or federal water quality standards that are applicable to the designated receiving water. This is necessary when less stringent TBELs would interfere with the attainment or maintenance of water quality criteria in the receiving water. *See* CWA § 301(b)(1)(C) and 40 CFR §§ 122.44(d)(1),122.44(d)(5), 125.84(e) and 125.94(i).

### 2.2.1 Water Quality Standards

The CWA requires that each state develop water quality standards (WQSs) for all water bodies within the State. *See* CWA § 303 and 40 CFR §§ 131.10-12. Generally, WQSs consist of three parts: 1) beneficial designated use or uses for a water body or a segment of a water body; 2) numeric or narrative water quality criteria sufficient to protect the assigned designated use(s); and 3) antidegradation requirements to ensure that once a use is attained it will not be degraded and to protect high quality and National resource waters. *See* CWA § 303(c)(2)(A) and 40 CFR § 131.12. The applicable State WQSs can be found in the New Hampshire Code of Administrative Rules, Surface Water Quality Regulations, Chapter Env-Wq 1700 *et seq*. *See also generally*, N.H. Rev. Stat. Title L, Water Management and Protection, Chapter 485-A, Water Pollution and Waste Disposal.

As a matter of state law, state WQSs specify different water body classifications, each of which is associated with certain designated uses and numeric and narrative water quality criteria. When using chemical-specific numeric criteria to develop permit limitations, acute and chronic aquatic life criteria and human health criteria are used and expressed in terms of maximum allowable in-stream pollutant concentrations. In general, aquatic-life acute criteria are considered applicable to daily time periods (maximum daily limit) and aquatic-life chronic criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific human health criteria are typically based on lifetime chronic exposure and, therefore, are typically applicable to monthly average limits.

When permit effluent limitation(s) are necessary to ensure that the receiving water meets narrative water quality criteria, the permitting authority must establish effluent limits in one of the following three ways: 1) based on a "calculated numeric criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and fully protect the designated use," 2) based on a "case-by-case basis" using CWA § 304(a) recommended water quality criteria, supplemented as necessary by other relevant information; or, 3) in certain circumstances, based on use of an indicator parameter. *See* 40 CFR § 122.44(d)(1)(vi)(A-C).

### 2.2.2 Antidegradation

Federal regulations found at 40 CFR § 131.12 require states to develop and adopt a statewide antidegradation policy that maintains and protects existing in-stream water uses and the level of water quality necessary to protect these existing uses. In addition, the antidegradation policy ensures maintenance of high quality waters which exceed levels necessary to support propagation of fish, shellfish, and wildlife and to support recreation in and on the water, unless the State finds that allowing degradation is necessary to accommodate important economic or social development in the area in which the waters are located.

The New Hampshire Antidegradation Policy, found at Env-Wq 1708, applies to any new or increased activity that would lower water quality or affect existing or designated uses, including increased loadings to a water body from an existing activity. The antidegradation regulations focus on protecting high quality waters and maintaining water quality necessary to protect existing uses. Discharges that cause "significant degradation" are defined in NH WQS (Env-Wq 1708.09(a)) as those that use 20% or more of the remaining assimilative capacity for a water quality parameter in terms of either concentration or mass of pollutants or flow rate for water quantity. When NHDES determines that a proposed increase would cause a significant impact to existing water quality , the applicant must provide documentation to demonstrate that the lowering of water quality is necessary, that it will provide net economic or social benefit in the area in which the water body is located, and that the benefits of the activity outweigh the environmental impact caused by the reduction in water quality. *See* Env-Wq 1708.10(b).

This permit is being reissued with effluent limitations sufficiently stringent to satisfy the State's antidegradation requirements, including the protection of the existing uses of the receiving water.

### 2.2.3 Assessment and Listing of Waters and Total Maximum Daily Loads

The objective of the CWA is to restore and maintain the chemical, physical and biological integrity of the Nation's waters. To meet this goal, the CWA requires states to develop information on the quality of their water resources and report this information to EPA, the U.S. Congress, and the public. To this end, EPA released guidance on November 19, 2001, for the preparation of an integrated "List of Waters" that could combine reporting elements of both § 305(b) and § 303(d) of the CWA. The integrated list format allows states to provide the status of all their assessed waters in one list. States choosing this option must list each water body or segment in one of the following five categories: 1) unimpaired and not threatened for all designated uses; 2) unimpaired waters for some uses and not assessed for others; 3) insufficient information to make assessments for any uses; 4) impaired or threatened for one or more uses but not requiring the calculation of a Total Maximum Daily Load (TMDL); and 5) impaired or threatened for one or more uses and requiring a TMDL.

A TMDL is a planning tool and potential starting point for restoration activities with the ultimate goal of attaining water quality standards. A TMDL essentially provides a pollution budget designed to restore the health of an impaired water body. A TMDL typically identifies the source(s) of the pollutant from point sources and non-point sources, determines the maximum load of the pollutant that the water body can tolerate while still attaining WQSs for the designated uses, and allocates that load among the various sources, including point source discharges, subject to NPDES permits. *See* 40 CFR § 130.7.

For impaired waters where a TMDL has been developed for a particular pollutant and the TMDL includes a waste load allocation (WLA) for a NPDES permitted discharge, the effluent limitation in the permit must be "consistent with the assumptions and requirements of any available WLA". 40 CFR § 122.44(d)(1)(vii)(B).

### 2.2.4 Reasonable Potential

Pursuant to CWA § 301(b)(1)(C) and 40 CFR § 122.44(d)(1), NPDES permits must contain any requirements in addition to TBELs that are necessary to achieve water quality standards established under § 303 of the CWA. *See also* 33 U.S.C. § 1311(b)(1)(C). In addition, limitations "must control any pollutant or pollutant parameter (conventional, non-conventional, or toxic) which the permitting authority determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any water quality standard, including State narrative criteria for water quality." 40 CFR § 122.44(d)(1)(i). To determine if the discharge causes, or has the reasonable potential to cause, or contribute to an excursion above any WQS, EPA considers: 1) existing controls on point and non-point sources of pollution; 2) the variability of the pollutant or pollutant parameter in the effluent; 3) the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity); and 4) where appropriate, the dilution of the effluent by the receiving water. *See* 40 CFR § 122.44(d)(1)(ii).

If the permitting authority determines that the discharge of a pollutant will cause, has the reasonable potential to cause, or contribute to an excursion above WQSs, the permit must contain WQBELs for that pollutant. *See* 40 CFR § 122.44(d)(1)(i).

### 2.2.5 State Certification

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving water(s) either 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 the State WQSs, the State waives, or is deemed to have waived, its right to certify. *See* 33 U.S.C. § 1341(a)(1). Regulations governing state certification are set forth in 40 CFR § 124.53 and § 124.55. EPA has requested permit certification by the State pursuant to 40 CFR § 124.53 and expects that the Draft Permit will be certified.

If the State believes that conditions more stringent than those contained in the Draft Permit are necessary to meet the requirements of either CWA §§ 208(e), 301, 302, 303, 306 and 307, or applicable requirements of State law, the State should include such conditions in its certification and, in each case, cite the CWA or State law provisions upon which that condition is based. Failure to provide such a citation waives the right to certify as to that condition. EPA includes properly supported State certification conditions in the NPDES permit. The only exception to this is that the permit conditions/requirements regulating sewage sludge management and implementing CWA § 405(d) are not subject to the State certification requirements. Reviews and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through EPA's permit appeal procedures of 40 CFR Part 124.

In addition, the State should provide a statement of the extent to which any condition of the Draft Permit can be made less stringent without violating the requirements of State law. Since the State's certification is provided prior to final permit issuance, any failure by the State to provide this statement waives the State's right to certify or object to any less stringent condition.

It should be noted that under CWA § 401, EPA's duty to defer to considerations of State law is intended to prevent EPA from relaxing any requirements, limitations or conditions imposed by State law. Therefore, "[a] State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition." 40 CFR § 124.55(c). In such an instance, the regulation provides that, "The Regional Administrator shall disregard any such certification conditions or denials as waivers of certification." *Id.* EPA regulations pertaining to permit limitations based upon WQSs and State requirements are contained in 40 CFR §§ 122.4(d) and 122.44(d).

## 2.3 Effluent Flow Requirements

Generally, EPA uses effluent flow both to determine whether an NPDES permit needs certain effluent limitations and to calculate the effluent limitations themselves. EPA practice is to use effluent flow as a reasonable and important worst-case condition in EPA's reasonable potential and WQBEL calculations to ensure compliance with WQSs under CWA § 301(b)(1)(C). Should

the effluent flow exceed the flow assumed in these calculations, the in-stream dilution would be reduced and the calculated effluent limitations might not be sufficiently protective (i.e., might not meet WQSs). Further, pollutants that do not have the reasonable potential to exceed WQSs at a lower discharge flow may have reasonable potential at a higher flow due to the decreased dilution. In order to ensure that the assumptions underlying EPA's reasonable potential analyses and permit effluent limitation derivations remain sound for the duration of the permit, EPA may ensure the validity of its "worst-case" effluent flow assumptions through imposition of permit conditions for effluent flow.[1] In this regard, the effluent flow limitation is a component of WQBELs because the WQBELs are premised on a maximum level flow. The effluent flow limit is also necessary to ensure that other pollutants remain at levels that do not have a reasonable potential to exceed WQSs.

The limitation on effluent flow is within EPA's authority to condition a permit to carry out the objectives and satisfy the requirements of the CWA. *See* CWA §§ 402(a)(2) and 301(b)(1)(C); 40 CFR §§ 122.4(a) and (d), 122.43 and 122.44(d). A condition on the discharge designed to ensure the validity of EPA's WQBELs and reasonable potential calculations that account for "worst case" conditions is encompassed by the references to "condition" and "limitations" in CWA §§402 and 301 and the implementing regulations, as WQBELs are designed to assure compliance with applicable water quality regulations, including antidegradation requirements. Regulating the quantity of pollutants in the discharge through a restriction on the quantity of effluent is also consistent with the CWA.

In addition, as provided in Part II.B.1 of this permit and 40 CFR § 122.41(e), the Permittee is required to properly operate and maintain all facilities and systems of treatment and control. Improper operation and maintenance may result in non-compliance with permit effluent limitations. Consequently, the effluent flow limit is a permit condition that relates to the Permittee's duty to mitigate (*i.e.*, minimize or prevent any discharge in violation of the permit that has a reasonable likelihood of adversely affecting human health or the environment) and to properly operate and maintain the treatment works. *See* 40 CFR §§ 122.41(d), (e).

## 2.4 Monitoring and Reporting Requirements

### 2.4.1 Monitoring Requirements

Sections 308(a) and 402(a)(2) of the CWA and the implementing regulations at 40 CFR Parts 122, 124, 125, and 136 authorize EPA to include monitoring and reporting requirements in NPDES permits.

The monitoring requirements included in this permit have been established to yield data representative of the Facility's discharges in accordance with CWA §§ 308(a) and 402(a)(2), and consistent with 40 CFR §§ 122.41(j), 122.43(a), 122.44(i) and 122.48. The Draft Permit specifies

[1] EPA's regulations regarding "reasonable potential" require EPA to consider "where appropriate, the dilution of the effluent in the receiving water," *id.* 40 CFR §122.44(d)(1)(ii). *Both* the effluent flow and receiving water flow may be considered when assessing reasonable potential. *In re Upper Blackstone Water Pollution Abatement Dist.*, 14 E.A.D. 577, 599 (EAB 2010). EPA guidance directs that this "reasonable potential" analysis be based on "worst-case" conditions. *See In re Washington Aqueduct Water Supply Sys., 11 E.A.D. 565, 584 (EAB 2004)*.

routine sampling and analysis requirements to provide ongoing, representative information on the levels of regulated constituents in the discharges. The monitoring program is needed to enable EPA and the State to assess the characteristics of the Facility's effluent, whether Facility discharges are complying with permit limits, and whether different permit conditions may be necessary in the future to ensure compliance with technology-based and water quality-based standards under the CWA. EPA and/or the State may use the results of the chemical analyses conducted pursuant to this permit, as well as national water quality criteria developed pursuant to CWA § 304(a)(1), State water quality criteria, and any other appropriate information or data, to develop numerical effluent limitations for any pollutants, including, but not limited to, those pollutants listed in Appendix D of 40 CFR Part 122.

NPDES permits require that the approved analytical procedures found in 40 CFR Part 136 be used for sampling and analysis unless other procedures are explicitly specified. Permits also include requirements necessary to comply with the *National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting Rule*.[2] This Rule requires that where EPA-approved methods exist, NPDES applicants must use sufficiently sensitive EPA-approved analytical methods when quantifying the presence of pollutants in a discharge. Further, the permitting authority must prescribe that only sufficiently sensitive EPA-approved methods be used for analyses of pollutants or pollutant parameters under the permit. The NPDES regulations at 40 CFR § 122.21(e)(3) (completeness), 40 CFR § 122.44(i)(1)(iv) (monitoring requirements) and/or as cross referenced at 40 CFR § 136.1(c) (applicability) indicate that an EPA-approved method is sufficiently sensitive where:

- The method minimum level[3] (ML) is at or below the level of the effluent limitation established in the permit for the measured pollutant or pollutant parameter; or
- In the case of permit applications, the ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or parameter in the discharge; or
- The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N or O for the measured pollutant or pollutant parameter.

### 2.4.2 Reporting Requirements

The Draft Permit requires the Permittee to report monitoring results obtained during each calendar month to EPA and the State electronically using NetDMR. The Permittee must submit a

[2] Fed. Reg. 49,001 (Aug. 19, 2014).
[3] The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL), whichever is higher. Minimum levels may be obtained in several ways: They may be published in a method; they may be based on the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a laboratory, by a factor. EPA is considering the following terms related to analytical method sensitivity to be synonymous: "quantitation limit," "reporting limit," "level of quantitation," and "minimum level." *See* Fed. Reg. 49,001 (Aug. 19, 2014).

Discharge Monitoring Report (DMR) for each calendar month no later than the 15th day of the month following the completed reporting period.

NetDMR is a national web-based tool enabling regulated CWA permittees to submit DMRs electronically via a secure internet application to EPA through the Environmental Information Exchange Network. NetDMR has eliminated the need for participants to mail in paper forms to EPA under 40 CFR §§ 122.41 and 403.12. NetDMR is accessible through EPA's Central Data Exchange at https://cdx.epa.gov/. Further information about NetDMR can be found on EPA's NetDMR support portal webpage.[4]

With the use of NetDMR, the Permittee is no longer required to submit hard copies of DMRs and reports to EPA and the State unless otherwise specified in the Draft Permit. In most cases, reports required under the permit shall be submitted to EPA as an electronic attachment through NetDMR. Certain exceptions are provided in the permit such as for providing written notifications required under the Part II Standard Conditions.

### 2.5 Standard Conditions

The standard conditions, included as Part II of the Draft Permit, are based on applicable regulations found in the Code of Federal Regulations. *See generally* 40 CFR Part 122.

### 2.6 Anti-backsliding

The CWA's anti-backsliding requirements prohibit a permit from being renewed, reissued or modified to include less stringent limitations or conditions than those contained in a previous permit except in compliance with one of the specified exceptions to those requirements. *See* CWA §§ 402(o) and 303(d)(4) and 40 CFR § 122.44(*l*). Anti-backsliding provisions apply to effluent limits based on technology, water quality, and/or State certification requirements.

All proposed limitations in the Draft Permit are at least as stringent as limitations included in the 2008 Permit unless specific conditions exist to justify relaxation in accordance with CWA § 402(o) or § 303(d)(4). Discussion of any less stringent limitations and corresponding exceptions to anti-backsliding provisions is provided in the sections that follow.

## 3.0 Description of Facility and Discharge

### 3.1 Location and Type of Facility

Little Bay Seafood in Newington, NH primarily packs lobsters for sale to wholesale seafood distributors. Additionally, the facility handles baitfish for its lobster fishing operation and for sale. The Facility is located on approximately three acres along the western shore of the Piscataqua River. The site includes (1) a 32,700 square foot building containing offices and lobster operations, (2) the baitfish wetting area, and (3) docking facilities. The office/lobster operation building houses the lobster grading, holding, and packaging areas, the cold storage

[4] https://netdmr.zendesk.com/hc/en-us

areas, mechanical equipment associated with pumping, filtering and cooling water for the lobster holding area; and emergency power diesel generators. Operations associated with baitfish wetting and packing are located at the loading dock. The Facility location is shown in Figure 1 and a site plan is shown in Figure 2.

LBS continuously pumps seawater from the Piscataqua River into the Facility's saltwater pipe main. Three pumps, each with its own intake pipe, are employed to pump seawater: one pump has a rated capacity of 600 gallons per minute (GPM), and each of the other two pumps is rated at a capacity of 200 GPM. According to the Permittee, the Facility typically runs the 600 GPM intake pump (864,000 gallons per day (GPD)) with a minimum through-flow from a single 200 GPM (288,000 GPD) intake pump. Only a small portion of the intake flow is used for the lobster and baitfish wetting operations and depends on the activity occurring. The majority of the intake water is simply routed straight through to Outfall 003.

*Lobster Holding & Grading Operations*

LBS sorts, holds, and packages lobsters from its own fishing fleet or from independent lobstermen. Lobsters are graded according to size in the grading room and transferred to a plastic tote or crate. Lobsters in crates are held in an open tank (Tank A) and lobsters in totes are stacked in holding areas B, C, and D, which are positioned under an overhead system that delivers a constant flow of filtered water. A flow schematic is shown in Figure 3.

Each of the four lobster holding areas (A, B, C, and D) is supplied by an independent, recirculating system. A schematic of the treatment system is shown in Figure 4. In Tank A, water drains via a standpipe to a reservoir area located under the holding area. In Areas B, C, and D, water from the overhead pipes fills the stacked containers and flows across the floor and through evenly spaced drains to a reservoir located beneath each holding area. From the reservoirs, the water is filtered (using bead/polymide and sand filters) and chilled (the water temperature is approximately 60°F). A foam fractionator discharges to the floor of the lobster holding areas and drains back into each of the reservoirs. Water levels in each of the four reservoirs drains via a standpipe to Outfall 003. In addition, lobster holding water is discharged to Outfall 003 when crates and totes are moved from the holding area to the packaging area. The water in the crate or tote drains through a floor drain. A sump in the floor of the mechanical room for the recirculating system also drains to Outfall 003. Discharges from the lobster holding area combines with the through flow in the pipe before being discharged to Outfall 003. Outfall 003 discharges above the water line to the river. A portion of river water from the intake pipe is diverted to adjust the level of each reservoir to make up for water lost when lobsters are transported from holding to shipping. The remaining intake water is either used for truck rinse water or discharged directly back into the river without being used for industrial activity. The interior storage area of the trucks used to transport baitfish and lobsters are rinsed with seawater that drains to Outfall 003. The Draft Permit authorizes the discharge of the truck storage rinse water but prohibits the discharge of truck washing water and use of cleaning agents.

*Baitfish Wetting*

Baitfish used by the LBS fishing fleet or sold to other lobstermen has been handled in Newington since 1986. Generally, a variety of fish get delivered by truck or boat. The fish are salted, refrigerated or frozen and finally either loaded onto fishing boats or shipped to external customers. LBS has decreased their production volume of baitfish significantly over the last permit term reducing their processing from between 20 and 30 million pounds of baitfish per year to 4.5 to 9 million pounds of baitfish per year; however, production volume varies depending on availability and demand.

Baitfish are loaded onto a conveyer where they are sprayed with river water from the intake. After the fish enter the facility, they pass through a machine that automatically coats each fish with salt. Fish are placed in plastic barrels for transport onto the lobster boats. Water from the conveyer transporting the baitfish discharges into a catch basin and through to Outfall 002. See Figure 3. In addition to the baitfish wetting, the facility rinses the plastic barrels used to hold bait on the lobster boats using freshwater. The rinse water also discharges to the catch basin and through Outfall 002. See Figure 3. Outfall 002 is an 8-inch pipe that extends out under LBS's pier, and its terminus is 10 feet under water at mean low tide. The baitfish wetting and rinsing operations do not always occur at the same time. Since the last permit was issued a screen was installed on the catch basin to prevent the discharge of large solids.

The baitfish wetting operation changed substantially in 2010. From 2006 through 2010, the Facility's wetting operation was far more active and predominantly handled herring and mackerel. Based on DMR data between 2008 and 2010, the Facility handled, on average, about 283,000 pounds of fish per month with a maximum of 917,000 pounds. Currently most of the baitfish used for the lobster boats comes to the Facility frozen and is loaded onto the boats directly from cold storage in the original cardboard boxes. The Facility also sold its baitfish boats and no longer handles herring or menhaden. Based on data from 2011 to 2021, the Facility now handles, on average, about 20,600 pounds of fish per month with a maximum of 51,500 pounds. The current baitfish wetting activity is about 7% of the activity at the time of the 2008 Permit. Moreover, because the 2008 Permit required monitoring when the baitfish activity was handling herring or menhaden and the Facility has not handled either species since 2012, there has been no effluent sampling that is representative of the current activity at the Facility.

### 3.1.1 Effluent Limitation Guidelines

EPA has promulgated technology-based effluent limitation guidelines (ELGs) for Seafood Processing for the Canned and Preserved Seafood point source category at 40 CFR Part 408 covering wastewater discharges from facilities that preserve and can seafood. However, the 33 subcategories covered by the ELGs do not include the baitfish processing or wholesale lobster activities at LBS. Therefore, in accordance with CWA § 402(a)(1)(B) and 40 CFR § 125.3(c)(2), EPA may establish effluent limitations on a case-by-case basis using BPJ. The NPDES regulations in 40 CFR §125.3(c)(2) state that permits developed on a case-by-case basis under Section 402 (a)(1) of the CWA shall apply the appropriate factors listed in 40 CFR § 125.3(d) and must consider 1) the appropriate technology for the category class of point sources of which

the applicant is a member, based on available information, and 2) any unique factors relating to the applicant.

### 3.2 Location and Type of Discharge

Outfall 002 is located at Latitude 43° 06' 21.3" Longitude 70° 47' 50.5" and discharges wastewater from baitfish wetting and fish container rinsing through a single port diffuser. Outfall 003 is located at Latitude 43° 06' 21.1" Longitude 70° 47' 50.7", and discharges water from the lobster holding containers, rinse water from transport trucks, and flow-through water from the intake pumps that is not used in any of the facility's operations. Outfall 005 is located at Latitude 43° 06' 18.5" Longitude 70° 47' 48.8" and discharges comingled stormwater and groundwater from a French drain along the warehouse foundation. All outfalls are located on the western bank of Piscataqua River. *See* Figure 2.

The discharge from Outfall 002 consists of baitfish wetting water and baitfish container rinse water. Outfall 002 discharges from a submerged, single port diffuser located under the pier on the northwestern side of the Facility. The discharges from Outfall 002 are identified as follows:

- Outfall 002A: Baitfish wetting wastewater. Outfall 002A shall be monitored at the Outfall 002 sampling port when the discharge is only associated with baitfish wetting activity.

- Outfall 002B: Baitfish container rinse water. Outfall 002B shall be monitored at the Outfall 002 sampling port when the discharge is only associated with the rinsing of baitfish storage containers.

The discharge to Outfall 003 is comprised of water from the lobster holding tanks and rinse water from the interior of the trucks transport baitfish and lobsters. These discharges mix with a constant through-flow of river water from the intake before being discharged above the water line next to the pier on the northwestern side of the Facility. The discharges from Outfall 003 are identified as follows:

- Outfall 003A: Lobster holding water. Discharges to Outfall 003A shall be collected from the drain to Outfall 003.

- Outfall 003B: Truck rinse water. Discharges to Outfall 003B shall be collected from the rinse water from as the effluent drains from the interior of the trucks.

The discharge from Outfall 005 consists of stormwater from a French drain of the warehouse comingled with groundwater. The pipe ends next to the Outfall 004 pipe above the water line across from the pier on the southeastern side of the Facility. The 2008 Permit required sampling of this discharge during the first three quarters of the permit term. Under the 2008 Permit, the Permittee also discharged stormwater and contaminated groundwater from Outfall 004. Since the 2008 Permit was issued the Permittee has completed remediation and moved the catch basin to Outfall 004 under cover. The discharge from Outfall 004 has been eliminated and the Draft Permit prohibits discharges from Outfall 004.

A quantitative description of the discharge in terms of effluent parameters, based on monitoring data submitted by the Permittee, including Discharge Monitoring Reports (DMRs), from January 1, 2016 to January 31, 2021 is provided in Appendix A of this Fact Sheet. EPA notes that, due to conditional monitoring requirements from the 2008 Permit, recent data is only available for Outfall 003 and limited parameters at Outfall 002. EPA evaluated older data where data from the past five years was unavailable.

*Stormwater*

Stormwater associated with an industrial activity, as defined in 40 CFR § 122.26(b)(14), means "the discharge from any conveyance that is used for collecting and conveying storm water that is directly related to manufacturing, processing or raw materials storage at an industrial site" including material handling activities such as loading and unloading. The Fact Sheet for the 2008 Permit indicates that at various times the Facility has had its stormwater discharge authorized under an individual permit and a multi-sector general permit. In its 2013 permit application, the Permittee entered the Standard Industrial Classification (SIC) code 2092 for "prepared fresh or frozen fish and seafoods." Facilities classified within SIC code 2092 are considered to be engaging in "industrial activity" for the purposes of 40 CFR § 122.26(b)(14). *See* 40 CFR § 122.26(b)(14)(ii). According to the NAICS Association, this code is for establishments primarily engaged in preparing fresh and raw or cooked frozen seafoods and seafood preparations. Prepared fresh fish are eviscerated or processed by removal of heads, fins, or scales. LBS handles baitfish and lobsters for wholesale distribution; it does not process any fresh fish or prepare seafood. SIC code 5146 for "fish and seafoods" is for establishments primarily engaged in the wholesale distribution of fresh, cured, or frozen fish and seafoods, except canned or packaged frozen. SIC code 5146 better classifies the industrial activity at LBS. Activities at the Facility, as classified within SIC code 5146, do not fit any of the categories described in 40 CFR § 122.26(b)(14)(i)-(xi). At this time, EPA has determined that stormwater discharges at LBS do not present a significant source of pollutants that would violate water quality standards and do not warrant additional, stormwater-specific controls beyond the narrative, technology-based requirements described in Part 5 of the Fact Sheet (*e.g.*, by making a site-specific designation as "Sector AD" under EPA's Multi-Sector General Permit). At the same time, some of the industrial activity at LBS, including baitfish wetting, storage container rinsing, and truck rinsing, occurs outside. Residuals from these activities may be exposed to the elements. For this reason, the Draft Permit proposes to include Best Management Practices (BMPs) to control the discharge of pollutants associated with these exposed activities during wet weather and requires bi-annual monitoring to ensure that the BMPs are effectively implemented and maintained.

## 4.0 Description of Receiving Water and Dilution

### 4.1 Receiving Water

The Facility discharges to the Lower Piscataqua River-North (Assessment Unit ID: NHEST600031001-02-01), which encompasses 0.613 square miles in the vicinity of the town of Newington, New Hampshire.

The Piscataqua River begins at the confluence of the Salmon Falls and Cocheco Rivers between Dover, New Hampshire and Eliot, Maine. The combined drainage area contains approximately 1,495 square miles in Maine and New Hampshire, including Great Bay and six of its tributaries. The Piscataqua itself is a tidal river, approximately 13 miles long, which empties into Portsmouth Harbor and ultimately the Atlantic Ocean. The tide in this river is semi-diurnal with an average period of 12.4 hours. The lower portion of the Piscataqua River, where the discharge is located, has been characterized as a well-mixed estuary. Tidal flushing requires six to 12 tidal cycles (3 to 6 days) and tidal mixing forces cause the water column to be vertically well mixed. In the vicinity of the Facility's discharge, center river channel depths range from 42 ft to 75 ft below Mean Low Water (MLW) with a median depth (as defined by area) of 18 ft. Also, within the lower Piscataqua River, the river has maximum sweeping flow velocities of approximately 4.9 feet per second (fps) during ebb tide and 4.4 fps during flood tide. The peak tidal flows are approximately 117,000 cubic feet per second (cfs).

The Piscataqua River is classified as a Class B water body pursuant to the State of New Hampshire's Surface Water Quality Regulations (N.H. Code of Administrative Rules, Env-Wq 1703.01) and N.H. RSA 485-A:8. Pursuant to New Hampshire Law at Revised Statutes Annotated (RSA) 485-A:8, II;

> Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics, shall contain a dissolved oxygen content of at least 75 percent of saturation.... The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies….

Furthermore, the New Hampshire Code of Administrative Rules, Chapter Env-Wq 1700 - Surface Water Quality Regulations (hereinafter "NH Standards") provides expanded and refined interpretations of the State Statute (RSA 485-A:8). Env-Wq 1703.03(c) states that: [t]he following physical, chemical and biological criteria shall apply to all surface waters:

1. All surface waters shall be free from substances in kind or quantity which:
    a. settle to form harmful deposits;
    b. float as foam, debris, scum or other visible substances;
    c. produce odor, color, taste or turbidity which is not naturally occurring and would render it unsuitable for its designated uses;
    d. result in the dominance of nuisance species; or
    e. interfere with recreational activities.

Section 303(d) of the CWA requires states to identify those waterbodies that are not expected to meet surface water quality standards after the implementation of technology-based controls and, as such, require the development of total maximum daily loads (TMDL).

The Lower Piscataqua River – North is listed in the final New Hampshire Year 2018 Integrated List of Waters ("303(d) List") as a Category 5-P "Waters Requiring a TMDL[5] for polychlorinated biphenyls (PCBs) and mercury under the fish consumption designated use category, dioxin, mercury and PCBs under the shellfishing designated use category and estuarine bioassessments under the aquatic life designated use category. This discharge (lobster holding and baitfish wetting) will not contribute dioxin, mercury, or PCBs to the river.

To date, no TMDL has been developed for this segment for any of the listed impairments. The status of each designated use is presented in Table 1.

**Table 1: Summary of Designated Uses and Listing Status**

| Designated Use | **Status** |
|---|---|
| Aquatic Life | Not Supporting / Severe |
| Drinking Water After Treatment | Fully Supporting / Good |
| Primary Contact Recreation | Potentially Fully Supporting / Insufficient Information |
| Secondary Contact Recreation | Insufficient Information / No Data |
| Fish Consumption | Not Supporting / Marginal |
| Shellfishing | Not Supporting / Marginal |

According to the New Hampshire *Watershed 305(b) Assessment Summary Report*,[6] this water body segment is fully supporting designated uses for drinking water, after treatment, potentially fully supporting designated uses for primary contact recreation, and not supporting designated uses for aquatic life, fish consumption and shellfishing. There is insufficient information to assign a status to the secondary contact recreation designated use category.

## 4.2 Available Dilution

To ensure that discharges do not cause or contribute to violations of WQSs under all expected conditions, WQBELs are derived assuming critical conditions for the receiving water.[7]
The critical flow is some measure of the low flow of the receiving water and may stipulate the magnitude, duration, and frequency of allowable excursions from the magnitude component of criteria in order to prevent adverse impacts of discharges on existing and designated uses. The NH Surface Water Quality Standards specify that for tidal rivers like the Piscataqua River, the critical low flow shall be equivalent to the conditions that result in a dilution that is exceeded 99% of the time. *See* Env-Wq 1705.02(b). NHDES's marine dilution policy interprets this low flow scenario as the seventh lowest spring and neap tides for the year which corresponds to the 1% low tide.

[5] New Hampshire Year 2018 Section 303(d) Surface Water Quality List. NHDES, R-WD-19-10; August 2018.
[6] NHDES 2018 Surface Water Quality Assessment Viewer available at: https://nhdes-surface-water-quality-assessment-site-nhdes.hub.arcgis.com/app/aa5a11f8b8c341058fc031701a2fb3c9
and NHDES 2016 Watershed Report Card available at:
https://www2.des.state.nh.us/onestoppub/SWQA/010600031001_2016.pdf
[7] EPA Permit Writer's Manual, Section 6.2.4

For this Permit issuance, NHDES estimated dilution of LBS's discharge at Outfall 002 as 105.3 within 119 ft of the outfall using the Cornell Mixing Zone Expert System (CORMIX) model. This dilution (greater than 100:1) is generally consistent with the estimates for the 2008 Permit. NHDES limits allowable dilution to 100 to 1 unless a tidal pollutant buildup analysis is performed. The dilution allowance considered in this Fact Sheet is contingent on the proper operation and maintenance of the Facility's diffuser. Accordingly, the Draft Permit requires periodic inspections and regular maintenance of the diffuser pursuant to 40 CFR § 122.41(e), "Proper operation and maintenance." Outfalls 003 and 005 discharge above the high water line and, as a result, there is no dilution for these outfalls.

## 5.0 Proposed Effluent Limitations and Conditions

The proposed effluent limitations and conditions derived under the CWA and State WQSs are described below. These proposed effluent limitations and conditions, the basis of which is discussed throughout this Fact Sheet, may be found in Part I of the Draft Permit.

### 5.1 Effluent Limitations and Monitoring Requirements

The State and Federal regulations, data regarding discharge characteristics, and data regarding ambient characteristics described above, were used during the effluent limitation's development process. Discharge data is included in Appendix A.

#### 5.1.1 Effluent Flow

The 2008 Permit includes a total monthly reporting requirement for both Outfalls 002 and 003. The effluent flow of permitted discharges to Outfalls 002 and 003 varies depending on the activity at the facility. For Outfall 002, the Permittee reported estimated flow only for the baitfish wetting activity. To EPA's knowledge, the flow from rinsing the bait storage containers has not been estimated. From January 1, 2016 to January 31, 2021 (Appendix A) effluent flow at Outfall 002 ranged from 1,160 gallons per day (GPD) to 5,600 GPD. On two occasions (February 2017 and December 2017) the Permittee reported unusually high flows at Outfall 002 (above 24,000 GPD); the source of the high flows is unknown. The effluent flow at Outfall 002 over the past five years reflects the reduction in the baitfish wetting operation. From 2008 to 2010 when the baitfish operation was more active, the average flow was 20,634 GPD with a reported maximum flow of 51,150 GPD. The Draft Permit requires the Permittee to estimate and report average monthly and maximum daily flows (in GPD) for the baitfish wetting and the bait storage rinse water separately.

For Outfall 003, the Permittee reported estimated flow withdrawn to adjust the levels of the lobster holding tanks. The reported flow at Outfall 003 does not reflect the amount of river water that is withdrawn, transported through the outfall pipe, and discharged (i.e., the "through-flow"). Based on the minimum intake flow (200 GPM), the flow through Outfall 003 is about 288,000 GPD. The effluent discharged From January 1, 2016 to January 31, 2021 (Appendix A) effluent flow at Outfall 003 ranged from 5,300 GPD to 19,000 GPD. The through-flow from the intake is 15 times greater based on the minimum intake and maximum discharge. The Draft Permit requires the Permittee to report flows for the lobster holding facility based on the volume of

make-up water is used to maintain the levels in the reservoirs. To EPA's knowledge, the reported flow for Outfall 003 does not include the discharge of water used to rinse the interior storage areas from the trucks used to transport bait and lobsters, although this water is discharged to Outfall 003. The Draft Permit requires the Permittee to estimate the average monthly and maximum daily flows (in GPD) for the truck rinse water.

### 5.1.2 pH

The hydrogen-ion concentration in an aqueous solution is represented by the pH using a logarithmic scale of 0 to 14 standard units (S.U.). Solutions with pH 7.0 S.U. are neutral, while those with pH less than 7.0 S.U. are acidic and those with pH greater than 7.0 S.U. are basic. Discharges with pH values markedly different from the receiving water pH can have a detrimental effect on the environment. Sudden pH changes can kill aquatic life. pH can also have an indirect effect on the toxicity of other pollutants in the water.

The 2008 permit required monthly pH sampling at Outfall 002 and 003. From January 1, 2016 through January 31, 2021 (Appendix A), pH ranged from 7.02 S.U. to 7.97 S.U. at Outfall 002 and from 7.57 to 7.89 S.U. at Outfall 003. The Draft Permit requires a pH range of 6.5 to 8.0 S.U. when the Facility is discharging, monitored by monthly grab samples at Outfall 002 and quarterly grab samples at Outfall 003. The pH limitations are based on the State WQSs, CWA § 301(b)(1)(C), and 40 CFR § 122.44(d).

### 5.1.3 Total Suspended Solids

Solids could include inorganic (e.g., silt, sand, clay, and insoluble hydrated metal oxides) and organic matter (e.g., flocculated colloids and compounds that contribute to color). Solids can clog fish gills, resulting in an increase in susceptibility to infection or asphyxiation. Suspended solids can increase turbidity in receiving waters and reduce light penetration through the water column or settle to form bottom deposits in the receiving water. Suspended solids also provide a medium for the transport of other adsorbed pollutants, such as metals, which may accumulate in settled deposits that can have a long-term impact on the water column through cycles of re-suspension.

The 2008 Permit required short- and long-term composite sampling for TSS at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. The 2008 Fact Sheet indicated that processing of menhaden and herring species tend to cause higher peaks in TSS, BOD, and nutrient concentrations than other fish species; the 2008 Permit required that effluent samples be taken from effluent produced by herring or menhaden processing. However, LBS ceased processing menhaden and herring. Because LBS has not processed either species since March 2014, TSS has not been monitored at Outfall 002 since March 2014. The Permittee reported the No Data Indicator (NODI) Code "9" for conditional, not monitored. From December 1, 2008 to March 31, 2014, TSS concentrations ranged from 16 mg/L to 920 mg/L in the short composite samples and 13 mg/L to 1,600 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples.

No recent samples of baitfish wetting discharge have been collected at this outfall that would be representative of current baitfish wetting activity which, as explained above, has changed substantially since the 2008 Permit was issued. There has never been characterization of the effluent from rinsing the bait storage containers. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit imposes narrative, technology-based effluent limitations in the form of best management practices to control the discharge of pollutants to the receiving water. The Draft Permit includes narrative, technology-based requirements and a Best Management Practices (BMP) Plan to ensure that good housekeeping practices and other control measures are implemented and maintained. In addition, the Draft Permit requires reporting TSS concentrations from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. The Draft Permit eliminates the requirement to sample during processing of only certain species to ensure that sampling is conducted when discharging baitfish wetting effluent. The Draft Permit carries forward the requirement to maintain a screen or other filtering device at the Outfall 002 catch basin to control the discharge of solids.

The 2008 Permit required annual sampling from the discharge at Outfall 003 to the receiving water during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum total suspended solids (TSS) concentrations at Outfall 003 ranged from below 7.2 to 77 mg/L. Annual monitoring over the last permit term indicates that TSS concentrations at Outfall 003 range widely and can be substantial. However, because the 2008 Permit required monitoring at the end of the Outfall 003 pipe, which is after the effluent from the lobster holding activity comingles with the through-flow of river water from the intake, there sampling is not representative of the effluent itself. Required monitoring must yield data which are representative of the monitored activity. *See* 40 CFR § 122.48(b). Due to the lack of representative data, the Draft Permit requires reporting the maximum daily TSS in the lobster holding effluent discharged to Outfall 003 on a quarterly basis. During each quarterly sampling event, the Permittee must collect a single composite sample from a grab samples from a limited number of lobster crates or totes being packaged during the monitoring period. Samples of the lobster holding water from totes and crates that are transported for packaging and, as such, are draining to Outfall 003, will be most representative of the effluent prior to comingling with any other wastestream. The Permittee must also collect a single, grab sample of truck rinse water after it is used in the trucks and before comingling with any other flow in Outfall 003.

### 5.1.4 Biochemical Oxygen Demand

Biochemical oxygen demand (BOD), measures the amount of oxygen consumed by microorganisms in decomposing organic matter in water. BOD also measures the chemical oxidation of inorganic matter (i.e., the extraction of oxygen from water via chemical reaction). The rate of oxygen consumption in a waterbody is affected by several variables: temperature, pH, the presence of microorganisms, and the type of organic and inorganic material. BOD directly affects the amount of dissolved oxygen in rivers and streams. The greater the BOD, the more rapidly oxygen is depleted in the stream. Depletion of the in-stream oxygen levels cause aquatic organisms to become stressed, suffocate, and die.

The 2008 Permit required short- and long-term composite sampling for BOD at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring when herring and/or menhaden were being processed. As with TSS, LBS reported the No Data Indicator (NODI) Code "9" for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, BOD concentrations ranged from 13 mg/L to 1700 mg/L in the short composite samples and 1.7 mg/L to 4900 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting TSS concentrations from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of BOD to Outfall 002.

The 2008 Permit required annual sampling from the discharge at Outfall 003 to the receiving water during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum BOD concentrations at Outfall 003 has ranged from 0.0 to 16 mg/L. Annual monitoring over the last permit term indicates that BOD concentrations at Outfall 003 range widely and can be substantial. However, as with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily BOD in the lobster holding effluent separate from the truck rinse water on a quarterly basis.

### 5.1.5 Nitrogen

Nitrogen is an essential nutrient for plant growth. However, elevated concentrations of nitrogen can result in eutrophication, where nutrient concentrations lead to excessive plant and algal growth. Respiration and decomposition of plants and algae under eutrophic conditions reduce dissolved oxygen in the water and can create poor habitat for aquatic organisms. Total Nitrogen is the sum of Total Kjeldahl Nitrogen (TKN) (ammonium, organic and reduced nitrogen) and nitrate-nitrite. It is derived by individually monitoring for organic nitrogen compounds, ammonia, nitrate, and nitrite and adding the components together. New Hampshire water quality standards (Env-Wq 1703.14(a)) state "Class B waters shall contain no phosphorus or nitrogen in such concentrations that would impair any existing or designated uses, unless naturally occurring." The Great Bay estuary, which includes the lower Piscataqua River, is currently experiencing water quality issues related to excessive levels of nitrogen including areas of low dissolved oxygen and loss of eelgrass habitat and shellfish beds. Based on a weight of evidence approach, EPA has determined that the total nitrogen load to the estuary exceeds the assimilative capacity of the estuary and is causing or contributing, or has the reasonable potential to cause or contribute, to pervasive nutrient-related impairments and violations of water quality standards. See Great Bay Total Nitrogen General Permit (NHG58A000) Fact Sheet pp. 14-26. See also Great Bay Total Nitrogen General Permit Response to Comment p. 5. The lower Piscataqua River (north) is listed as potentially not supporting for the aquatic life designated use as a result of total nitrogen and is listed as impaired for estuarine bioassessment, which is related to excessive nutrient loading.

The 2008 Permit required short- and long-term composite sampling for ammonia, TKN and nitrates at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. As with TSS, LBS reported the No Data Indicator (NODI) Code "9" for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. This data, which was taken prior to the substantial reduction in and change in species handled during baitfish wetting activity, does not necessarily reflect the current operations or levels of nitrogen discharged to Outfall 002. From December 1, 2008 to March 31, 2014, ammonia concentrations ranged from 0.6 mg/L to 120 mg/L in the short composite samples and 0.08 mg/L to 100 mg/L in the long composite samples, TKN concentrations ranged from 0.9 mg/L to 260 mg/L in the short composite samples and 3 mg/L to 1300 mg/L in the long composite samples, nitrate concentrations were below the detection limit in both short and long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data and inability to characterize the effluent from Outfall 002, and considering the relatively low discharge volume, the Draft Permit requires reporting total nitrogen (TN), TKN, nitrate and nitrite, and ammonia nitrogen from monthly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. A higher monitoring frequency is warranted for nitrogen given that the water quality issues in Great Bay and in the lower Piscataqua River. The Draft Permit requires narrative, technology-based limitations to control the discharge of nitrogen. The monitoring data will provide a baseline of the existing load to the receiving water while the narrative limitations, include optimizing control measures to target nitrogen reductions, coupled with the requirements to track nitrogen loads, will ensure that there is no increase in nitrogen loading to the receiving water under the Draft Permit in accordance with antidegradation requirements. See Env-Wq 1708. Indeed, while there is no recent data representative of current loads, EPA expects that the changes in the baitfish wetting operations since 2012, including reducing the pounds of baitfish and eliminating handling of menhanden and herring (two species that were associated with higher pollutant concentrations) achieves lower nitrogen loads. These narrative limitations are consistent with EPA's adaptive management permitting approach for point sources in Great Bay, which also considers efforts to control point and non-point sources of nitrogen throughout the watershed. See NHG58A000. If monitoring data indicates that the narrative limitations are not sufficient to control nitrogen discharges to maintain water quality standards, EPA and the State may evaluate the BMPs and make changes as needed, including potentially establishing a numeric, water-quality based limit.

The 2008 Permit required annual sampling for ammonia, TKN and nitrates at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum ammonia concentrations ranged from 0.0 to 0.9 mg/L, daily maximum TKN concentrations ranged from 0.6 to 4.8 mg/L, and daily maximum nitrate concentrations ranged from 0.0 to 64 mg/L. Annual monitoring over the last permit term indicates that ammonia, TKN and nitrate concentrations at Outfall 003 range widely; however, as explained above, the discharge from Outfall 003 is primarily river water through-flow. As with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily total nitrogen (TN) , TKN, nitrate and nitrite, and ammonia nitrogen in the lobster holding effluent separate from the truck rinse water on a monthly basis. As explained above, the narrative limits and optimization requirements, in the Draft Permit are expected to maintain water quality standards to ensure that

there is no increased nitrogen load to Great Bay. EPA and the State may evaluate the BMPs and make changes as needed, including potentially establishing a numeric, water-quality based limit, if monitoring data indicates that the narrative limitations are not sufficient to control nitrogen discharges.

### 5.1.6 Total Phosphorus

While phosphorus is an essential nutrient for the growth of aquatic plants, it can stimulate rapid plant growth in freshwater ecosystems when it is present in high quantities. The excessive growth of aquatic plants and algae within freshwater systems negatively impacts water quality and can interfere with the attainment of designated uses by: 1) increasing oxygen demand within the water body to support an increase in both plant respiration and the biological breakdown of dead organic (plant) matter; 2) causing an unpleasant appearance and odor; 3) interfering with navigation and recreation; 4) reducing water clarity; 5) reducing the quality and availability of suitable habitat for aquatic life; 6) producing toxic cyanobacteria during certain algal blooms.

The 2008 Permit required short- and long-term composite sampling for total phosphorus at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring and composite sampling for total phosphorus at Outfall 003 on an annual basis. As with TSS, LBS reported the No Data Indicator (NODI) Code "9" for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, total phosphorus concentrations ranged from 0.03 mg/L to 250 mg/L in the short composite samples and 0.25 mg/L to 240 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting total phosphorus from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of total phosphorus to Outfall 002.

The 2008 Permit required annual sampling for total phosphorus at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum total phosphorus concentrations at Outfall 003 ranged from 0.07 to 11 mg/L. Annual monitoring over the last permit term indicates that phosphorus concentrations at Outfall 003 range widely and can be substantial. However, as with TSS, the previous sampling has not been representative of the effluent associated with the lobster holding activity. Due to the lack of representative data, the Draft Permit requires reporting the maximum daily total phosphorus (TP) in the lobster holding effluent separate from the truck rinse water on a quarterly basis.

### 5.1.7 Oil and Grease

Oil and Grease is not a single chemical constituent, but includes a large range of organic compounds, which can be both petroleum-related (e.g., hydrocarbons) and non-petroleum (e.g., vegetable and animal oils and greases, fats, and waxes). These compounds have varying physical, chemical, and toxicological properties. Generally, oils and greases in surface waters either float on the surface, are solubilized or emulsified in the water column, adsorb onto floating

or suspended solids and debris, or settle on the bottom or banks. Oil and grease, or certain compounds within an oil and grease mixture, can be lethal to fish, benthic organisms and water-dwelling wildlife.

The 2008 Permit required short- and long-term composite sampling for oil and grease at Outfall 002 on a monthly basis during the first year followed by quarterly monitoring. As with TSS, LBS reported the No Data Indicator (NODI) Code "9" for conditional, not monitored since April 2014 at Outfall 002 since neither species has been processed at the Facility since March 2014. From December 1, 2008 to March 31, 2014, oil and grease concentrations ranged from 0 mg/L to 300 mg/L in the short composite samples and 2.6 mg/L to 9900 mg/L in the long composite samples. There was no consistent pattern between the short and long-term composite samples. Due to the lack of recent data from Outfall 002, and considering the relatively low discharge volume and high dilution, the Draft Permit requires reporting oil and grease from quarterly grab samples for the baitfish wetting effluent separate from the bait storage rinse water in order to characterize the effluent from each activity. In addition, the Draft Permit requires narrative, technology-based limitations to control the discharge of oil and grease to Outfall 002.

The 2008 Permit required annual sampling for oil and grease at Outfall 003 during the month of August. From August 31, 2016 to August 31, 2020 (Appendix A), daily maximum oil and grease concentrations at Outfall 003 remained under the detection limit during the monitoring period. While previous sampling has not been representative of the effluent associated with the lobster holding activity, there is no reason to believe that the filtered water which drains from the crates and totes holding lobsters or in the reservoirs would contain oil and grease. The Draft Permit eliminates the requirement to monitor oil and grease in the lobster holding effluent discharged to Outfall 003 but requires monitoring and reporting oil and grease in the truck rinse water effluent discharged to Outfall 003.

### 5.1.8 Outfall 005

In the 2013 application for renewal of its NPDES permit, LBS indicated that Outfall 005 discharges from the compressor room and water condensate. However, the Permittee confirmed in 2006 that the condensate and compressor water was disconnected from Outfall 005. See July-August 2006 Monitoring Report (submitted September 15, 2006). The Permittee also indicated in 2006 that the end of the outfall pipe was capped and sealed. However, during the site visit EPA and NHDES observed that the end of Outfall 005 was open and the Permittee indicated that a small amount of weeping still occurs.

According to the 2008 Fact Sheet, Outfall 005 discharges from a pipe connected to a French drain located near the southeast corner of the building's foundation. Sampling of the discharge from Outfall 005 in 2007 and 2008 indicated that it may be contaminated with volatile organic compounds (VOCs) at levels above water quality standards. The 2008 Permit required the Permittee to collect samples from Outfall 005 during the first three quarters of the permit term and to monitor and report pH and volatile organic compounds. The Permittee reported two values for pH (in Apr-Jun 2009 and Jul-Sep 2009, both of which were within the range of 6.5 to 8.0 S.U) and one value of 14.6 µg/L for VOCs from the quarterly sample from July to September 2009.

The existing record for the discharge from Outfall 005 is currently inadequate. The existing data suggests that the concentrations of VOCs (primarily tetrachloroethylene) in the discharge is below the water quality standards for the protection of aquatic life at Env-Wq 1703.21(b) but may exceed the recommended human health criteria for consumption of aquatic organisms. The criteria for the protection of human health from the potential carcinogenic effects due to exposure of tetrachloroethylene (PCE) through consumption is 10 µg/L (water + organisms) and 29 µg/L (organism only). *See* Env-Wq 1703.21(b).[8] At least one of the limited number of samples exceeded the (water + organism) value, though the sample was collected at the end of pipe prior to any dilution in the receiving water. Although the discharge from Outfall 005 is above the water line, the criterion is based on human health consumption and EPA does not expect the discharge to exceed this value in the Piscataqua River.

The preferred option is for the Permittee to permanently seal Outfall 005 and eliminate any point source discharge of foundation water and groundwater. It is unclear, however, whether doing so would result in issues with drainage at the site. The Draft Permit proposes quarterly monitoring and reporting for pH, VOCs, and oil and grease at Outfall 005. Based on the results of the first three years of monitoring (or 12 samples), the Permittee may request a reduction in the frequency or elimination of monitoring at Outfall 005. Alternatively, the Permittee may permanently eliminate discharges from Outfall 005. If the Permittee documents the elimination of discharges from Outfall 005 prior to Final Permit issuance, EPA will remove the monitoring requirements from the permit. If the Permittee documents the elimination of discharges from Outfall 005 after issuance of the Final Permit, EPA may modify the permit to eliminate the monitoring requirements. Deleting a point source outfall when the discharge from the outfall is terminated in a minor modification under 40 CFR § 122.63(e)(2) and may be processed without following the procedures in 40 CFR Part 124.

## 5.2 Special Conditions

### 5.2.1 Best Management Practices

Best management practices (BMPs) may be expressly incorporated into a permit on a case-by-case basis where it is determined that they are necessary to achieve effluent limitations and standards or to carry out the purpose and intent of the CWA under § 402(a)(1). BMPs may be necessary to control or abate the discharge of pollutants when: 1) authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; 2) authorized under CWA § 402(p) for the control of storm water discharges; 3) numeric effluent limitations are infeasible; or 4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA. *See* 40 CFR § 122.44(k). Pollutants may be present because they are generated during Facility operations associated with baitfish wetting, transport, and lobster holding, which could result in these pollutants reaching waters of the United States.

[8] Also see EPA Final Updated Ambient Water Quality Criteria for the Protection of Human Health. 80 FR 36986 (June 29, 2015).

In this case, the Draft Permit requires the selection, design, installation, and implementation of control measures to comply with the non-numeric technology-based effluent limits in the Draft Permit. The Draft Permit requires the Permittee to implement and continually evaluate the Facility's structural controls (e.g., treatment systems, containment areas, holding tanks), and non-structural controls (operational procedures, site inspections, and operator training). Proper implementation of BMPs will minimize pollutants in discharges from baitfish wetting and lobster holding operations and prevent or minimize pollutants entering via runoff. Compliance with requirements to identify pollutant sources and select, design, install and maintain the pollution control technology necessary to meet the effluent limitations ensure that dilution is not used as a form of treatment. Non-numeric limitations include:

- Select, design, implement, and maintain control measures designed to minimize the discharge of total suspended solids, floating solids, foam, visible oil sheen, and settleable solids in discharges associated with lobster holding, baitfish wetting, and cleaning operations to the receiving water. Control measures must be used in accordance with good engineering practices and manufacturer's specifications.
- Maintain a corrosion resistant screen or other filter to prevent solids from entering the catch basin draining to Outfall 002 during baitfish wetting and fish container rinsing.
- Design good housekeeping measures to maintain areas that are potential sources of pollutants including, but not limiting to, maintaining the area around the outfall drainage and catch basins free of debris, fish scales, or fish parts;
- Implement preventative maintenance programs for pollution control equipment (e.g., screens at catch basins to prevent solids from being discharged) to ensure that equipment is maintained, and to avoid leaks, spills, and other releases of pollutants to receiving waters;
- Implement spill prevention and response procedures to ensure effective response to spills and leaks if or when they occur;
- Perform routine inspections of the control measures, discharge points, and areas where industrial materials, potential pollutant sources, or activities are exposed to runoff or wastewater;
- Minimize dust generation and vehicle tracking of industrial materials; and
- Develop standard procedures for handling solids and other wastes collected at pollution control equipment.

These non-numeric effluent limitations support, and are equally enforceable as, the numeric effluent limitations included in the Draft Permit. The purpose of these requirements is to reduce or eliminate the discharge of pollutants to waters of the United States. They have been selected on a case-by-case basis based on those appropriate for this specific facility. *See* CWA §§ 304(e) and 402(a)(1) and 40 CFR § 122.44(k). These requirements will also ensure that discharges from the Facility will meet State WQSs pursuant to CWA § 301(b)(1)(C) and 40 CFR § 122.44(d)(1). Unless otherwise stated, the Permittee may select, design, install, implement and maintain BMPs as the Permittee deems appropriate to meet the permit requirements. The selection, design, installation, implementation and maintenance of control measures must be in accordance with good engineering practices and manufacturer's specifications. To ensure that the BMPs are implemented and maintain, and the control measures effectively minimize the discharge of pollutants associated with baitfish wetting, container rinsing, and truck rinsing, the Draft Permit

proposes twice annual monitoring of runoff from Outfall 002A when the Facility is not engaged in baitfish wetting, baitfish storage container rinsing, or truck rinsing.

### 5.2.2 Best Management Practices Plan

As explained above, the Draft Permit requires the selection, design, installation, and implementation of control measures to comply with the non-numeric, technology-based effluent limits, or best management practices (BMPs) in the Draft Permit. This Draft Permit contains BMPs for wastewater associated with the lobster holding and grading operations. In addition to BMPs, the Draft Permit contains requirements for the Permittee to develop, implement, and maintain a BMP Plan for controlling the discharge of pollutants associated with baitfish wetting and lobster holding activities.

The Draft Permit specifies that the BMP Plan must include the following, at a minimum:

- Documentation of the selection, design, installation, implementation, and maintenance of control measures designed to prevent or reduce the discharge of pollutants in wastewater generated from lobster holding, baitfish wetting, truck bed rinsing, and rinsing containers used to hold baitfish;
- A description of the pollution control equipment and preventative maintenance procedures, including frequency of inspections, used to prevent or reduce the discharge of pollutants; and
- Documentation of the procedures for handling wastes generated from the baitfish wetting, truck rinsing, lobster holding, and fish container rising operations, including schedules for removal, handling and disposal of materials, and a description of where solids removed using pollution control equipment are stored and/or disposed. If solids are removed from the site, include a description of the destination and method of disposal and/or resuse.

The development and implementation of the BMP Plan is an enforceable element of the permit. The Draft Permit directs the Permittee to incorporate BMPs, as described above, directly into the BMP Plan, which serves to document the selection, design and installation of control measures selected to meet the permit effluent limitations. The goal of the BMP Plan is to reduce or prevent the discharge of pollutants to waters of the United States from discharges associated with baitfish wetting and lobster holding/packaging.

The Draft Permit requires the Permittee within ninety (90) days of the effective date of the permit to certify that the BMP Plan has been prepared, meets the requirements of the permit, and documents the control measures, including BMPs, that have been implemented to reduce or eliminate the discharge of pollutants associated with baitfish wetting, storage, and lobster holding and grading operations. The Permittee must also certify at least annually that the Facility has complied with the BMPs described in the BMP Plan, including inspections, maintenance, and training activities. The Permittee is required to amend and update the BMP Plan if any change occurs at the Facility affecting the Plan, such as changes in the design, construction, operation, or maintenance of the Facility. The BMP Plan must be maintained on site at the

Facility and provided to EPA and/or the State upon request. All BMP records must be maintained on-site for at least three years.

## 6.0 Federal Permitting Requirements

### 6.1 Endangered Species Act

Section 7(a) of the Endangered Species Act of 1973, as amended (ESA), grants authority and imposes requirements on 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").

Section 7(a)(2) of the ESA requires every Federal agency, in consultation with and with the assistance of the Secretary of Interior, to ensure 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. The National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) administers Section 7 consultations for marine and anadromous species.

The Federal action being considered in this case is EPA's proposed NPDES permit for Little Bay Seafood. The Draft Permit is intended to replace the 2008 Permit in governing the Facility. As the federal agency charged with authorizing the discharge from this Facility, EPA determines potential impacts to federally listed species, and initiates consultation, when required under Section 7(a)(2) of the ESA.

The discharges are located at approximately Latitude 43° 06' 18" Longitude -70° 47' 48" along the southern bank of the Piscataqua River. The discharge to Outfall 002 is comprised of wastewater associated with baitfish wetting and rinsing bait storage containers. Outfall 002 discharges from a submerged, single port diffuser located under the pier. The discharge to Outfall 003 is comprised of water from the lobster holding tanks and rinse water from the interior of the trucks transport baitfish and lobsters. These discharges mix with a constant through-flow of river water before being discharged above the water line next to the pier. The Lower Piscataqua River - North (Assessment Unit ID NHEST600031001-02) in Newington, New Hampshire is a tidal river that empties to Portsmouth Harbor about 3.5 miles downstream from the outfalls before joining the Gulf of Maine.

EPA has reviewed the federal endangered or threatened species of fish, wildlife, and plants in the expected action area of the outfalls. Atlantic sturgeon adults and subadults, shortnose sturgeon adults, and critical habitat for Atlantic sturgeon, all of which fall under the jurisdiction of NOAA Fisheries, occur in the vicinity of the Facility's discharges.[9] NOAA fisheries expects that Atlantic sturgeon adults and subadults use the Piscataqua River for foraging year-round and for resting during spring and fall migrations, although tracking data indicates limited use of this area. Similarly, NOAA Fisheries expects that shortnose sturgeon could be present from early spring to

[9] See https://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html]

late fall. The protected species and habitat may be influenced by the discharge from the Facility. NOAA Fisheries designated critical habitat for the Gulf of Maine, New York Bight, Chesapeake Bay, and South Atlantic Distinct Population Segments of Atlantic Sturgeon, which became effective on September 18, 2017. *See* 82 Fed. Reg. 39160 (August 17, 2017). The designated critical habitat includes the Piscataqua River from its confluence with the Salmon Falls and Cocheco rivers downstream to where the mainstem river discharges at its mouth into the Atlantic Ocean[10], which includes the action area. *See* 50 CFR § 226.225(d)(4).

Because federally-listed protected species may be affected by the discharges authorized by the Draft Permit, EPA has evaluated the potential impacts of the permit action on shortnose and Atlantic sturgeon as well as Atlantic sturgeon critical habitat. Briefly, the primary pollutants of concerns are total suspended solids and nutrients and the discharges are likely to experience significant dilution in the receiving water such that the narrative water quality standards applicable to these pollutants will be met. As an example, the estimated dilution at the diffuser for Outfall 002 under the last permit was more than 100:1. The discharge from the lobster holding facility mixes with the through-flow of river water in Outfall 003 prior to discharge. In addition, the Draft Permit prohibits the discharge of any chemical, additives, or cleaning agents to the receiving water. Finally, the Draft Permit establishes narrative, technology-based effluent limitations in the form of best management practices (BMPs) to control the discharge of pollutants to the receiving water and imposes monitoring requirements that will ensure the BMPs are effective. On the basis of its evaluation, EPA made a preliminary finding that the discharges from LBS may affect, but are not likely to adversely affect, life stages of shortnose and atlantic sturgeon in the action area or Atlantic sturgeon critical habitat. Therefore, EPA has judged that a formal consultation pursuant to Section 7 of the ESA is not required. EPA is seeking concurrence from NOAA Fisheries regarding its evaluation and preliminary finding in a letter sent to NOAA Fisheries Protected Resources Division under separate cover.

For protected species under the jurisdiction of the USFWS, one listed threatened species, the northern long-eared bat (*Myotis septentrionalis*), was identified as potentially occurring in the action area of the Facility's discharge(s).[11] According to the USFWS, the threatened northern long-eared bat is found in "winter – mines and caves, summer – wide variety of forested habitats." This species is not aquatic, so the Facility's discharge(s) will have no direct effect on this mammal. Further, the permit action is also expected to have no indirect effect on the species because it is not expected to impact insects, the primary prey of the northern long-eared bat. EPA completed an "effects determination" using the northern long-eared bat key within the Information for Planning and Consultation (IPaC) system and determined that the action is consistent with the activities analyzed in the Service's January 5, 2016 Programmatic Biological Opinion. Therefore, EPA has satisfied its responsibilities for this action under ESA Section 7(a)(2) with respect to the northern long-eared bat.

[10] Critical habitat boundaries also include the waters of the Cocheco River from its confluence with the Piscataqua River and upstream to the Cocheco Falls Dam and waters of the Salmon Falls River from its confluence with the Piscataqua River and upstream to the Route 4 Dam. These waters are outside of the action area.
[11] See https://ecos.fws.gov/ipac/

At the beginning of the public comment period, EPA notified USFWS and NOAA Fisheries Protected Resources Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents.

Initiation of formal consultation is not required, but can be requested by EPA or by the Services where discretionary Federal involvement or control over the action has been retained or is authorized by law and if: 1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the analysis; 2) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this analysis; 3) a new species is listed or critical habitat designated that may be affected by the identified action; or 4) there is any incidental taking of a listed species.

## 6.2 Essential Fish Habitat

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (*see* 16 U.S.C. § 1801 *et seq*., 1998), EPA is required to consult with the NOAA Fisheries if EPA's action or proposed actions that it funds, permits, or undertakes, "may adversely impact any essential fish habitat". *See* 16 U.S.C. § 1855(b).

The Amendments broadly define "essential fish habitat" (EFH) as: "waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity". *See* 16 U.S.C. § 1802(10). "Adverse impact" means any impact that 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 fish species for which federal Fisheries Management Plans exist. *See* 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.

The Federal action being considered in this case is EPA's proposed NPDES permit for the Little Bay Seafood, which discharges though Outfall 002 and 003 to the Lower Piscataqua River (Assessment Unit ID: NHEST600031001-02-01) in Newington, NH. The Lower Piscataqua River is not covered by EFH designation for riverine systems at Latitude 43° 06' 18" and Longitude 70° 47' 48" as determined by the NOAA EFH Mapper.[12] EPA's review of available EFH information indicated that this water body is designated EFH for 16 federally managed species. The full listing of EFH species is included in Table 2, below.

[12] NOAA EFH Mapper available at http://www.habitat.noaa.gov/protection/efh/efhmapper/

**Table 2. EFH Species in the vicinity of Little Bay Seafood Outfalls at Latitude 43° 06' 18", Longitude 70° 47' 48"**

| Species | Lifestage(s) Found at Location |
|---|---|
| Atlantic Sea Scallop | All |
| Atlantic Wolffish | All |
| Winter Flounder | Eggs, Juvenile, Larvae/Adult |
| Little Skate | Juvenile, Adult |
| Atlantic Herring | Juvenile, Adult, Larvae |
| Atlantic Cod | Larvae, Adult, Eggs |
| Pollock | Juvenile, Eggs, Larvae |
| Red Hake | Adult, Eggs/Larvae/Juvenile |
| Windowpane Flounder | Adult, Larvae, Eggs, Juvenile |
| Winter Skate | Juvenile |
| Smooth Skate | Juvenile |
| White Hake | Adult, Eggs, Juvenile |
| Thorny Skate | Juvenile |
| Atlantic Mackerel | Eggs, Larvae, Juvenile |
| Bluefish | Adult, Juvenile |
| Atlantic Butterfish | Adult |

### 6.2.1 EPA's Finding of all Potential Impacts to EFH Species

EPA has concluded that the limits and conditions contained in the Draft Permit minimize adverse effects to EFH species listed in Table 2, above, for the following reasons:

- This Draft Permit action does not constitute a new source of pollutants. It is the reissuance of an existing NPDES permit;
- The Draft Permit establishes narrative, best management practices and monitoring to control the discharge of pH, total suspended solids, biochemical oxygen demand, oil and grease. total nitrogen and total phosphorus;
- The Draft Permit prohibits the discharge of chemicals, additives, detergents, prophylactic bacterial medication, pharmaceuticals, pentachlorophenol, trichlorophenol, and vehicle wash water;
- The Draft Permit prohibits the discharge of pollutants or combination of pollutants in toxic amounts;
- The effluent limitations and conditions in the Draft Permit were developed to be protective of all aquatic life; and
- The Draft Permit prohibits violations of the state water quality standards.

EPA believes that the conditions and limitations contained in the Draft Permit adequately protects all aquatic life, including designated EFH species in the receiving water. Further mitigation is not warranted. Should adverse impacts to EFH be detected as a result of this permit action, or if new information is received that changes the basis for EPA's conclusions, NOAA Fisheries Habitat Division will be contacted and an EFH consultation will be re-initiated.

At the beginning of the public comment period, EPA notified NOAA Fisheries Habitat and Ecosystem Services Division that the Draft Permit and Fact Sheet were available for review and provided a link to the EPA NPDES Permit website to allow direct access to the documents. In addition to this Fact Sheet and the Draft Permit, information to support EPA's finding was included in a letter under separate cover that will be sent to the NOAA Fisheries Habitat and Ecosystem Services Division during the public comment period.

### 6.3 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 et seq., and its implementing regulations (15 CFR Part 930) require a determination that any federally licensed or permitted activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) is consistent with the enforceable policies of the CZMP. EPA is prohibited from issuing a NPDES permit for any activity affecting any land or water use or natural resource of the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification or the Secretary of Commerce overrides the State's nonconcurrence.

In New Hampshire, the New Hampshire Coastal Program (NHCP) – 222 International Drive, Suite 175, Portsmouth, NH 03801 – is responsible for issuing federal consistency decisions. The Permittee submitted the required federal consistency certification and necessary data and information to the NHCP in a letter dated May 1, 2020. EPA expects the NHCP will find the discharge consistent with the CZMA and its enforceable policies.

## 7.0 Public Comments, Hearing Requests, and Permit Appeals

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:

Danielle Gaito
EPA Region 1
5 Post Office Square, Suite 100 (06-1)
Boston, MA 02109-3912
Telephone: (617) 918-1297
Email: gaito.danielle@epa.gov

Prior to the close of the public comment period, any person may submit a written request to EPA for a public hearing to consider the Draft Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held if the criteria stated in 40 CFR § 124.12 are satisfied. In reaching a final decision on the Draft Permit, EPA will respond to all significant comments in a Response to Comments document attached to the Final Permit and make these responses available to the public at EPA's Boston office and on EPA's website.

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

applicant, and provide a copy or notice of availability of the final decision to each person who submitted written comments or requested notice. Within 30 days after EPA serves notice of the issuance of the Final Permit decision, an appeal of the federal NPDES permit may be commenced by filing a petition for review of the permit with the Clerk of EPA's Environmental Appeals Board in accordance with the procedures at 40 CFR § 124.19.

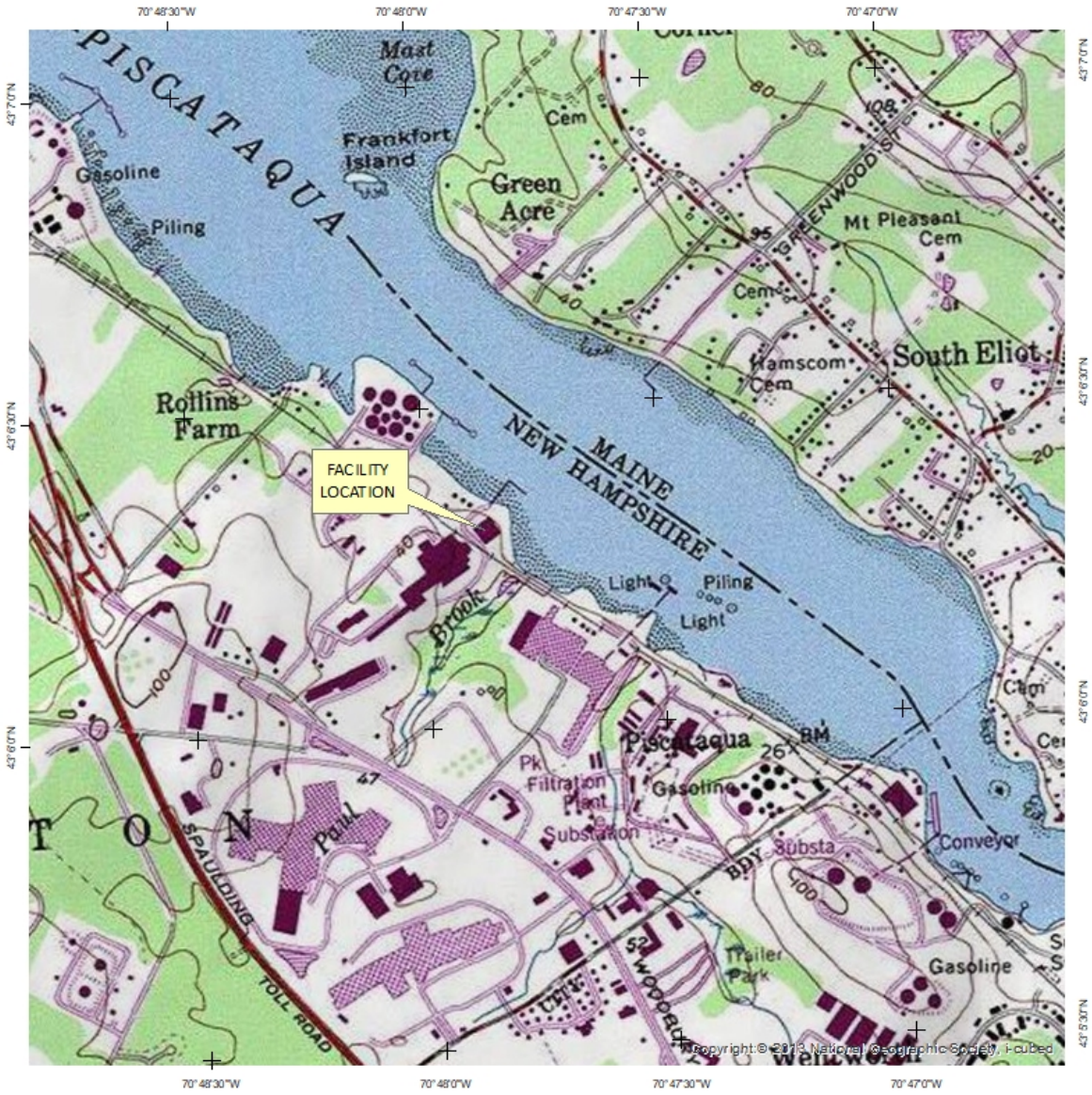
## 8.0 Administrative Record

The administrative record on which this Draft Permit is based may be accessed on EPA's website or at EPA's Boston office by appointment, Monday through Friday, excluding holidays from Danielle Gaito, EPA Region 1, 5 Post Office Square, Suite-100 (06-1), Boston, MA 02109-3912, or via email to gaito.danielle@epa.gov.

Date

Ken Moraff, Director
Water Division
U.S. Environmental Protection Agency

**Figure 1: Location Map**




Scale 1 : 15,183
0 500 Meters
0 1,000 Feet

Regulated Facilities: EPA

**FIGURE 1**
**Little Bay Seafood**
**Location Map**

Newington, NH

EPA
4/15/2021

**Figure 2: Site Plan**

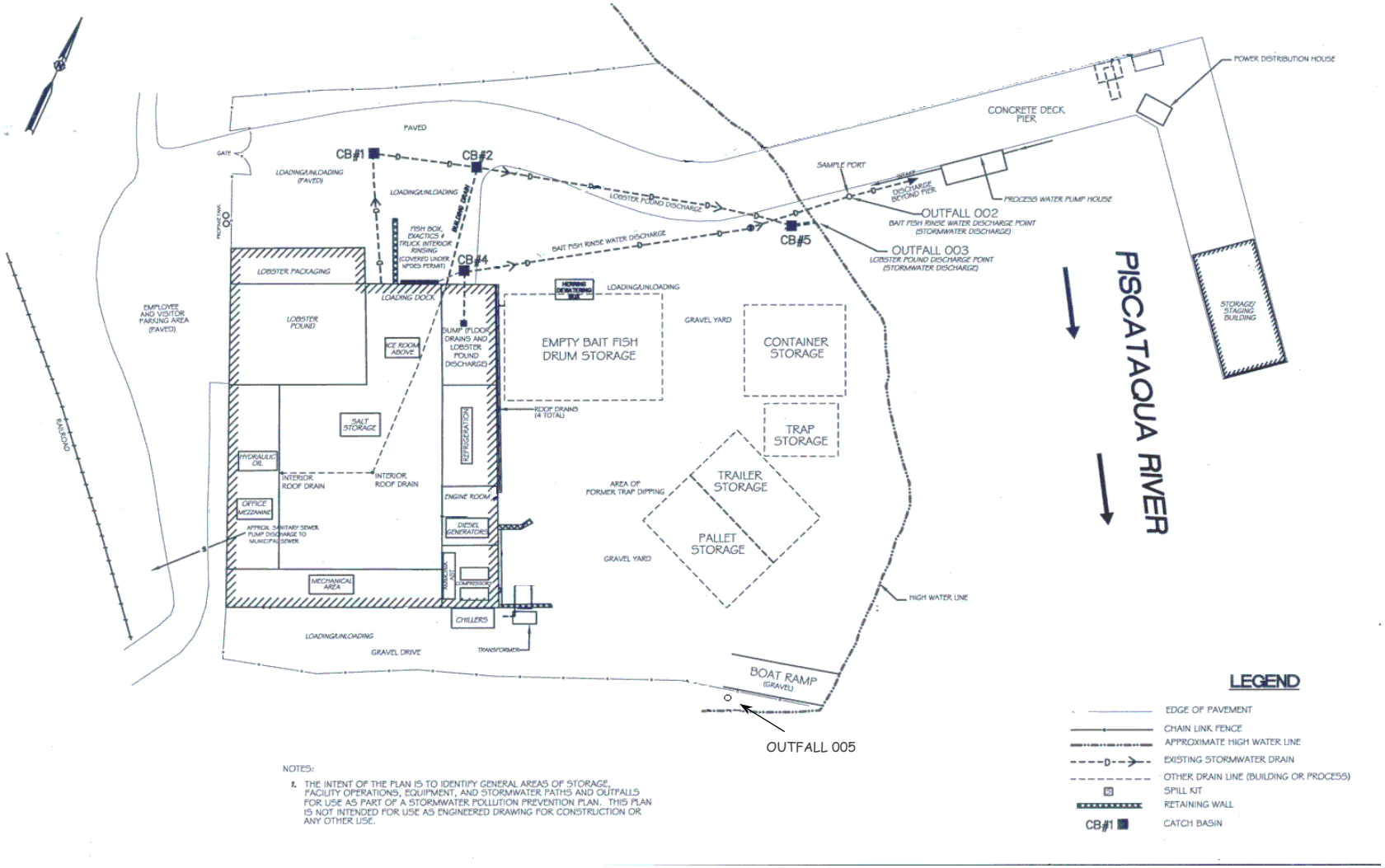


**Figure 3: Schematic of Water Flow**

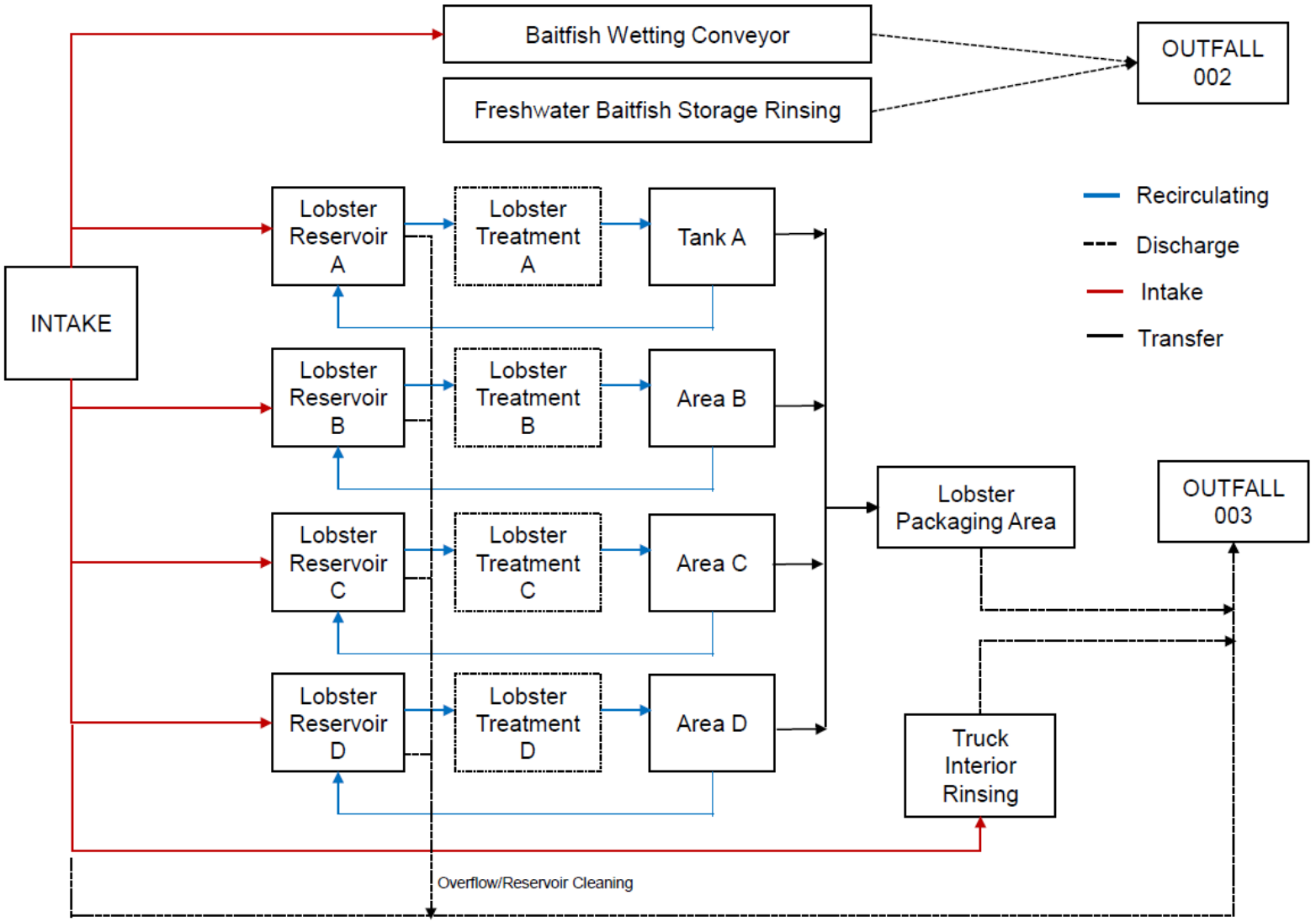
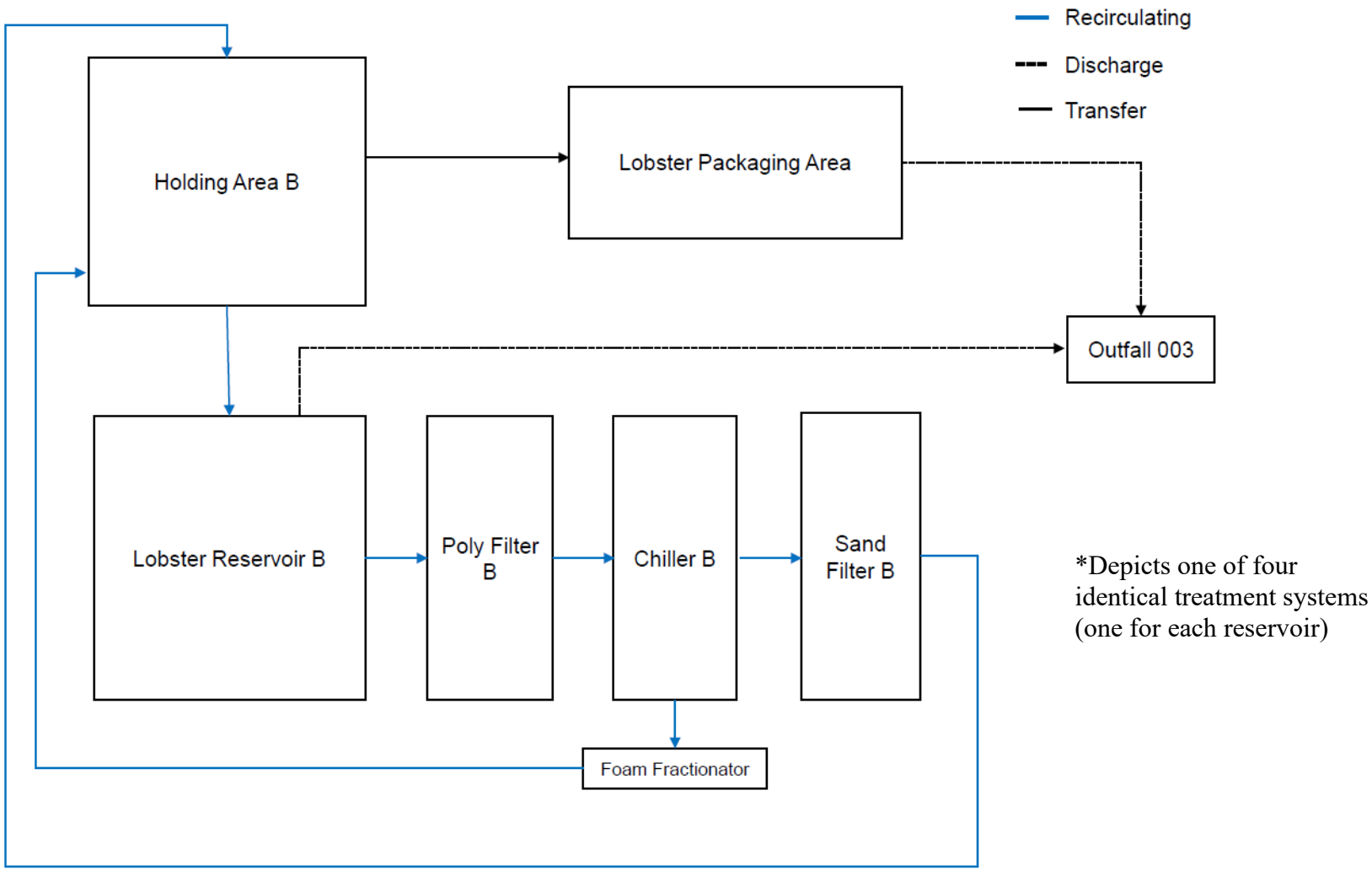


**Figure 4: Schematic of Lobster Tank Recirculation System**



## Appendix A: Discharge Monitoring Data

| **Little Bay Seafood: Outfall 002 Monthly Effluent Monitoring** | | | | |
|---|---|---|---|---|
| **Parameter** | **Flow** | **Baitfish** | **pH** | **pH** |
| | **MO TOTAL** | **MO TOTAL** | **Minimum** | **Maximum** |
| **Units** | **MGD** | **lbs** | **SU** | **SU** |
| **Effluent Limit** | **Report** | **Report** | **6.5** | **8** |
| **Minimum** | **0.00116** | **6375** | **7.02** | **7.02** |
| **Maximum** | **0.0279** | **38584** | **7.97** | **7.97** |
| **Median** | **0.0024** | **15736.5** | **7.835** | **7.835** |
| **No. of Violations** | **N/A** | **N/A** | **0** | **0** |
| **Monitoring Period End Date** | | | | |
| 1/31/2016 | 0.00186 | 10479 | 7.96 | 7.96 |
| 2/29/2016 | 0.00159 | 15171 | 7.77 | 7.77 |
| 3/31/2016 | 0.00219 | 11700 | 7.89 | 7.89 |
| 4/30/2016 | 0.00174 | 9619 | 7.66 | 7.66 |
| 5/31/2016 | 0.0025 | 16200 | 7.94 | 7.94 |
| 6/30/2016 | 0.002945 | 15835 | 7.49 | 7.49 |
| 7/31/2016 | 0.0023 | 16594 | 7.74 | 7.74 |
| 8/31/2016 | 0.00167 | 10170 | 7.74 | 7.74 |
| 9/30/2016 | 0.00146 | 13114 | 7.27 | 7.27 |
| 10/31/2016 | 0.00116 | 10425 | 7.73 | 7.73 |
| 11/30/2016 | 0.00124 | 6375 | 7.91 | 7.91 |
| 12/31/2016 | 0.00314 | 15244 | 7.73 | 7.73 |
| 1/31/2017 | 0.00279 | 17000 | 7.65 | 7.65 |
| 2/28/2017 | 0.0279 | 14231 | 7.94 | 7.94 |
| 3/31/2017 | 0.00313 | 17363 | 7.67 | 7.67 |
| 4/30/2017 | 0.0022 | 12263 | 7.76 | 7.76 |
| 5/31/2017 | 0.00203 | 15447 | 7.66 | 7.66 |
| 6/30/2017 | 0.003 | 28679 | 7.02 | 7.02 |
| 7/31/2017 | 0.003255 | 23094 | 7.36 | 7.36 |
| 8/31/2017 | 0.0016 | 10919 | 7.93 | 7.93 |
| 9/30/2017 | 0.0027 | 13914 | 7.91 | 7.91 |
| 10/31/2017 | 0.0023 | 11531 | 7.85 | 7.85 |
| 11/30/2017 | 0.0016 | 10181 | 7.89 | 7.89 |
| 12/31/2017 | 0.0248 | 14310 | 7.15 | 7.15 |

| | | | | |
|---|---|---|---|---|
| 1/31/2018 | 0.0033 | 7693 | 7.85 | 7.85 |
| 2/28/2018 | 0.0033 | 24750 | 7.92 | 7.92 |
| 3/31/2018 | 0.003 | 18825 | 7.84 | 7.84 |
| 4/30/2018 | 0.0033 | 25264 | 7.94 | 7.94 |
| 5/31/2018 | 0.002 | 13238 | 7.89 | 7.89 |
| 6/30/2018 | 0.0035 | 17213 | 7.49 | 7.49 |
| 7/31/2018 | 0.00372 | 22050 | 7.67 | 7.67 |
| 8/31/2018 | 0.001395 | 8269 | 7.97 | 7.97 |
| 9/30/2018 | 0.00264 | 16380 | 7.85 | 7.85 |
| 10/31/2018 | 0.0021 | 15638 | 7.4 | 7.4 |
| 11/30/2018 | 0.0017 | 12960 | 7.81 | 7.81 |
| 12/31/2018 | 0.0017 | 12150 | 7.76 | 7.76 |
| 1/31/2019 | 0.0015 | 15043 | 7.83 | 7.83 |
| 2/28/2019 | 0.0016 | 14300 | 7.96 | 7.96 |
| 3/31/2019 | 0.0017 | 15107 | 7.85 | 7.85 |
| 4/30/2019 | 0.001674 | 12971 | 7.78 | 7.78 |
| 5/31/2019 | 0.0021 | 17990 | 7.79 | 7.79 |
| 6/30/2019 | 0.0024 | 21950 | 7.95 | 7.95 |
| 7/31/2019 | 0.001953 | 18485 | 7.97 | 7.97 |
| 8/31/2019 | 0.0037 | 29555 | 7.94 | 7.94 |
| 9/30/2019 | 0.0033 | 32150 | 7.94 | 7.94 |
| 10/31/2019 | 0.0016 | 10631 | 7.83 | 7.83 |
| 11/30/2019 | 0.0023 | 19425 | 7.84 | 7.84 |
| 12/31/2019 | 0.00167 | 13590 | 7.82 | 7.82 |
| 1/31/2020 | 0.0024 | 16013 | 7.9 | 7.9 |
| 2/29/2020 | 0.00425 | 24332 | 7.96 | 7.96 |
| 3/31/2020 | 0.0034 | 17010 | 7.88 | 7.88 |
| 4/30/2020 | 0.0037 | 28575 | 7.86 | 7.86 |
| 5/31/2020 | 0.0025 | 21536 | 7.82 | 7.82 |
| 6/30/2020 | 0.004 | 23327 | 7.54 | 7.54 |
| 7/31/2020 | 0.00372 | 28388 | 7.95 | 7.95 |
| 8/31/2020 | 0.00372 | 32288 | 7.94 | 7.94 |
| 9/30/2020 | 0.0051 | 38584 | 7.6 | 7.6 |
| 10/31/2020 | 0.0051 | 37050 | 7.82 | 7.82 |
| 11/30/2020 | 0.0036 | 26349 | 7.91 | 7.91 |
| 12/31/2020 | 0.0022 | 13860 | 7.69 | 7.69 |
| 1/31/2021 | 0.0056 | 31387 | 7.79 | 7.79 |

Notes:
0 = parameter not detected
N/A = not applicable

| **Little Bay Seafood: Outfall 002<br>Quarterly Effluent Monitoring: Short Composite** | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Parameter** | **BOD5** | **TSS** | **Ammonia** | **TKN** | **Nitrate** | **TP** | **Oil & grease** |
| | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** |
| **Units** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** |
| **Effluent Limit** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** |
| **Minimum** | **13** | **16** | **0.9** | **2.7** | **0** | **0.03** | **0** |
| **Maximum** | **1700** | **670** | **120** | **260** | **0** | **44** | **300** |
| **Median** | **320** | **130** | **12** | **47** | **0** | **14** | **14.835** |
| **Monitoring Period End Date** | | | | | | | |
| 3/31/2010 | 600 | 130 | 29 | 240 | < 5 | 41 | 12.67 |
| 6/30/2010 | 35 | 27 | 2.2 | 6 | < 2 | 0.03 | 5 |
| 9/30/2010 | 100 | 64 | 3.6 | 14 | < 5 | 2.2 | 4 |
| 12/31/2010 | 20 | 16 | 1.4 | 6.4 | 0 | 0.43 | 0 |
| 3/31/2011 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 |
| 6/30/2011 | 240 | 130 | 11 | 36 | 0 | 4.4 | 17 |
| 9/30/2011 | 1400 | 640 | 68 | 140 | 0 | 44 | 44.5 |
| 12/31/2011 | 1700 | 670 | 120 | 260 | 0 | 36 | 48 |
| 3/31/2012 | 13 | 38 | 0.9 | 2.7 | 0 | 0.48 | 7 |
| 6/30/2012 | 1300 | 600 | 4.4 | 27 | 0 | 44 | 175 |
| 9/30/2012 | 300 | 52 | 16 | 75 | 0 | 21 | 4.5 |
| 12/31/2012 | 870 | 160 | 35 | 220 | 0 | 29 | 19 |
| 3/31/2013 | 340 | 140 | 15 | 74 | 0 | 19 | 11.5 |
| 6/30/2013 | 360 | 110 | 13 | 58 | 0 | 17 | 300 |
| 9/30/2013 | 160 | 190 | 6 | 30 | 0 | 4.3 | 260 |
| 12/31/2013 | 650 | 190 | 23 | 150 | 0 | 11 | 84 |
| 3/31/2014 | 74 | 25 | 2.8 | 13 | 13 | 1.4 | 11 |

Notes:
0 = parameter not detected

| **Little Bay Seafood: Outfall 002**<br>**Quarterly Effluent Monitoring: Long Composite** | | | | | | | |
|---|---|---|---|---|---|---|---|
| **Parameter** | **BOD5** | **TSS** | **Ammonia** | **TKN** | **Nitrate** | **TP** | **Oil & grease** |
| | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** |
| **Units** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** |
| **Effluent Limit** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** |
| **Minimum** | **18** | **20** | **0.9** | **3** | **0** | **0.43** | **9** |
| **Maximum** | **4900** | **1600** | **86** | **430** | **0** | **100** | **9900** |
| **Median** | **335** | **100** | **16.5** | **69.5** | **0** | **9.2** | **67.5** |
| **Monitoring Period End Date** | | | | | | | |
| 3/31/2010 | 730 | 190 | 32 | 250 | < 5 | 46 | 35 |
| 6/30/2010 | 4900 | 1600 | 86 | 430 | < 2 | 100 | 9900 |
| 9/30/2010 | 730 | 180 | 22 | 100 | < 5 | 16 | 97 |
| 12/31/2010 | 490 | 58 | 15 | 100 | 0 | 12 | 13 |
| 3/31/2011 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 | NODI: 9 |
| 6/30/2011 | 1300 | 440 | 47 | 170 | 0 | 34 | 200 |
| 9/30/2011 | 940 | 490 | 74 | 140 | 0 | 47 | 240 |
| 12/31/2011 | 210 | 160 | 11 | 29 | 0 | 2.8 | 160 |
| 3/31/2012 | 18 | 43 | 0.9 | 3 | 0 | 0.56 | 14 |
| 6/30/2012 | 56 | 60 | 12 | 21 | 0 | 2 | 350 |
| 9/30/2012 | 45 | 58 | 8 | 13 | 0 | 0.91 | 9 |
| 12/31/2012 | 310 | 100 | 18 | 60 | 0 | 6.4 | 38 |
| 3/31/2013 | 360 | 100 | 19 | 79 | 0 | 23 | 23 |
| 6/30/2013 | 34 | 31 | 4.1 | 9.8 | 0 | 1.2 | 600 |
| 9/30/2013 | 1100 | 500 | 31 | 190 | 0 | 15 | 139 |
| 12/31/2013 | 27 | 20 | 2.8 | 4.8 | 0 | 0.43 | 30 |
| 3/31/2014 | 67 | 26 | 2.1 | 11 | 13 | 0.76 | 4 |

Notes:
0 = parameter not detected

| **Little Bay Seafood: Outfall 003 Monthly Effluent Monitoring** | | | |
|---|---|---|---|
| **Parameter** | **Flow** | | **Flow** |
| **Units** | **MGD** | | **MGD** |
| **Effluent Limit** | **Report** | | |
| **Minimum** | **0.0053** | | |
| **Maximum** | **0.019** | | |
| **Median** | **0.0122** | | |
| **Monitoring Period End Date** | | **Monitoring Period End Date** | |
| 1/31/2016 | 0.016 | 8/31/2018 | 0.0078 |
| 2/29/2016 | 0.0151 | 9/30/2018 | 0.012375 |
| 3/31/2016 | 0.015 | 10/31/2018 | 0.0129 |
| 4/30/2016 | 0.0107 | 11/30/2018 | 0.0079 |
| 5/31/2016 | 0.0158 | 12/31/2018 | 0.0104 |
| 6/30/2016 | 0.0125 | 1/31/2019 | 0.0111 |
| 7/31/2016 | 0.014156 | 2/28/2019 | 0.0082 |
| 8/31/2016 | 0.0159 | 3/31/2019 | 0.0069 |
| 9/30/2016 | 0.01329 | 4/30/2019 | 0.0067 |
| 10/31/2016 | 0.016 | 5/31/2019 | 0.0063 |
| 11/30/2016 | 0.015 | 6/30/2019 | 0.0064 |
| 12/31/2016 | 0.01733 | 7/31/2019 | 0.00745 |
| 1/31/2017 | 0.0155 | 8/31/2019 | 0.0091 |
| 2/28/2017 | 0.0165 | 9/30/2019 | 0.0077 |
| 3/31/2017 | 0.0122 | 10/31/2019 | 0.0084 |
| 4/30/2017 | 0.011 | 11/30/2019 | 0.00929 |
| 5/31/2017 | 0.015 | 12/31/2019 | 0.0058 |
| 6/30/2017 | 0.0154 | 1/31/2020 | 0.0062 |
| 7/31/2017 | 0.0183 | 2/29/2020 | 0.0075 |
| 8/31/2017 | 0.01075 | 3/31/2020 | 0.00552 |
| 9/30/2017 | 0.0153 | 4/30/2020 | 0.0053 |
| 10/31/2017 | 0.0166 | 5/31/2020 | 0.0067 |
| 11/30/2017 | 0.019 | 6/30/2020 | 0.0073 |
| 12/31/2017 | 0.015 | 7/31/2020 | 0.0078 |
| 1/31/2018 | 0.0127 | 8/31/2020 | 0.0067 |
| 2/28/2018 | 0.013 | 9/30/2020 | 0.0093 |
| 3/31/2018 | 0.014 | 10/31/2020 | 0.0133 |
| 4/30/2018 | 0.013 | 11/30/2020 | 0.0116 |
| 5/31/2018 | 0.012 | 12/31/2020 | 0.0085 |
| 6/30/2018 | 0.014 | 1/31/2021 | 0.0119 |
| 7/31/2018 | 0.0182 | Notes: 0 = parameter not detected | |

| **Little Bay Seafood: Outfall 003<br>Annual Effluent Monitoring** | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Parameter** | **BOD5** | **TSS** | **Ammonia** | **TKN** | **Nitrate** | **TP** | **Oil & grease** | **pH** | **pH** |
| | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Daily Max** | **Minimum** | **Maximum** |
| **Units** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **mg/L** | **SU** | **SU** |
| **Effluent Limit** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** | **Report** | **6.5** | **8** |
| **Minimum** | **0** | **7.2** | **0** | **0.6** | **0** | **0.07** | **0** | **7.28** | **7.28** |
| **Maximum** | **56** | **380** | **1.6** | **15** | **64** | **11** | **21** | **7.89** | **7.89** |
| **Median** | **10** | **48** | **0.75** | **3.7** | **14** | **2.1** | **0** | | |
| **No. of Violations** | **N/A** | **N/A** | **N/A** | **N/A** | **N/A** | **N/A** | **N/A** | **0** | **0** |
| **Monitoring Period End Date** | | | | | | | | | |
| 8/31/2011 | 0 | 54 | 1.1 | 3.7 | 0 | 0.72 | 0 | 7.74 | 7.74 |
| 8/31/2012 | 10 | 42 | 1.6 | 3.7 | 5.1 | 1.1 | 0 | 7.38 | 7.38 |
| 8/31/2013 | 19 | 63 | 0.7 | 4.3 | 14 | 1.5 | 0 | 7.54 | 7.54 |
| 8/31/2014 | 56 | 380 | 1.5 | 15 | 31 | 7.7 | 21 | 7.28 | 7.28 |
| 8/31/2015 | 19 | 110 | 0.8 | 4.7 | 28 | 3.2 | 0 | 7.44 | 7.44 |
| 8/31/2016 | 10 | 41 | 0.5 | 3 | 16 | 3.2 | 0 | 7.78 | 7.78 |
| 8/31/2017 | 16 | 77 | 0.9 | 4.8 | 14 | 2.7 | 0 | 7.79 | 7.79 |
| 8/31/2018 | 0 | 7.2 | 0 | 0.6 | 0 | 0.07 | 0 | 7.89 | 7.89 |
| 8/31/2019 | 0 | 13 | 0 | 1.5 | 11 | 1.5 | 0 | 7.61 | 7.61 |
| 8/31/2020 | 0 | 21 | 0.6 | 0.7 | 64 | 11 | 0 | 7.57 | 7.57 |

Notes: 0 = parameter not detected

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY-REGION 1 (EPA)
WATER DIVISION
5 POST OFFICE SQUARE
BOSTON, MASSACHUSETTS 02109

NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES (NHDES)
WATER DIVISION
P.O. BOX 95
CONCORD, NEW HAMPSHIRE 03302-0095

JOINT EPA PUBLIC NOTICE OF A DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE INTO WATERS OF THE UNITED STATES UNDER SECTION 402 OF THE CLEAN WATER ACT (CWA), AS AMENDED; NHDES PUBLIC NOTICE OF EPA REQUEST FOR STATE CERTIFICATION UNDER SECTION 401 OF THE ACT; AND NHDES PUBLIC NOTICE OF ISSUANCE OF A STATE SURFACE WATER PERMIT UNDER NH RSA 485-A:13, I(a).

PUBLIC NOTICE PERIOD: **6/4/2021 - 7/6/2021**

PERMIT NUMBER: **NH0020923**

PUBLIC NOTICE NUMBER: **NH-005-21**

NAME AND MAILING ADDRESS OF APPLICANT:

Little Bay Seafood LLC and Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Little Bay Seafood
158 Shattuck Way
Newington, NH 03801

RECEIVING WATER AND CLASSIFICATION:

Lower Piscataqua River (Class B)

PREPARATION OF THE DRAFT PERMIT, EPA REQUEST FOR CWA § 401 CERTIFICATION, AND PROPOSED ISSUANCE OF A STATE SURFACE WATER PERMIT:

EPA is issuing for public notice and comment the Draft NPDES Permit for the Little Bay Seafood facility, which discharges lobster holding water, water from baitfish wetting, fish container rinse water, and truck rinse water. The effluent limits and permit conditions imposed have been drafted pursuant to, and assure compliance with, the CWA, including EPA-approved State Surface Water Quality Standards at Env-Wq 1700 et seq. NHDES cooperated with EPA in the development of the Draft NPDES Permit. NHDES plans to adopt EPA's permit under Chapter 485-A of the New Hampshire Statutes (NH RSA 485-A:13, I(a)).

In addition, EPA has requested that NHDES grant or deny certification of this Draft Permit pursuant to Section 401 of the CWA and implementing regulations. Under federal regulations governing the NPDES program at 40 Code of Federal Regulations (CFR) § 124.53(e), state certification shall contain conditions that are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law, including any conditions more stringent than those in the Draft Permit that NHDES finds necessary to meet these requirements. In

addition, NHDES may provide a statement of the extent to which each condition of the Draft Permit can be made less stringent without violating the requirements of State law.

INFORMATION ABOUT THE DRAFT PERMIT:

The Draft Permit and explanatory Fact Sheet may be obtained at no cost at https://www.epa.gov/npdes-permits/new-hampshire-draft-individual-npdes-permits or by contacting:

Danielle Gaito
U.S. Environmental Protection Agency – Region 1
5 Post Office Square, Suite 100 (06-4)
Boston, MA 02109-3912
Telephone: (617) 918-1297
gaito.danielle@epa.gov

Following U.S. Centers for Disease Control and Prevention (CDC) and U.S. Office of Personnel Management (OPM) guidance and specific state guidelines impacting our regional offices, EPA's workforce has been directed to telework to help prevent transmission of the coronavirus. While in this workforce telework status, there are practical limitations on the ability of Agency personnel to allow the public to review the administrative record in person at the EPA Boston office. However, any electronically available documents that are part of the administrative record can be requested from the EPA contact above.

PUBLIC COMMENT AND REQUESTS FOR PUBLIC HEARINGS:

All persons, including applicants, who believe any condition of the Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by July 6, 2021, which is the close of the public comment period. Comments, including those pertaining to EPA's request for CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit, should be submitted to the EPA contact at the address or email address listed above. Upon the close of the public comment period, EPA will make all comments available to NHDES.

Any person, prior to the close of the public comment period, may submit a request in writing to EPA and NHDES for a public hearing on the Draft Permit under 40 CFR § 124.10, CWA § 401 certification and/or NHDES proposed issuance of a State Surface Water Permit. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice if the Regional Administrator finds that response to this notice indicates significant public interest. In reaching a final decision on the Draft Permit, the Regional Administrator will respond to all significant comments and make the responses available to the public.

Due to the COVID-19 National Emergency, if comments are submitted in hard copy form, please also email a copy to the EPA contact above.

FINAL PERMIT DECISION:

Following the close of the comment period, and after a public hearing, if such hearing is held, the Regional Administrator will issue a final permit decision and notify the applicant and each person who has submitted written comments or requested notice.

KEN MORAFF, DIRECTOR
WATER DIVISION
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY – REGION I

THOMAS E. O'DONOVAN, DIRECTOR
WATER DIVISION
NEW HAMPSHIRE DEPARTMENT OF
ENVIRONMENTAL SERVICES