

pounds. A maximum of 280,000 pounds of food will be fed during the calendar month of maximum feeding (the month of peak production). This activity has a Standard Industrial Classification (SIC) code of 0273.

A sketch of the location of the production area is appended as Attachments I.A and I.B.

III. DESCRIPTION OF DISCHARGE

The discharge will consist of unconsumed fish food and excrement of the saltwater fish (cobia) confined in cages submerged in the sea in the production system. A description of the type and quantity of pollutants to be discharged is listed in Table A-1 of the draft permit.

IV. DESCRIPTION OF DRAFT PERMIT CONDITIONS

The effluent limitations, monitoring requirements, schedules of compliance and other conditions of the draft permit are described in Attachment II. Also included in Attachment II is a brief summary of the basis for each effluent limitation and other conditions in the draft permit.

V. STATE CERTIFICATION REQUIREMENTS

State Certification requirements based upon a final Water Quality Certificate (WQC) issued on September 30, 2008 by the Environmental Quality Board (EQB) of the Commonwealth of Puerto Rico are described in Attachment IV. Review and appeals of limitations and conditions attributable to this certification shall be made through the applicable procedures of the Commonwealth of Puerto Rico and may not be made through EPA procedures.

VI. PROCEDURES FOR REACHING A FINAL DECISION ON THE DRAFT PERMIT

These procedures, which are set forth in 40 Code of Federal Regulations (CFR) 124, are described in the public notice of preparation of this draft permit. Included in the public notice are requirements for the submission of comments by a specified date, procedures for requesting a hearing and the nature of the hearing, and other procedures for participation in the final agency decision.

VII. NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS

The basis for including permit conditions as part of the National Environmental Policy Act (NEPA) review, as set forth in 40 CFR 122.49, are described in Attachment II.

VIII. ENDANGERED SPECIES ACT

The Endangered Species Act (ESA) consultation requirements, as set forth in 40 CFR 122.49(c), are described in Attachment II.

IX. OCEAN DISCHARGE CRITERIA REQUIREMENTS

The basis for including permit conditions as part of the Ocean Discharge Criteria requirements, as set forth in 40 CFR 125.123, is described in Attachments II and III.

X. ENVIRONMENTAL JUSTICE ANALYSIS

The Environmental Justice Analysis is described in Attachment II.

XI. ESSENTIAL FISH HABITAT REQUIREMENTS

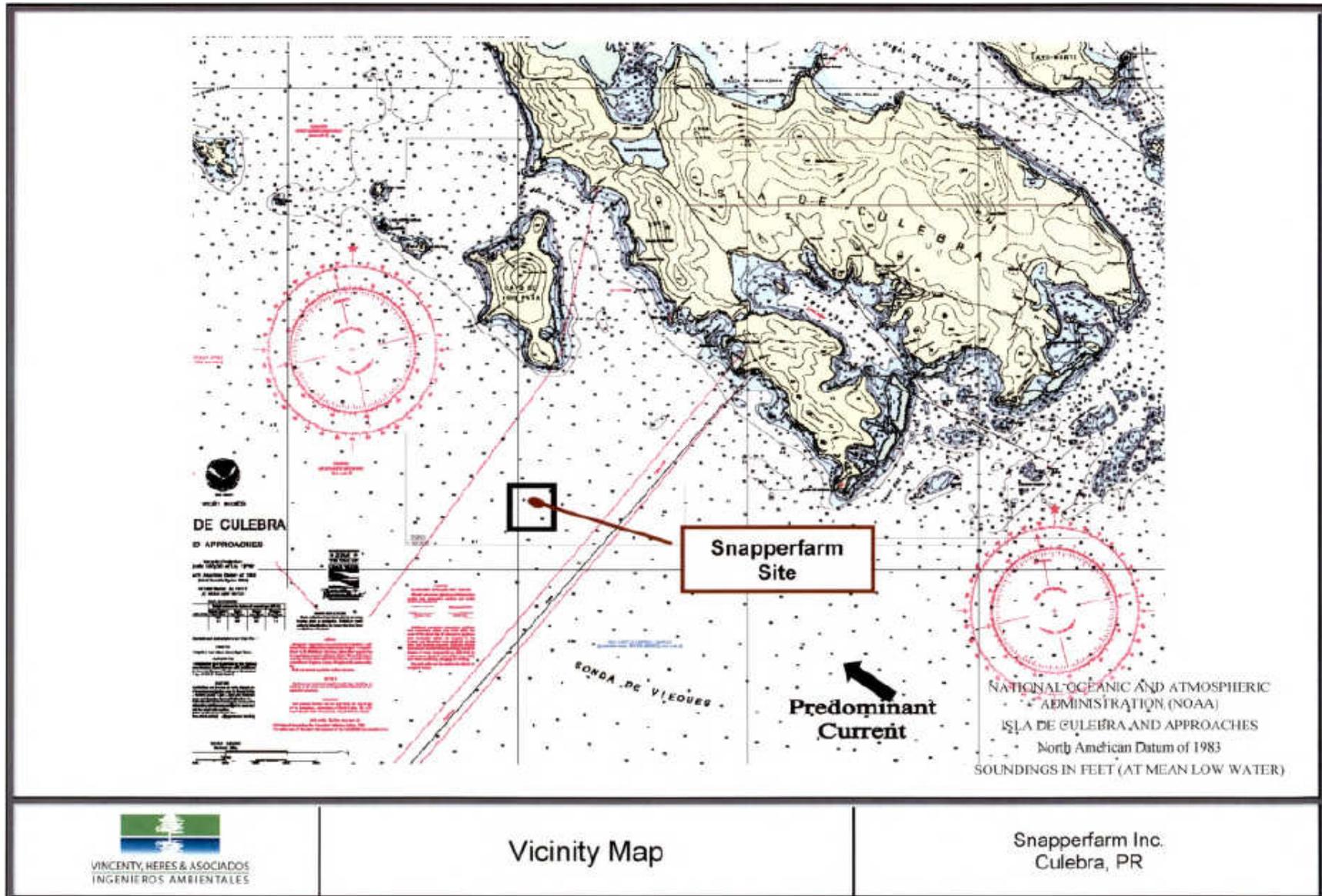
The Essential Fish Habitat (EFH) consultation requirements are described in Attachment II.

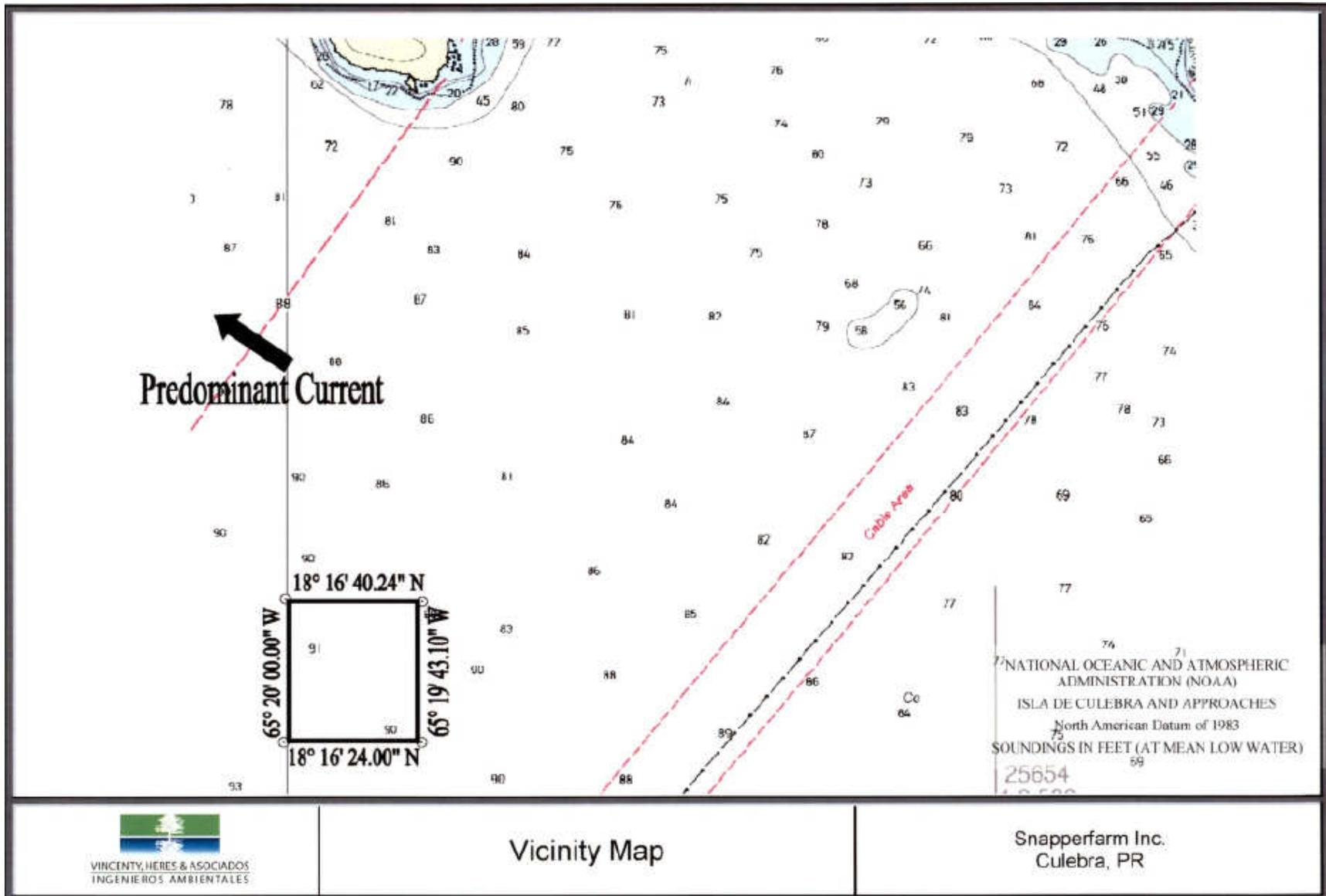
XII. EPA CONTACT

Additional information concerning the draft permit may be obtained between the hours of 8:00 A.M. and 4:30 P.M., Monday through Friday from:

JEFFREY GRATZ, CHIEF
CLEAN WATER REGULATORY BRANCH
USEPA-REGION 2
290 BROADWAY - 24TH FLOOR
NEW YORK, NEW YORK 10007-1866
(212) 637-3873

CARL SODERBERG, DIRECTOR
US EPA REGION II
CARIBBEAN ENVIRONMENTAL
PROTECTION DIVISION
EDIF CENTRO EUROPA APT 417
1492 AVENIDA PONCE DE LEON
SAN JUAN PR 00907-4127
(787) 729-6951





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DESCRIPTION OF DRAFT PERMIT CONDITIONS

The effluent limitations, monitoring requirements, and other conditions are described in the draft permit and the basis for these conditions are described below. The effluent limitations in the permit are equivalent to the most stringent values specified in the applicable technology-based guidelines or water quality-based limitations.

Requirement to Obtain a Permit – 40 Code of Federal Regulations (CFR) §122.24(a) (Permit Requirements) specifies that Concentrated Aquatic Animal Production (CAAP) facilities, as defined therein, are point sources subject to the NPDES permit program. 40 CFR §122.24(b) specifies that a CAAP facility means a hatchery, fish farm, or other facility which meets the criteria in appendix C of Part 122, or which the Director designates under 40 CFR 122.24(c). Appendix C specifies that a hatchery, fish farm, or other facility is a CAAP facility for purposes of §122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

- (a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include: (1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and (2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
- (b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include: (1) Closed ponds which discharge only during periods of excess runoff; or (2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

Appendix C definitions include: “Cold water aquatic animals” include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon. “Warm water aquatic animals” include, but are not limited to, the *Ameiuride*, *Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

EPA has determined that the facility meets these above requirements as a CAAP facility since the facility will produce a total yearly harvestable weight of 1,200,000 pounds (maximum weight present at any one time of 1,500,000 pounds) of cobia, an aquatic animal, in submerged cages according to the NPDES permit application.

Technology-based Effluent Limitations (under 40 CFR Part 451) – As discussed in this paragraph, EPA has determined that the discharge of pollutants from this facility is covered under 40 CFR Part 451 - CAAP Point Source Category, and within that category is covered under Subpart B - Net Pen Subcategory. According to the applicability section in 40 CFR 451.1, 40 CFR Part 451

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applies to the discharges of pollutants from CAAP facilities that produce 100,000 pounds or more of aquatic animals per year in a flow-through, recirculating, net pen or submerged cage system. According to 40 CFR 451.1, CAAP facilities are defined at 40 CFR 122.24 and Appendix C of 40 CFR Part 122. According to 40 CFR 451.20, Subpart B applies to the discharge of pollutants from a CAAP facility that produces 100,000 pounds or more per year of aquatic animals in net pen or submerged cage systems, except for net pen facilities rearing native species released after a growing period of no longer than 4 months to supplement commercial and sport fisheries. The facility meets the applicability requirements for 40 CFR Part 451, Subpart B since the facility will produce up to 1,200,000 pounds per year harvestable weight (1,500,000 pounds maximum weight at any one time) of cobia, an aquatic animal, in submerged cages according to the NPDES permit application.

According to the New Source Performance Standards (NSPS) in 40 CFR 451.24, any point source subject to Subpart B that is also a new source subject to these NSPS must meet the same requirements as specified in 40 CFR 451.21 representing the application of effluent limitations attainable by the application of the best practicable control technology currently available (BPT). The facility is a new source covered by NSPS in 40 CFR 451.24 since its construction will commence after the September 22, 2004 date for establishing new sources in 40 CFR Part 451.

Therefore, the draft permit is including the applicable requirements (narrative effluent limitations) in 40 CFR 451.21. 40 CFR 451.21 (a) through (h) specifies permit requirements, expressed as practices, including “feed management”, “waste collection and disposal”, “transport or harvest discharge”, “carcass removal”, “materials storage”, “maintenance”, “recordkeeping”, and “training”. Since these are narrative limitations, instead of including them in Tabular form, EPA is including them under additional requirements (see below). Also, the Best Management Practices (BMP) plan is the mechanism for describing how these practices will be achieved. Refer to the discussion on the BMP plan in the general reporting requirements section (below).

General Reporting Requirements (under 40 CFR Part 451)

As specified above, the discharge from this facility is covered under 40 CFR Part 451 - CAAP Point Source Category. Therefore, the “general reporting requirements” section of the draft permit includes the applicable general reporting/notification requirements specified in 40 CFR §451.3(a) through (d) (Report Drugs; Report Failure/Damage; Report Spills; BMP Requirements).

EPA has included a specific telephone number for providing oral reports discussed in 40 CFR §451.3(a) through (c).

EPA has included wording clarifying the following: Although the drug notification requirements in Part I.C.1 of the draft permit (as specified in 40 CFR §451.3(c)) refer to reporting the use of certain drugs where the use may lead to the discharge to waters of the U.S., Part I, Special

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Condition 1 of the draft permit does not authorize the discharge of drugs from the production system.

The general reporting requirements specified in 40 CFR §451.3(d) require the permittee to develop a BMP plan which describes how the permittee will achieve the requirements, expressed as practices (described above), in 40 CFR 451.21(a) through (h) representing the application of BPT/NSPS. It also requires the permittee to maintain the plan onsite, make the plan available on request to the permitting authority and provide certification. EPA has revised the BMP plan requirements to include the following requirements, based on Best Professional Judgement (BPJ):

- EPA has included a time frame for submission of the written certification to ensure submission prior to start of operations.
- EPA has included language allowing the permittee to maintain the BMP either on the vessel used for transport of the fish or at an associated land-based facility when an onsite location is not available.

Water Quality-based Limits

The water quality-based effluent limitations in Table A-1 for the parameters **BOD₅, Color, Copper, Dissolved Oxygen, Nitrogen (NO₃, NO₂, NH₃), Oil and Grease, pH, Solids and Other Matter, Selenium, Suspended, Colloidal or Settleable Solids, Taste and Odor Producing Substances, Temperature, Turbidity and Zinc** included in the draft permit are as imposed in Table A-1 of the final Water Quality Certificate (WQC) issued by the Environmental Quality Board of Puerto Rico (EQB) on September 30, 2008. The narrative limit for Color was corrected to remove the word “except” in the following phrase: “Shall not be altered except by other than natural phenomena...” and to correct the word “charge” to read “change”.

This is the first round permit and as such there are no applicable prior limitations for which antibacksliding/antidegradation requirements must be met.

Monitoring Requirements

The monitoring requirements in Table A-1 of the draft permit for **BOD₅, Color, Copper, Nitrogen, Total (NO₃, NO₂, NH₃), Oil and Grease, Selenium, Suspended, Colloidal or Settleable Solids, and Zinc** are based on a BPJ determination in consideration of the final WQC issued by EQB on September 30, 2008.

The measurement frequency in Table A-1 of the draft permit for **Dissolved Oxygen, pH, Temperature, and Turbidity** is based on a BPJ determination in consideration of the final WQC issued by EQB on September 30, 2008. The sample type (grab) in Table A-1 of the draft permit for these same four parameters is based on a BPJ determination in consideration of the

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significance of the discharge. EPA has not included a sample type of “In Situ” as shown in the final WQC for these parameters in the draft permit since it does not adequately specify the sample type.

The monitoring requirements in Table A-1 of the draft permit for **Ammonia, Nitrate, and Nitrite** are as specified in mitigation measure/practice number 4 in the Finding of No Significant Impact (FNSI) (Also, see Attachment II, Additional Requirement, Item 2 below).

The monitoring requirements in Table A-2 of the draft permit for **BOD₅, Color, Copper, Current Velocity, Dissolved Oxygen, Nitrogen (NO₃, NO₂, NH₃), Oil and Grease, pH, Selenium, Temperature, Turbidity and Zinc** are based on a BPJ determination in consideration of the final WQC issued by EQB on September 30, 2008.

The measurement frequency in Table A-2 of the draft permit for **Dissolved Oxygen, pH, Temperature, and Turbidity** is based on a BPJ determination in consideration of the final WQC issued by EQB on September 30, 2008. The sample type (grab) in Table A-2 of the draft permit for these same four parameters is based on a BPJ determination in consideration of the significance of the discharge. EPA has not included a sample type of “In Situ” as shown in the final WQC for these parameters in the draft permit since it does not adequately specify the sample type.

The monitoring requirements in Table A-2 of the draft permit for **Ammonia, Nitrate, and Nitrite** are as specified in mitigation measure/practice number 4 in the FNSI (Also, see Attachment II, Additional Requirement, Item 2 below).

EPA has revised the sampling point numbers shown in Table A-1 of the draft permit from 2, 4, 5, 6, 7, 8, and 9 to 002, 004, 005, 006, 007, 008, and 009, respectively, to be consistent with the use of three digits in EPA’s database for entering outfalls/sampling points.

EPA has added the sampling point number 010 in Table A-1 of the draft permit which was incorrectly omitted from the opening wording in Table A-1 of the final WQC issued by EQB on September 30, 2008 but correctly included in Special Condition 7.b and under the “Notes” section of Table A-1 of the final WQC.

EPA has added wording from the final WQC in Table A-1 of the draft permit requiring measurements of the current velocity in order to determine the current direction and specifying which sampling points are to be used for sampling depending on the current direction.

A footnote @ was included in Table A-1 of the draft permit under the parameter Suspended, Colloidal, or Settleable Solids to clarify that testing for these parameters should be conducted individually for Settleable Solids and Total Suspended Solids.

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A footnote Φ from the final WQC was included in Table A-1 of the draft permit for the parameters Copper, Selenium and Zinc.

General Conditions

These conditions apply to all permits as required by 40 CFR Part 122.41 and 122.42.

Special Conditions

The Special Conditions in the draft permit are part of EQB's final WQC, issued on September 30, 2008 except as specified below.

- Special Condition number 7.e - The document referenced in Special Condition 7.e of the final WQC issued on September 30, 2008 has been revised per clarification from EQB to read as follows: “the EPA-QA/QC of the Amended Section 301(h) Technical Support Document, EPA 842-B-94-007, September 1994 (Table D-1 Example ZID Boundary station locations)”.
- Special Condition number 7.f – Special Condition 7.f of the final WQC issued by EQB on September 30, 2008 refers to seven stations of the production area. There were only seven stations in the draft WQC (Points 002, 004, 005, 006, 007, 008, and 009). However, an eighth station (Point 010) was added in the final WQC. Therefore, EPA has corrected the wording.
- Special Condition number 12 – Special Condition 12 requires submission of reports. The final WQC has removed the due date of 60 days after the inspection, etc. that was specified in the draft WQC but has added a requirement that a report be submitted semiannually. EPA is including this requirement to submit a semiannual report in the draft permit. Semiannual reports cover the period from January through June and July through December. However, this special condition no longer specifies when the reports are to be submitted. EPA is adding wording to this special condition allowing 1 month from the end of the semiannual period until the end of July and January to submit the semiannual reports.
- Special Condition numbers 20 and 21 - Special Conditions number 20 and 21 in the final WQC were not included in the draft permit since they only pertained to the WQC not the draft permit.

Additional Requirements

1. Narrative Effluent Limitations – The technology-based narrative effluent limitations discussed above are included in the “Additional Requirements” section of the permit.

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2. National Environmental Policy Act Requirements – The regulation in 40 CFR §122.49 provides a list of Federal laws which may apply to issuance of a NPDES permit under those rules. It also requires that the procedures of the listed Federal laws must be followed where applicable and when the applicable law requires consideration or adoption of particular permit conditions or requires denial of a permit, those requirements also must be followed.

Included in the list under 40 CFR §122.49(g) is the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.* The regulation in 40 CFR §122.49(g) states that this law may require preparation of an Environmental Impact Statement (EIS) and consideration of EIS-related permit conditions (other than effluent limitations) as provided in 40 CFR §122.29(c). The regulation in 40 CFR 122.29(c) specifies that the issuance of an NPDES permit to a new source by EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA and is subject to the environmental review provisions of NEPA as set out in 40 CFR part 6, subpart F. It further requires EPA to determine whether an Environmental Impact Statement (EIS) is required under 40 CFR §122.21(l) and 40 CFR part 6, subpart F. In addition, it requires EPA, to the extent allowed by law, to issue, condition (other than imposing effluent limitations), or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse impacts of the proposed action and a review of the recommendations contained in the EIS or finding of no significant impact (FNSI). EPA has made a determination that a FNSI, not an EIS, is required.

The regulations in 40 CFR Part 6, subpart F provide procedures for carrying out the NEPA environmental review process for the issuance of new source NPDES permits including the issuance of a FNSI. The FNSI is issued when the environmental review indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts. The FNSI must list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

The FNSI prepared by EPA includes mitigation measures number 1 through 10. It indicates that no significant adverse environmental impacts will result from the proposed action provided that the measures/practices identified in the FNSI are implemented. The FNSI also indicates that EPA finds it necessary to gather site-specific data which will be used to inform future permit decisions given that large-scale aquaculture is a relatively new activity in Puerto Rico and that aquaculture practices and local natural conditions vary. Some of these mitigation measures involve monitoring. Therefore, EPA has determined that all FNSI mitigation measures are appropriate to include as conditions in the draft NPDES permit with the exception of measure number 10.

With the exception of measure number 10, these measures are within the scope of the NPDES program, and apply directly or indirectly to the regulation of the discharge of

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pollutants from this facility. Moreover, it is EPA's understanding and we fully support that Snapperfarm has already agreed to implement the Vessel Strike Avoidance Measures established by National Marine Fisheries Service (NMFS) which are reiterated in measure number 10 as follows:

Measure 10: Snapperfarm adopted the NMFS guidelines to reduce the risk associated with vessel strikes or disturbance of protected species to discountable levels.

- a) Protected Species Identification Training: Vessel crews should use an Atlantic and Gulf of Mexico reference guide that includes and helps identify the 28 species of whales and dolphins, 5 species of sea turtles and the single species of manatee that might be encountered in the Atlantic Ocean and Gulf of Mexico.
- b) Vessel Strike Avoidance: Avoid causing injury or death to marine mammals and sea turtles by:
 - Vessel operators and crews maintaining a vigilant watch for marine mammals and sea turtles and slowing down or stopping to avoid striking sighted protected species.
 - When whales are sighted, maintaining a distance of 100 yards or greater between the whale and the vessel. If the whale is believed to be a North Atlantic right whale, federal regulation requires a minimum distance of 500 yards be maintained from the animal (50 CFR §224.103 (c)).
 - When sea turtles or small cetaceans are sighted, attempting to maintain a distance of 50 yards or greater between the animal and the vessel.
 - When cetaceans are sighted, attempting to remain parallel to the animal's course and avoiding excessive speed or abrupt changes in direction until the cetacean has left the area.
 - Reducing vessel speed to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near an underway vessel. A single cetacean at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, prudent precautionary measures should always be exercised.
 - Reducing speed and shifting the engine to neutral when an animal is sighted in the vessel's path or in close proximity. Whales may surface in

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unpredictable locations or approach slowly moving vessels. Do not engage the engines until the animals are clear of the area.

- c) Injured/Dead Protected Species Reporting: Vessel crews must report sightings of any injured or dead protected species immediately, regardless of the cause of the injury or death.
- Marine mammal sightings should be reported to the Southeast U.S. Stranding Hotline: 305-862-2850
 - Sea turtle sightings should be reported to the NMFS Southeast Regional Office: 727-824-5312
 - The report should include: the time, date, and location (latitude/longitude) of the incident; the name and type of the vessel involved; the vessel's speed during the incident; a description of the incident; water depth; environmental conditions (e.g., wind speed and direction, sea state, cloud cover, and visibility); the species identification or description of the animal; and the fate of the animal. The responsible parties should remain available to assist the respective salvage and stranding network as needed.

Also, the FNSI indicates that these measures will be implemented by the permittee from project initiation until the initial permit expires and may be extended at the time of permit renewal if EPA data analysis demonstrates a need. EPA is not including in the draft NPDES permit the requirement to extend the measures. It will be addressed in the renewal permit as needed.

EPA is revising FNSI measures number 7 and 9 in the permit based on BPJ to include a due date for submission of the information specified.

The FNSI together with the environmental assessment (EA) that supports the finding must be distributed in accordance with 40 CFR § 6.400(d). This regulation requires that sufficient public review of a FNSI shall be allowed before it becomes effective and that comments submitted on the FNSI shall be considered fully before taking administrative action. EPA is distributing the FNSI and EA for public review. The EA will be available on EPA Region 2's website at <http://www.epa.gov/region02/spmm/r2nepa.htm>

3. 403(c) Ocean Discharge Criteria Requirements – EPA's basis for including the Ocean Discharge Criteria Requirements in Part I.F.1 of the draft permit is described in the 403(c) Ocean Discharge Criteria decision document included in Attachment III.

Although the requirement in Part I.F.1 of the draft NPDES permit to use Food and Drug

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Administration (FDA) approved medications is not based on the ODC requirement in 40 CFR §125.123(d), EPA has made a determination based on BPJ to include this requirement in the draft permit since it will help to control the use of medications. Also, EPA has added a note regarding the requirement dealing with the discharge of medications to clarify that Part I.A, Special Condition 1 does not authorize the discharge of drugs from the production area.

Additional Notes

1. Endangered Species Act - The regulation in 40 CFR §122.49 provides a list of Federal laws which may apply to issuance of a NPDES permit under those rules. It also requires that the procedures of the listed Federal laws must be followed where applicable and when the applicable law requires consideration or adoption of particular permit conditions or requires denial of a permit, those requirements also must be followed. Included in the list under 40 CFR §122.49(c) is the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402). This law requires the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

In a May 1, 2001 letter, NMFS determined that the installation and operation of the original two cages was unlikely to affect sea turtles or marine mammals. In a May 30, 2001 letter, the U.S. Fish and Wildlife Service (USFWS) determined that the location proposed for installation of the two original cages was within the range of the threatened roseate tern, (*Sterna dougallii*), but that the proposed project was not likely to adversely affect the species. Both of these letters were based on the operation of 2 cages.

In October 2007, Snapperfarm prepared a Biological Assessment (BA) to determine the potential of the proposed action (i.e., installation and operation of six additional cages) to affect any of the threatened, endangered, proposed species and designated or proposed essential fish habitat (critical habitats) present in the area of the project. The BA addressed the proposed action in compliance with Section 7(C) (50 CFR 402) of the ESA of 1973, as amended. On November 14, 2007, NMFS requested additional information from Snapperfarm. On December 13, 2007, Snapperfarm provided the additional information requested by NMFS. Based on this information, EPA, as discussed in the Environmental Assessment (discussed above under NEPA requirements) has concluded that the establishment of six new cages is not expected to adversely affect the species in the region. EPA is awaiting final concurrence from NMFS of EPA's determination that the proposed action is not likely to adversely affect ESA-listed whales and sea turtles or essential fish habitat.

2. Coastal Zone Management Act Requirements - According to 40 Code of Federal

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Regulations (CFR) §122.49(d), EPA is prohibited from issuing a final NPDES permit for an activity affecting land or water use in 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 non-concurrence). EPA received such concurrence from the Puerto Rico Planning Board in a letter dated May 1, 2001 for 2 cages. As of the date of preparation of the public notice of this draft NPDES permit, EPA has not received such concurrence from the Puerto Rico Planning Board for the additional 6 cages.

3. Environmental Justice Analysis – Consistent with Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” EPA performs environmental justice (EJ) assessments on areas potentially affected by proposed projects. Areas that meet EPA criteria classifying populations as an EJ area undergo a full EJ analysis. An EJ Assessment was conducted as part of the NEPA environmental review and documented in Section 4.7 of the Environmental Assessment prepared by EPA as part of the NEPA environmental review (as discussed above). Based on this EJ Assessment, Culebra, Puerto Rico (chosen as the Community of Concern (COC) for this analysis) is not considered to be a potential EJ community in accordance with EPA policy. As a result, a full EJ analysis was not conducted.

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4. Essential Fish Habitat Requirements – Pursuant to Section 305(b) (2) of the Magnuson-Stevens Fishery Conservation and Management Act, Federal agencies must consult with NMFS regarding any of their actions authorized, funded or undertaken that may adversely affect Essential Fish Habitat (EFH). In that regard, Section 7.10 of the EA, prepared as part of the NEPA review, discusses this requirement and concludes: “Based on the project design, data and observation since 2001 from the ongoing monitoring program, the proposed project is not likely to affect EFH.