UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
FIVE POST OFFICE SQUARE – SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

October 31, 2012

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 its implementing regulations (50 CFR 600.905), EPA is sending this letter to complete our consultation on the proposed South Terminal Project, New Bedford, Massachusetts. In its August 21, 2012 letter, 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 dredging area by up to 300 feet, and expanding CAD cell 3 to accommodate the extra material should be eliminated.

2. In order to reduce impacts of fill on sub-tidal habitat, the concrete blanket proposed for the pile supported apron adjacent to the wharf should be reduced to the maximum extent possible.

3. 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 May 31 of any year.

4. 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 reseeding of quahog clams to include other species identified in the shellfish survey.

5. Prior to final approval, all mitigation plans and monitoring reports should be provided to the resource agencies for review and comment.

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EPA provides the following responses to your conservation recommendations.

1. After full consideration of the record, EPA has concluded that the need for the additional dredging has not been adequately justified, and EPA is not approving it at this time. However, we recognize that facts may change and the Commonwealth may seek a modification of the approval in the future based on new information. Therefore, we have evaluated the impact of the project both with and without the additional dredging, and we have concluded that the impacts associated with the additional dredging would not alter EPA's determination that, if properly mitigated, the impacts from the overall project will not cause or contribute to significant degradation of waters of the U.S. If the Commonwealth does seek to modify EPA's final approval to allow for the expanded dredging, EPA will reinitiate consultation with NMFS on EFH.

2. In correspondence from the Commonwealth to EPA dated October 22, 2012, the Commonwealth provided additional information related to the concrete blanket. Its purpose is to prevent erosion of the area under the pile-supported apron, and it has been minimized to the extent feasible while preserving the structural integrity of the facility. The Commonwealth noted that the material used to construct the concrete blanket is very expensive, so there is a financial incentive to keep it as small as possible. The pile-supported apron was a change from the Commonwealth's original proposal, which would have included an additional 0.67 acres of solid fill at the CDF. The apron design reduces the amount of fill, but it is still necessary to partially fill at the base of the apron for structural integrity. EPA believes that the Commonwealth has minimized the area of the concrete blanket to the greatest extent practicable.

3. In order to have this facility operational in time to accommodate the construction of turbines for the Cape Wind project, dredging will need to occur between January 15 and May 31 and beyond. In an effort to identify ways to minimize impacts to winter flounder spawning, the Commonwealth met several times with EPA and NMFS. It has committed to the following plan as a way to minimize impacts during the January-May time frame (See October 22, 2012 EH submission). The entire project area will be surrounded by a series of silt curtains, bubble curtains and fish weirs. Before dredging begins, multiple fish startle systems will be deployed throughout the project area to encourage fish to leave the project area. Weekly monitoring will be done to ensure the integrity of the barriers and to look for fish in the project area. If fish are detected in the project area, the fish startle systems will be redeployed in an attempt to move them out. EPA believes these measures will be sufficient to minimize impacts to winter flounder spawning and intends to require these measures as a condition of EPA's final approval.

With respect to blasting during the winter flounder spawning period, EPA will not approve the use of any blasting to remove rock in the Final Determination for this project. If the Commonwealth ultimately determines that blasting is absolutely

required, it will need to seek modification of EPA's Determination, and EPA will reinitiate EFH consultation with NMFS.

4. Because the vast majority of shellfish loss caused by this project would be to quahogs, EPA, in its tentative determination, stated its intent to require the Commonwealth to provide shellfish seeding of approximately 24 million quahogs in order to mitigate for shellfish loss. EPA has no objection to including in the shellfish mitigation plan measures to address the loss of other shellfish in addition to quahogs. However, at this time, EPA has only been provided with a final shellfish mitigation plan that addresses quahogs. The Commonwealth has made a commitment to include oysters as part of the shellfish mitigation effort, but a final plan for that component has yet to be developed. EPA's understanding is that a workgroup of NMFS, Massachusetts Division of Marine Fisheries and EPA staff will consult on the details of the oyster restoration. In its Final Determination, EPA intends to approve the final shellfish mitigation plan that addresses quahogs only. If and when a final oyster restoration plan is developed, the Commonwealth can ask EPA for a modification of the Final Determination to approve a revised shellfish mitigation plan that incorporates oyster restoration.

5. EPA has been sharing all draft mitigation and monitoring plans with the appropriate NMFS staff, seeking their input. To the greatest extent possible, EPA and the Commonwealth have incorporated NMFS comments.

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,

Stephen S. Perkins, Director
Office of Ecosystem Protection

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