



United States Department of the Interior



FISH AND WILDLIFE SERVICE

New England Field Office
70 Commercial Street, Suite 300
Concord, NH 03301-5087
<http://www.fws.gov/newengland>

September 2, 2010

Mr. Chet H. Myers, PE
Apex Companies, LLC
184 High Street, Suite 502
Boston, Massachusetts 02110

Dear Mr. Myers:

This responds to your letter, dated July 22, 2010, in regard to the proposed South Terminal Extension project, a new marine terminal to be constructed in New Bedford Harbor, New Bedford, Massachusetts. Your letter indicates that the U.S. Environmental Protection Agency (EPA), which has jurisdiction over this development, has requested that you initiate consultation with us under the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., regarding the potential effects of the project on species which the ESA affords protection. Your letter also asks for our assistance in the environmental review of the project.

EPA's intent to approve or condition the proposed project as an enhanced remedy under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as opposed to traditional permitting methods, raises certain procedural and substantive issues that must be resolved among the federal agencies. These issues include, but are not limited to:

- 1) the role of "Applicable, or Relevant and Appropriate Requirements" (ARARs) under CERCLA and the process to be used to assure ESA compliance;
- 2) the applicability of the U.S. Fish and Wildlife Service's (Service) ESA implementing regulations to the consultation; and,
- 3) the manner in which the proposed project relates to prior consultations and previously-issued authorizations under the ESA.

We plan to address these issues independently with EPA and other involved federal agencies. We will turn our attention to the requested environmental review once these critical questions have been resolved.

In the meantime, Michael Amaral and Maria Tur of my staff have contacted EPA and have agreed to a site visit on the afternoon of September 9, 2010. We hope that the site visit will further educate us about the proposed project and be useful in our later evaluation of potential

Mr. Chet H. Myers, PE
September 2, 2010

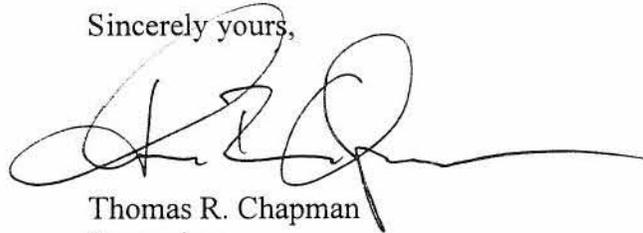
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effects on roseate terns (*Sterna dougallii*), other threatened and candidate species, and other wildlife trust species for which the Service is responsible.

By copy of this letter to EPA and the Bureau of Ocean Energy, Regulations and Management Bureau (formerly the Minerals Management Service), we encourage close communication in regard to the environmental planning of this project and to ensure that we meet our respective obligations to comply with applicable federal laws, including the ESA.

We look forward to continuing to work with you and all involved agencies as this project progresses. Please contact Michael Amaral, Maria Tur or me at 603-223-2541 if you have questions concerning these comments.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Chapman', with a long horizontal flourish extending to the right.

Thomas R. Chapman
Supervisor
New England Field Office