UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND - REGION I
ONE CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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: **MA0040142**

PUBLIC NOTICE START AND END DATES:

NAME AND MAILING ADDRESS OF APPLICANT:

Boston Ship Repair, Inc.
32A Drydock Avenue
Boston, MA 02210

NAME AND ADDRESS OF FACILITY WHERE DISCHARGE OCCURS:

Boston Ship Repair, Inc.
32A Drydock Avenue
Boston, MA 02210

RECEIVING WATER(S): **Boston Inner Harbor to Massachusetts Bay**
{USGS Hydrologic Code #01090001 – Boston Harbor Watershed (70)}

RECEIVING WATER CLASSIFICATION(S): **Class SB, CSO**

SIC CODES: **3731**

Table of Contents

I. Proposed Action, Type of Facility and Discharge Location …… 3
II. Description of Treatment System and Discharges ……. 3
Outfalls 001 and 002 ……..……. 3
Outfalls 003 and 005 ……..……. 4
III. Receiving Water Description …… 5
IV. Limitations and Conditions ……. 5
V. Permit Basis: Statutory and Regulatory Authority …….. 5
General Requirements …… 5
Technology-Based Requirements ……..…….. 6
Water Quality-Based Requirements ……..…….. 7
Antibacksliding/Antidegradation ……..……. 8
VI. Explanation of Permit's Effluent Limitations ….……. 9
Best Management Practices (BMP) Plan ….……..……. 9
Outfall Monitoring……..……. 10
VII. Essential Fish Habitat Determination (EFH) ……..…… 11
VIII. Endangered Species Act (ESA) …… 13
IX. State Certification Requirements …… 14
X. Public Comment Period, Public Hearing, and Procedures for Final Decision .. 14
XI. EPA and MassDEP Contacts …….. 15

Figure 1 - Facility Location
Figure 2 - Facility Site Plan
Figure 3 - Water Flow Diagram

I. Proposed Action, Type of Facility and Discharge Location

Boston Ship Repair, Inc. (BSR), the "Permittee", has applied to the U.S. Environmental Protection Agency for reissuance of a NPDES permit to discharge into Boston Harbor. The permittee is engaged in the repair and modification of sea going vessels. BSR leases this shipyard from the Boston Redevelopment Authority (BRA). See **Figure 1** for the facility location, **Figure 2** for a site plan of the facility and **Figure 3** for a water flow diagram of all outfalls.

II. Description of Treatment System and Discharges

BSR leases this shipyard and graving dock, also designated as Drydock number 3, located on Boston Harbor, from the BRA. This dry-dock was built in 1915 by the United States Navy and is located on an 11 acre site at 32A Drydock Road. The dry-dock is constructed of concrete, stone, and granite and is 1075 feet long, 149 feet wide, and 51 feet deep.

The site includes several buildings which provide a variety of services to docked vessels, as shown on **Figure 2.** These services include abrasive blasting, painting, and mechanical repairs. The BSR Offices are located on site in two office trailers adjacent to the dry-dock.

Sources of Discharge

Outfall 001: Dry-dock Dewatering - Main Pump

Seagoing vessels contract with BSR for service and repairs and typically have a scheduled time period when they will be docked for such service. When there is no vessel in the dry-dock, the dry-dock is typically kept flooded. As a vessel approaches the dry-dock, the caisson gate is opened and the vessel is brought into the dry-dock with the assistance of tug boats and winches. After a vessel is securely in the dry-dock and positioned over the keel blocks, the caisson gate is sealed. At this point, up to fifty million gallons of ocean water is pumped from the dry-dock through Outfall 001 to Boston Inner Harbor. The pumping rate is up to 103,000 GPM. The main pump loses head when the dry-dock water depth is less than approximately three feet. The remainder of the water is removed by a stripping pump described below. When all repairs and servicing of such vessel is completed, usually within one to two weeks, the dry-dock is flooded and the vessel is floated back out into Boston Harbor.

Outfall 002: Dry-Dock Dewatering - Stripping Pump (internal outfall)

Water in the dry-dock that is not removed by the main pump is removed by a stripping pump with a 267,400 gallon per hour capacity through Outfall 002 to Boston Inner Harbor. The stripping pump is also used to remove both water that leaks around the

caisson seal and the rain water that collects in the dry-dock and usually pumps for a few hours of every day that a vessel is docked. In 2006, the permittee discovered that this outfall structure experienced a pipe failure. This failure was below grade and could not be easily accessed for repair. Therefore, the permittee re-routed this discharge in early 2007 so that it now discharges to the same outfall structure as Outfall 001. Whereas previously these two outfalls were a few feet from each other, they now share a common discharge point at 34 feet below the mean low water (MLW) level. This outfall will remain designated as Outfall 002, but is now an internal outfall that must be sampled in the drydock at a point prior to discharging to Outfall 001.

Outfall 003: Fire Suppression and Non-Contact Pump Cooling Water

The shipyard maintains an ocean water fire main as a safety precaution when vessels are docked at the facility. This fire pump is an electric, deep well pump, which pumps water continuously when vessels are docked and typically discharges this water back out to the harbor about 50 feet from the pump location. This pump has a capacity of 864,000 gallons per day, so that roughly this amount of water is discharged every day that there is a vessel docked. A relatively small volume of this water is sometimes used as non-contact cooling water in refrigeration and air conditioning systems on docked vessels and varies considerably depending on the size of the vessel, the amount of crew on board and the time of year. This non-contact cooling water is pumped to the drydock and is discharged through Outfall 002 with the other stripping pump discharges to Boston Inner Harbor.

Outfall 005: Caisson Ballast Water

Caisson ballast (ocean) water is discharged to Boston Inner Harbor and replaced with air to raise the caisson and seal the dry-dock. Each docking and undocking operation results in the estimated discharge of 363,400 gallons of water from this caisson system.

***Outfall 004*: Infiltration Sump Water (Non-NPDES Discharge)**

Dockside infiltration water is pumped from a sump into the municipal collection system. Although this is identified as an outfall in the BSR application dated June 27, 2001, the discharge is regulated as a contributor to the municipal collection system, rather than in this individual permit.

Storm Water:

Two storm catch basins in the assembly area drain to the municipal storm water collection system.

Vessel Wastes:

Normal wastes produced aboard seagoing vessels include sanitary water, grey water, contaminated bilge water and non-contact cooling water. These waters are not authorized for discharge to Boston Harbor, with the exception of the occasional non-contact cooling water while vessels are docked as described above. These wastewaters are either discharged to the Boston Water and Sewer collection system or hauled off site for appropriate disposal. The handling of these waters is detailed in the facility's Best Management Practices (BMP) plan.

Sediment:

Sediment enters the dry dock when the caisson is lowered to dock or undock a ship. Sediment removed from the dry-dock floor is not allowed to be discharged to Boston Harbor. These sediments are collected and hauled off site for disposal in accordance with land disposal regulations. The handling of these waters is detailed in the facility's BMP plan. A total suspended solids (TSS) monitoring requirement has been established for Outfall 002, to confirm that the BMPs are effective in minimizing the solids being discharged to Boston Harbor.

Solid Wastes:

Blasting grit, paint chips, paint cans and all other forms of solid wastes are disposed off site in conformance with all appropriate solid waste regulations. As noted earlier, the BMP plan addresses these activities.

III. Receiving Water Description

Under the Massachusetts water use classification system, the Massachusetts Department of Environmental Protection (MassDEP) has designated Boston Inner Harbor as a Class SB water {314 Code of Massachusetts Regulations (CMR) 4.00}, with some Combined Sewer Overflows (CSO). Class SB waters are designated as a habitat for fish, other aquatic life and wildlife and for primary and secondary recreation. In approved areas, they shall be suitable for shellfish harvesting with depuration (Restricted Shellfish Areas). These waters shall have consistently good aesthetic value. This water segment, #MA70-02, is on the MassDEP's 2004 303(d) list of impaired waters for priority organics and pathogens.

IV. Limitations and Conditions

The effluent limitations and all other requirements described in Part VI of this Fact Sheet may be found in the draft permit.

V. Permit Basis: Statutory and Regulatory Authority

General Requirements

The Clean Water Act (CWA) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the CWA. The NPDES permit is the mechanism used to implement technology and water quality-based effluent limitations and other requirements including monitoring and reporting. This draft NPDES permit was developed in accordance with various statutory and regulatory requirements established pursuant to the CWA and any applicable State regulations. The regulations governing the EPA NPDES permit program are generally found at 40 CFR Parts 122, 124, 125, and 136.

When developing permit limits, EPA must consider the most recent technology-based treatment and water quality-based requirements. Subpart A of 40 CFR Part 125 establishes criteria and standards for the imposition of technology-based treatment requirements in permits under Section 301(b) of the CWA, including the application of EPA-promulgated effluent limitations and case-by-case determinations of effluent limitations under Section 402(a)(1) of the CWA. EPA is required to consider technology and water quality-based requirements as well as all limitations and requirements in the existing permit when developing permit limits.

Technology-Based Requirements

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

In general, the statutory deadline for non-POTW, technology-based effluent limitations must have been 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 can not be authorized by a NPDES permit.

In the absence of published technology-based effluent guidelines, the permit writer is authorized under Section 402(a)(1)(B) of the CWA to establish effluent limitations on a case-by-case basis using best professional judgment (BPJ).

The effluent monitoring requirements have been established to yield data representative of the discharges under the authority of Section 308(a) of the Clean Water Act, according

to regulations set forth at 40 CFR § 122.41(j), 122.44(i) and 122.48. The monitoring program in the permit specifies routine sampling and analysis which will provide continuous information on the reliability and effectiveness of the installed pollution abatement equipment. The approved analytical procedures are to be found in 40 CFR 136 unless other procedures are explicitly required in the permit.

There are no applicable technology guidelines (effluent limitations guidelines) for Shipbuilding and Repair. EPA issued a Draft Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Point Source Category in December of 1979. These draft Guidelines were never finalized. In the absence of published technology-based effluent guidelines, the permit writer is authorized under Section 402(a)(1) of the CWA to establish effluent limitations on a case-by-case basis using best professional judgement (BPJ). See 40 CFR §§125.3 (c)(2) and (c)(3). The factors to be considered in developing BAT limits are set forth at 40 C.F.R. §§ 125.3(c)(2)(i) and (ii) and 125.3(d)(3)(i) - (vi) and include, among other things, the age of existing facilities, engineering issues, process changes, non-water quality-related environmental impacts, and the costs of achieving required effluent pollutant reductions.

Water Quality-Based Requirements

Water quality-based limitations are required in NPDES permits when EPA and the State determine that effluent limits more stringent than technology-based limits are necessary to maintain or achieve state or federal water quality standards (WQS). See Section 301(b)(1)(C) of the CWA.

Receiving water requirements are established according to numerical and narrative standards adopted under state law for each water quality classification. When using chemical-specific numeric criteria to develop permit limits, both the acute and chronic aquatic-life criteria, expressed in terms of maximum allowable in-stream pollutant concentration, are used. Acute aquatic-life criteria are considered applicable to daily time periods (maximum daily limit) and chronic aquatic-life criteria are considered applicable to monthly time periods (average monthly limit). Chemical-specific limits are allowed under 40 CFR § 122.44(d)(1) and are implemented under 40 CFR § 122.45(d).

A facility's design flow is used when deriving constituent limits for daily and monthly time periods as well as weekly periods where appropriate. Also, the dilution provided by the receiving water is factored into this process where appropriate. Narrative criteria from the state's WQS are often used to limit toxicity in discharges where (a) a specific pollutant can be identified as causing or contributing to the toxicity but the state has no numeric standard; or (b) toxicity cannot be traced to a specific pollutant.

EPA regulations require NPDES permits to contain effluent limits more stringent than technology-based limits where more stringent limits are necessary to maintain or achieve state or federal WQS. The permit must address any pollutant or pollutant parameter (conventional, non-conventional, toxic and whole effluent toxicity) that is or may be

discharged at a level that causes or has "reasonable potential" to cause or contribute to an excursion above any water quality criterion. See 40 CFR Section 122.44(d)(1). An excursion occurs if the projected or actual in-stream concentration exceeds the applicable criterion. In determining reasonable potential, EPA considers (a) existing controls on point and non-point sources of pollution; (b) pollutant concentration and variability in the effluent and receiving water as determined from the permit application, monthly Discharge Monitoring Reports (DMRs), and State and Federal Water Quality Reports; (c) sensitivity of the species to toxicity testing; (d) known water quality impacts of processes on wastewater; and, where appropriate, (e) dilution of the effluent in the receiving water.

Water quality standards consist of three parts: (a) beneficial designated uses for a water body or a segment of a water body; (b) numeric and/or narrative water quality criteria sufficient to protect the assigned designated use(s); and (c) antidegradation requirements to ensure that once a use is attained it will not be degraded. The Massachusetts Surface Water Quality Standards (MA SWQS), found at 314 CMR 4.00, include these elements. The state will limit or prohibit discharges of pollutants to surface waters to assure that surface WQS of the receiving waters are protected and maintained or attained. These standards also include requirements for the regulation and control of toxic constituents and require that EPA criteria, established pursuant to Section 304(a) of the CWA, shall be used unless a site-specific criterion is established. The conditions of the permit reflect the goal of the CWA and EPA to achieve and then to maintain water quality standards.

Consistent with the MA SWQS promulgated at 314 CMR 4.03(2) and MassDEP guidance documents, MassDEP may set water quality based discharge limits based on a "mixing zone". Generally, mixing zones are areas in which exceedances of numeric WQS are allowed, provided that, among other things, these exceedances do not result in acute toxicity and that the mixing zone will still be protective of the narrative requirements of the WQS. In addition, mixing zones cannot be disproportionately large so as to interfere with the attainment of the designated uses assigned to the water body segment. All applicable numeric water quality criteria must be met at the edge of the mixing zone, and the other requirements of the state mixing zone must also be satisfied.

Antibacksliding

A permit may not be renewed, reissued or modified with less stringent limitations or conditions than those contained in the previous permit unless in compliance with the anti-backsliding requirements of the CWA [see Sections 402(o) and 303(d)(4) of the CWA and 40 CFR §122.44(l)(1 and 2)]. EPA's antibacksliding provisions prohibit the relaxation of permit limits, standards, and conditions except under certain circumstances. Effluent limits based on BPJ, water quality, and state certification requirements must also meet the antibacksliding provisions found at Section 402(o) and 303(d)(4) of the CWA. Since all proposed permit conditions are at least as stringent as those of the current permit, antibacksliding is not applicable for this permit reissuance.

Antidegradation

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

State Certification

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

VI. Explanation of Permit's Effluent Limitations

Best Management Practices (BMPs)

The CWA allows the use of BMPs where specific numerical effluent limitations are not practical. The Best Management Practices Document produced by BSR, dated January 2002, is included as an integral part of the draft NPDES permit. Pursuant to 40 CFR §122.44(k)(4), BMPs may be expressly incorporated into a permit on a case-by-case basis where it has been determined they are needed to carry out the provisions of the CWA (see CWA, Section 304(e)).

EPA is incorporating the BMP document into the draft permit as a fully enforceable requirement based on Best Professional Judgement (BPJ). The authority for BPJ is contained in Section 402(a)(1) of the CWA, which authorizes the EPA Administrator to issue a permit containing "such conditions as the Administrator determines are necessary to carry out the provisions of the Act". The NPDES regulations in 40 CFR §125.3 state that permits developed on a case-by-cases basis under Section 402(a)(1) of the CWA 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.

In December of 1979, EPA issued a Draft Development Document for Proposed Effluent Limitations Guidelines and Standards for The Shipbuilding and Repair Point Source

Category. No final effluent guidelines have been issued for this point source category. The draft Development Document states in part:

The studies conducted by the Environmental Protection Agency (EPA) determined that the imposition of national industry-wide numerical limitations and standards is impractical at this time. This document therefore, provides guidance which recommends specific best management practices. Such management practices should be tailored to specific facilities. This determination shall in no way restrict the use numerical limitations in NPDES permits.

The best management practices identified in this document shall be guidance for the determination of best practicable control technology currently available [BPT], *best available control technology economically achievable* [BAT], *and best available demonstrated control technology.*

The latest version of this site's BMP Document, dated January 2002, conforms to those BMPs recommended in the Draft Development Document. EPA has, therefore, made a BPJ determination that the BMP Document produced by BSR represents a level of pollution control that is both BCT and BAT for this applicant.

Best Management Practices focus on pollution prevention as a practical alternative to numerical limits and "end of pipe" treatment of contaminated water. Adherence to the BMPs serves to keep pollutants from reaching Boston Harbor. The BMP Document may require additional elements to address future operational changes. The Draft Permit stresses the responsibility of all the employees of BSR to understand and carry out each of the BMPs. The BMP document accordingly contains elements for training, supervision and inspection. The original draft BMP document was prepared after an inspection of the facility by EPA and BSR staff in 2001. EPA provided BSR with guidance for the development of BMPs and the final BMP document written by BSR contains twenty BMPs which collectively address all significant sources of pollutants likely to found in the ship repair facility. This BMP plan, dated January 2002, became an enforceable element of the final permit that was issued in 2002.

BSR is required to amend the BMP document as necessary to incorporate any changes to facility operations that may result in the discharge of pollutants not currently addressed in the permit. Additionally, the permittee is responsible for all necessary training of BSR personnel adequate to insure that all BMPs are properly implemented at all times.

Flow Monitoring

The regulations at 40 CFR 122.44(i)(1)(ii) require monitoring of *the volume of effluent discharged from each outfall.* Consistent with the 2002 permit, the total flow for Outfalls 001, 002, 003 and 005 shall be reported with each discharge occurrence. Where applicable, the permittee may estimate the discharge volume of each of the regulated discharges from pump curves, consistent with the pumps used at this location. In addition to the Discharge Monitoring Reports that are submitted monthly, the permittee

also submits additional effluent flow tables for each outfall that show the volume pumped each day of the month that pumping occurred.

Outfall 001 - Dry-dock Dewatering - Main Pump

Flow

The current permit requires monitoring and reporting of flow for each occasion that the dry-dock is emptied and flooded. The permittee reports the daily discharge of water through this pump, as estimates based on pump curves consistent with this main pump. Flows from this pump are up to 50 million gallons per docking and undocking event, but is often in the range of 30 to 40 million gallons. During some periods when vessels are not docked, the permittee discharges water that has accumulated in the dry-dock when the stripping pump was not being used.

Outfall 002 - Dry-dock Dewatering - Stripping Pump

As with the main pump, the permittee records the amount of flow as an estimate, based on pump capacity curves. As discussed earlier, this discharge was re-routed so that it now discharges to the same outfall structure as Outfall 001. Outfall 002, is now an internal outfall, where sampling may be conducted at the last accessible point prior to discharge to Outfall 001.

In order to confirm that the BMPs are effective at minimizing pollutants to the receiving water, this permit has established monitoring requirements for total suspended solids (TSS) and a priority pollutant scan. Since the stripping pump is operating when repairs are ongoing for docked vessels, it was determined Outfall 002 would be the most likely to potentially contain solids and other pollutants. TSS shall be monitored once per week while the stripping pump is operating. An annual priority pollutant scan is required due to the variety of potential pollutants that are present on the dry-dock floor from activities conducted on vessels.

Outfall 003: Fire Suppression and Non-Contact Pump Cooling Water

Any time that a vessel is docked at this site, the permittee must have a fire suppression system charged and ready to be used. When charged, this system discharges up to 864,000 gallons per day. Since this discharge is ocean water that is pumped into and out of this system, only a flow monitoring requirement has been maintained for this outfall.

Outfall 005: Caisson Ballast Water

Caisson ballast (ocean) water is discharged to Boston Harbor and replaced with air to raise the caisson and seal the dry-dock. There is a discharge from this system with each docking and undocking procedure. Since this discharge is ocean water that is pumped into and out of this system, only a flow monitoring requirement has been maintained for this outfall.

VII. Essential Fish Habitat Determination (EFH)

Under the 1996 Amendments (PL 104-267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq. (1998)), EPA is required to consult with the National Marine Fisheries Services (NMFS) if EPA's action or proposed actions that it funds, permits, or undertakes, may adversely impact any EFH such as: waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity (16 U.S.C. § 1802 (10)). Adversely impact means any impact which reduces the quality and/or quantity of EFH (50 C.F.R. § 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.

As described in Section I of this Fact Sheet, BSR applied for the reissuance of this NPDES Permit on March 20, 2007. With conditions, the permit allows BSR to discharge water from the drydock to Boston Inner Harbor. EPA intends to reissue the facility's NPDES permit for this discharge. Thus, BSR will continue to discharge these waters to Boston Inner Harbor through Outfalls 001, 002, 003 and 005. The characteristics of these outfalls are described earlier in this Fact Sheet.

EFH is only designated for species for which federal fisheries management plans exist (16 U.S.C. § 1855(b) (1) (A)). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999. The following is a list of the EFH species and applicable lifestage(s) for Massachusetts Bay, which includes Boston Inner Harbor:

Species	Eggs	Larvae	Juveniles	Adults
Atlantic cod (*Gadus morhua*)	X	X	X	X
Haddock (*Melanogrammus aeglefinus*)	X	X		
pollock (*Pollachius virens*)	X	X	X	X
whiting (*Merluccius bilinearis*)	X	X	X	X
Red hake (*Urophycis chuss*)	X	X	X	X
white hake (*Urophycis tenuis*)	X	X	X	X
winter flounder (*Pseudopleuronectes americanus*)	X	X	X	X
yellowtail flounder (*Pleuronectes ferruginea*)	X	X	X	X
Windowpane flounder (*Scopthalmus aquosus*)	X	X	X	X
American plaice (*Hippoglossoides platessoides*)	X	X	X	X

ocean pout (*Macrozoarces americanus*)	X	X	X	X
Atlantic halibut (*Hippoglossus hippoglossus*)	X	X	X	X
Atlantic sea scallop (*Placopecten magellanicus*)	X	X	X	X
Atlantic sea herring (*Clupea harengus*)		X	X	X
long finned squid (*Loligo pealei*)	n/a	n/a	X	X
short finned squid (*Illex illecebrosus*)	n/a	n/a	X	X
Atlantic butterfish (*Peprilus triacanthus*)	X	X	X	X
Atlantic mackerel (*Scomber scombrus*)	X	X	X	X
Summer flounder (*Paralicthys dentatus*)				X
scup (*Stenotomus chrysops*)	n/a	n/a	X	X
black sea bass (*Centropristus striata*)	n/a		X	X
surf clam (*Spisula solidissima*)	n/a	n/a	X	X
bluefin tuna (*Thunnus thynnus*)			X	X

A review of the relevant essential fish habitat information provided by NMFS indicates that EFH has been designated for 23 managed species within the NMFS boundaries encompassing Massachusetts Bay. It is possible that a number of these species utilize these receiving waters for spawning, while others are present seasonally.

Based on the relevant information examined, EPA finds that adoption of the draft permit will satisfy EFH requirements. The discharge of this dry-dock dewatering, fire suppression and caisson ballast waters are not expected to adversely impact the EFH directly or indirectly. The permittee is required to adhere to its BMP plan which addresses all sources of potential pollutants and implements measures that will prevent or minimize their introduction to the receiving water. During the public comment period, EPA has provided a copy of the Draft Permit and Fact Sheet to NMFS for consultation with NMFS under Section 305(b)(2) of the Magnuson-Stevens Act for EFH.

VIII. Endangered Species Act

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

Service (USFWS) typically administers Section 7 consultations for bird, terrestrial, and freshwater aquatic species. The National Marine Fisheries Service (NMFS) typically administers Section 7 consultations for marine species and anadromous fish.

EPA has reviewed the federal endangered and threatened species of fish, wildlife, and plants to see if any such listed species might potentially be impacted by the reissuance of this NPDES permit. The review has focused primarily on marine mammals, sea turtles and anadromous fish since the discharge is into Boston Inner Harbor. Based on the normal distribution of these species, it is highly unlikely that they would be present in the vicinity of this discharge. Furthermore, effluent limitations and other permit conditions which are in place in this draft permit should preclude any adverse effects should there be any incidental contact with listed species in Boston Harbor.

The proposed monitoring requirements and continued implementation of the site's BMP plans in the draft permit are sufficiently stringent to assure that WQS will be met for aquatic life protection and for all species, including endangered and threatened species. During the public comment period, EPA has provided a copy of the Draft Permit and Fact Sheet to both NMFS and USFWS.

Other Conditions

The remaining conditions of the permit are based on the NPDES regulations, 40 CFR Parts 122 through 125, and consist of management requirements common to all permits.

IX. State Certification Requirements

EPA may not issue a permit unless the State Water Pollution Control Agency with jurisdiction over the receiving waters certifies that the effluent limitations contained in the permit are stringent enough to assure that the discharge will not cause the receiving water to violate State Water Quality Standards. The staff of MassDEP has reviewed the draft permit and advised EPA that the limitations are adequate to protect water quality. EPA has requested permit certification by the State pursuant to 40 CFR 124.53 and expects that the draft permit will be certified.

X. Public Comment Period, Public Hearing, and Procedures for Final Decision

All persons, including applicants, who believe any condition of the draft permit is inappropriate must raise all issues and submit all available arguments and all supporting material for their arguments in full by the close of the public comment period, to the U.S. EPA, Massachusetts Office of Ecosystem Protection (CIP), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114-2023. Any person, prior to such date, may submit a request in writing for a public hearing to consider the draft permit to EPA and the State Agency. Such requests shall state the nature of the issues proposed to be raised in the hearing. A public hearing may be held after at least thirty days public notice whenever 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 these responses available to the public at EPA's Boston office.

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 forward a copy of the final decision to the applicant and each person who has submitted written comments or requested notice. Within 30 days following the notice of the final permit decision, any interested person may submit a request for a formal hearing to reconsider or contest the final decision. Requests for formal hearings must satisfy the requirements of 40 CFR 124.74, 48 Fed. Reg. 14279-14280 (April 1, 1983).

XI. EPA & MassDEP Contacts

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

George Papadopoulos, Massachusetts Office of Ecosystem Protection
One Congress Street Suite 1100 - Mailcode CIP
Boston, MA 02114-2023
Telephone: (617) 918-1579 FAX: (617) 918-1505

Paul Hogan, Massachusetts Department of Environmental Protection
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August 14, 2007
Date

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