



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

FIVE POST OFFICE SQUARE - SUITE 100

BOSTON, MASSACHUSETTS 02109-3912

July 25, 2013

John Bullard, Regional Administrator
National Marine Fisheries Service
Northeast Region
55 Great Republic Drive
Gloucester, MA 01930-2276

Dear Mr. Bullard:

Pursuant to our obligations under the Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act (FWCA), the U.S. Environmental Protection Agency (EPA) is sending this letter to reinitiate our consultation on the proposed South Terminal Project, New Bedford, Massachusetts. The Commonwealth of Massachusetts has requested several substantive changes to the South Terminal Project that have the potential to impact Essential Fish Habitat (EFH). The Commonwealth has asked EPA to approve additional dredging, including increasing the width of the approach channel by 50 feet and increasing the length of the deep draft berthing area by 200 feet. The Commonwealth has requested approval to use blasting as a technique for rock removal around the proposed terminal location. The Commonwealth has also requested approval of its plan not to include oysters in the shellfish mitigation plan.

In its August 21, 2012 letter, the National Marine Fisheries Service (NMFS) made the following Essential Fish Habitat (EFH) conservation recommendations to EPA on this proposed project:

1. In order to minimize impacts of the projects on shallow sub-tidal habitat to the maximum extent practicable, while meeting the purpose and need of the project, the proposed additional work, including increasing the width of the approach channel by 50 feet, increasing the length of the deep draft berthing area by up to 300 feet, and expanding CAD cell 3 to accommodate the extra material, should be eliminated.
2. In order to avoid adverse effects to winter flounder spawning and early life stages in New Bedford Harbor, in-water silt producing activity, including blasting, should be avoided between January 15 and June 30 of any year.

3. In order to compensate for the loss of shellfish resources at the project area, a shellfish mitigation plan should include compensation of all shellfish species found at the project site. This would include expanding the proposed reseeded of quahog clams to include other species identified in the shellfish survey.

In that letter, NMFS also recommended, in its consultation role pursuant to FWCA, that blasting activity should not occur between April 1 and June 30 of any year in order to avoid adverse impacts to migrating anadromous fish, and it noted that attenuation devices such as bubble curtains or cofferdams may reduce the noise level exposure to surrounding fish species and thus reduce impacts and mortality from blasting.

EPA provides the following responses to your recommendations.

1. The Commonwealth has submitted additional information to justify the need for the expanded dredging that it has requested. In support of its request, the Commonwealth provided additional documentation and explanation about the size of vessels that it believes will use the port in the future. The design vessel on which the Commonwealth based its original channel and berthing estimates has a shallower draft than many vessels of similar length. These other vessels could be utilized for construction of the offshore wind energy development, and their deeper draft requires a wider channel for vessel transit and navigational safety because of the design of the channel. Similarly, a longer deep draft berthing area would be necessary to safely accommodate such vessels. The Commonwealth also committed to funding the additional dredging and accomplishing it at the same time as the rest of the project, in contrast with its June 2012 proposal. EPA is persuaded that for the safe operation of the size class of vessels expected to visit the terminal, the extra width in the approach channel and the expanded deep draft berthing area at the terminal are necessary. The widening of the approach channel will be done to the west in areas that are currently too deep for winter flounder spawning. The expanded dredging for the deep draft berthing area will not result in any greater loss of winter flounder spawning habitat. The expanded dredging represents incremental temporary impacts to water quality associated with the dredging itself, but do not represent any long term habitat conversion of shallow water to deep water. EPA believes this request for additional dredging is approvable, subject to the same water quality performance standards as the previously approved dredging. We do not believe there would be additional adverse effects on EFH or any fish and wildlife trust resources under the FWCA.
2. EPA is currently considering the Commonwealth's blasting proposal and reviewing the acoustic impacts from blasting and the implementation of safeguards to protect both fish and the Hurricane Barrier. Consistent with NMFS's conservation recommendations, EPA will condition any approval of blasting to ensure, among other things, that blasting will not occur between

January 15 and June 30 of any year. EPA will also require the implementation of a fish deterrent system that includes bubble and silt curtains as well as other measures to minimize to the greatest extent possible the potential for fish to be within the impacts area. EPA also intends to limit the weight of explosives to no more than 50 pounds of explosive per delayed charge with a minimum time delay of 25 milliseconds between charges per delay,¹ in order to ensure no adverse pressure and impulse effects on fish.

3. The Commonwealth has requested that oysters be withdrawn for consideration as part of the shellfish mitigation plan. Attached is the Division of Marine Fisheries' (DMF) rationale for this request. EPA finds DMF's explanation to be reasonable and approvable.

EPA believes this completes our consultation obligations under Magnuson-Stevens Fishery Conservation and Management Act and the Fish and Wildlife Coordination Act. If you have any questions about this letter, please feel free to give Phil Colarusso of my staff a call at (617) 918-1506.

Sincerely,



Ken Moraff, Acting Director
Office of Ecosystem Protection

cc: Gary Davis, Mass EOE
Paul Diodati, Mass DMF
Kathryn Ford, Mass DMF

¹ It is possible that the Commonwealth may seek approval of a shorter delay interval (potentially 9 or 17 ms) for a small portion of the blasting referred to as "pre-split" blasting, which is necessary to provide separation between the areas of "production blasting" for rock removal for creation of deep water quayside berthing areas and the remaining bedrock that will support the future port facility. This pre-split blasting apparently would comprise approximately 15 percent of the blasting required for the project, or approximately 350 of a total of 2550 detonations. EPA has indicated it would consider such a request if the Commonwealth submits a complete and detailed description of the proposed blasting protocol, including proposed charge weights and delay times, a detailed explanation of the purpose and need for shorter delay times or other changes, and a detailed technical evaluation of the impacts of the proposed revised blasting protocol, including shorter delay times, on aquatic life.



Paul J. Diodati
Director

Commonwealth of Massachusetts

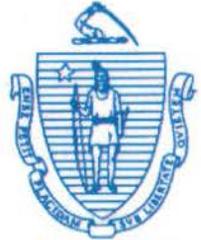
Division of Marine Fisheries

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Deval Patrick
Governor
Richard K. Sullivan, Jr.
Secretary
Mary B. Griffin
Commissioner

June 27, 2013

Bill White
Director, Offshore Wind Sector Development
Massachusetts Clean Energy Center
55 Summer Street, 9th Floor
Boston, MA 02110

Re: Elimination of Oysters from South Terminal Shellfish Mitigation Plan

Dear Bill:

The South Terminal shellfish mitigation plan that has been submitted by the Commonwealth calls for the creation of an "oyster reef" south of the New Bedford Hurricane Barrier within New Bedford Harbor to compensate for other shellfish species that were observed during field investigations. The plan states that up to 20% of the total 24.4 million shellfish to be planted will be oysters in association with construction of the reef. The exact location and configuration of this reef is to be determined cooperatively by EPA, NMFS and *Marine Fisheries*.

Marine Fisheries Shellfish Program staff believes that it was erroneous to apply the 20% oyster/ 80% quahog ratio to the shellfish mitigation plan for the whole project. This ratio was based on the APEX survey of the 6.16 acre Terminal facility footprint in Palmers Cove (May 2-3, 2010). Within this area, 20% of the estimated number of shellfish was oysters (202,779) and 80% was quahogs (812,702). The revised mitigation plan was based on the inclusion of significantly more impacted area that will be dredged (376.46 acres total), and virtually all of this additional area is quahog habitat, not oyster habitat. While we consider APEX's revised estimates of total impacted quahogs to be reasonable and correct (9,170,596), it is not reasonable to assume that 20% of the planted shellfish should be oysters.

Marine Fisheries does not support the construction of an oyster reef south of the New Bedford Hurricane Barrier, within New Bedford Harbor as part of the shellfish mitigation plan. While there is a remnant population of oysters in Palmers Cove, there are no other natural populations of wild oysters within New Bedford waters. While environmental conditions, including salinity and substrate, may be sufficient to support oysters within Palmer's Cove and elsewhere within New Bedford Inner Harbor, we do not support planting oysters in these waters as it will create a high value shellfish resource easily obtained by poachers and a potential risk to public health.

It is our opinion that there is no suitable habitat elsewhere within New Bedford waters that will support a successful natural oyster population. All shellfish mitigation efforts in New Bedford waters should be directed towards quahogs, the shellfish species that thrives in these waters.

Sincerely,

Paul Diodati, Director