RETURN TO SER AR INDEX

From: Carl Dierker
To: Phil Colarusso; Ralph Abele; Mike Marsh; Ann Williams; Cynthia Catri; Sneeringer, Paul J NAE; Jackie Leclair; Carl Deloi; ElaineT Stanley
Cc: Ira Leighton; Stephen Perkins; James Owens
Subject: NMFS Followup Letter on South Terminal
Date: Friday, September 28, 2012 6:25:56 PM
Attachments: att.pdf

Here's the letter that Phil and I received from NMFS at our meeting today that provides revised technical guidance on the South Terminal project. I will forward the original to Elaine Stanley for the administrative record. The state is drafting a letter that is intended to respond to the revised informational requests in the NMFS letter. Phil will be heading our response to NMFS, but will likely need assistance from many of you.

(See attached file: att.pdf)

SDMS Doc ID 526373

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

Elaine Stanley, EPA New England
5 Post Office Square, Suite 100
Mail Code 0SRR07-4
Boston, MA 02190-3912

Re: New Bedford Harbor-South Terminal Project

Dear Ms. Stanley,

After several coordination efforts with EPA, where we have subsequently learned more about the proposed project scope, NMFS would like to offer the following, revised, technical guidance on the five federally-listed Distinct Populations Segments (DPS) of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) that may be in the vicinity of the New Bedford Harbor-South Terminal Project, in New Bedford, Massachusetts.

Atlantic Sturgeon in the Action Area

Currently, we have no records of any federally listed species under our jurisdiction in New Bedford Harbor. However, Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) are known to use the nearby Taunton River as part of their estuarine/riverine habitat, and could be present anywhere within coastal waters as part of their marine habitat. Atlantic sturgeon in the area of the proposed action could belong to any of the five DPSs (Gulf of Maine – threatened; New York Bight, Chesapeake Bay, Carolina, and South Atlantic – endangered). Eggs, larvae, and juveniles are not expected to be in or near the action area; only sub-adult or adult sturgeon undertaking marine migrations and opportunistically foraging in coastal bays and estuaries could potentially be present in the vicinity of New Bedford Harbor and potentially in the action area, during March through November.

Initiation of Section 7 Consultation

We previously recommended that you initiate section 7 consultation with us, and we maintain that this path forward is appropriate. We request that you provide us with the information identified below. The inclusion of this information and your determination as to whether the project is likely to adversely affect Atlantic sturgeon will provide us with the information necessary to conclude consultation under the Endangered Species Act. Based on the information we recently received informally from the state, we believe that we will likely be able to concur with a "not likely to adversely affect" determination. Additionally, once we receive the following information, we can provide a letter with a final determination quickly.

Pile Driving
Our previous correspondence provided general information about pile driving and noise thresholds that represent the "best available" information on potential effect-inducing sound levels, as well as methods of pile driving known to minimize potential sound effects. With our further understanding of the project scope, we do not reasonably expect significant noise impacts to Atlantic sturgeon due to their rarity near the action area and because of the location of the pile driving along the bulkhead, in relatively shallow water. However, since they may transit in and around New Bedford Harbor, project specifics for the proposed pile driving along the bulkhead will allow us to move forward with a concurrence, after you initiate consultation. The following information is needed: number of proposed piles, approximate range of pile diameters, pile driving methods, location, and any pile driving sequencing. If any sound reduction mitigation (i.e. coffer dams, bubble curtains, etc.) are being proposed, this information should be included in your letter and brief analysis, as well.

Blasting
Our current understanding is that blasting may occur in one section of the bulkhead area where a rock outcrop is located. Again, noise levels above certain thresholds may affect listed sturgeon species, if they are present. In order for us to concur with a not likely to adversely affect determination, we need additional information about any potential blasting. Because of the rarity of Atlantic sturgeon near New Bedford Harbor, and the location of the proposed blasting, we do not reasonably expect detrimental effects to Atlantic sturgeon as a result from blasting activities. However, since they may transit near the action area, we need to assess the potential for minor effects and need the following information: proposed blasting schedule, proposed methodology, location, water depths, as well as any proposed mitigation measures (e.g., bubble curtains, coffer dams, blast engineering, etc.).

Dredging
Our current understanding of the dredging activities associated with the project is that mechanical dredges will be used. For fine material, an environmental bucket will be employed, as well. We do not foresee significant impacts resulting from dredging activities due to the equipment type and because the potential presence for Atlantic sturgeon in New Bedford Harbor is low. EPA should include this information in their consultation initiation letter. We will be able to concur with a "not likely to adversely affect" finding based on the current dredging plan.

Conclusions
As you may know, any discretionary federal action, such as the approval or funding of a project by a Federal agency, that may affect a listed species must undergo consultation pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended. The Federal agency should submit their determination along with justification for their determination and a request for concurrence, to the attention of the Section 7 Coordinator, NMFS Northeast Regional Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930. After reviewing this information, we would then be able to conduct a consultation under section 7 of the ESA.

Should you have any questions regarding these comments, please contact Chris Vaccaro at 978-281-9167 or by email at Christine.Vaccaro@noaa.gov.

Sincerely,

Kim Damon-Randall
Acting Assistant Regional
Administrator for Protected
Resources

File Code: H:\Section 7 Team\Section 7\Non-Fisheries\EPA\Tech Assistance\2012\TNER201202087_New Bedford Harbor South Terminal Project
PCTS: T/NER/2012/02087