New Bedford Harbor CDF project comments to EPA

The comments below express the National Marine Fisheries Service's (NMFS) concerns regarding the proposed project to construct and operate a confined disposal facility (CDF) within New Bedford harbor. At this time, these comments are informal and intended to assist the EPA in their decision making process. It is not clear whether a public document will be developed however, NMFS believes that thisd project should require a public process. Should EPA provide a public document or initiation of EFH consultation, NMFS will provide official EFH conservation recommendations, as appropriate.

Project description and alternatives analysis document

Page 5 – Beginning on Page 5 and throughout the document, the planning volumes are cited as 1.8 million cubic yards (mcyds). While this is the volume of material for the entire state enhanced remedy (SER) dredging activity, NMFS believes that the planning volume of material should be limited to amount for construction of proposed CAD cell. This is important as it will affect reasonable range of alternatives to be considered for disposal.

Page 5 – Expresses concerns with disposing at CCBDS due to capacity issues, and potential need for designation of new site. Since this is a primary reason this alternative was not chosen for disposal it is important to understand the current capacity at CCBDS. Based on the updated volume from CAD cell (above), are capacity issues relevant?

Page 7 – Contains a description of marine terminal and specific operational requirements. Is there a specific developer targeted here? (Page 12 discusses proximity to the "construction site"). If this project is associated with other existing projects, the issue of project segmentation is of concern.

Project description needs to account for the area to be dredged to -30 MLLW, and loss of shallow water habitat

Page 11 – In determining the preferred location for the proposed project, the document first focuses on specific criteria for development of a marine terminal – independent of the harbor remediation. Thus, this appears to be a tiered approach, where the decision of terminal location is the driving factor. If this is the case, NMFS questions whether this project should be outside of the SER process since the primary focus is on the terminal development, rather than harbor remediation.

Page 14 -This presumes that both goals - the terminal, and harbor remediation/sediment disposal - need to be met by one option regardless of environmental impacts. The document should discuss combinations of various alternatives that would avoid and minimize environmental impacts, and still meet project goals.

Page 17-18 –the economic analysis assumes 1.8 mcyds and should consider the revised volumes for the south terminal project. Furthermore, this cost analysis does not fully consider the environmental impact costs nor the cost of mitigation and monitoring.

Page 18 – refers to state agency goals of beneficial reuse of sediment however, it is not clear if this applies in cases where adverse impacts are greater (e.g. CDF development vs. disposal at CCBDS)

Page 18-65 – contains a detailed alternatives analysis for harbor remediation with New Bedford harbor, and focuses on utilizing sediment to construct CDF . This document does not contain a comparable level of analysis of alternatives for new and existing marine terminal locations and potential range of structural options. Quonset should be a viable marine terminal alternative, since it was identified by MMS for Cape Wind.

Page 18-65 – discussion of alternatives for sediment disposal should include combinations of various alternatives that would avoid and minimize environmental impacts, and still meet project goals.

Page 21 – the CDF is proposed to contain contaminated material. If mixing with clean sediment is allowed to occur, it is unclear how material can be beneficially reused in the future. Furthermore, due to weight of wind energy staging equipment , will compaction of sediment constrain use of material in the future?

Page 30 - NMFS maintains that loss of intertidal and shallow water habitats is of greater concern than disposal of material at CCBDS. Potential capacity issues at CCBDS should not specifically preclude disposal if it will result in less impacts than the proposed shoreline filling. With regards to capacity, revised volumes should be developed to account for CCBDS capacity and the volumes for the South Terminal.

Page 34 – The project statistics for the CDF within New Bedford Harbor shows impacts that far exceed other alternatives, except for open ocean disposal. However, this assumes that a new disposal site would be required should 1.8 mcyds be placed. Utilizing revised volumes for the South terminal project only would significantly reduce the presumed impact .

Page 36 – detailed evaluation of CAD cell disposal options. This should have been completed previously for CAD cell approval. If so, was conclusion of analysis that offshore disposal was preferred? Document should contain comparable level of alternatives analysis for marine terminal.

Page 45 – Alternative matrix table – it is not clear whether there is a statistical basis for this evaluation. Not clear how values were determined – for example, long term impacts from a CDF is described as a 4. Since this will include the permanent loss of important habitat, it should be 0.

Page 46 – comparison of alternatives - the document should discuss combinations of various alternatives that would minimize environmental impacts.

Page 67 – States that resource area (intertidal and subtidal areas) is impacted by PCB's and heavy metals. Is this presumed since it is in the Superfund site, or have core samples been taken?

Page 68 – intertidal mudflat as "special aquatic site" not described. This is important to describe due to significance under Clean Water Act. Resource impact assessment does not describe shallow water habitat area to be dredged for marine terminal access.

Page 68-69 – statement that due to required remediation, resource impacts would occur regardless of whether CDF is chosen as alternative, is incorrect. Remediation would remove sediment and shellfish – but not habitat. Intertidal habitat will be permanently lost due to CDF construction.

Page 69 – Do not agree with statement that existing resources have limited value and capping will have environmental benefit. Shellfish resources provide a seed source, and intertidal mudflat and shallow water habitat provides refuge for juvenile fish.

Page 71-73 – appears to be referring to specific development project details – concerns over project segmentation as noted above

Assessment of functions and values document

Page 1 – Not clear if MA DEP prefers reuse alternatives that have significant environmental impacts.

Page 5 - intertidal mudflat as "special aquatic site" not described. This is important to describe due to significance under Clean Water Act and the importance to the marine ecosystem. Resource impact assessment does not describe shallow water habitat area to be dredged for marine terminal access. Based on the current and proposed depths, dredging will result in permanent losses to winter flounder spawning habitat.

Page 5 – Wetland identification – areas between low tide and high tide should include intertidal mudflat habitat, based on EPA/NMFS site visit.

Page 7, section 4.4 – does not identify or describe intertidal mudflat or shallow water habitats that will be lost.

Page 9 – evaluation of functions and values is limited, and does not account for significant impacts. Conclusion that capping of shellfish bed is beneficial ignores role as seed source for harbor, as well as the role of habitat to be impacted.

EFH assessment

Page 2, section 2.1 – conclusion that due to shallow water depths the impact is relatively low, is incorrect. The shallow water and intertidal areas, while there is limited water, serves as high value for precisely for that reason. These areas serve as shelter and forage habitat for juvenile fishes and serve as spawning habitat for winter flounder (shallow water habitat). The statement that significant quantity of fish habitat will be created in front of the bulkhead once dredging is completed is incorrect. In fact, the dredging will result in permanent losses to shallow water habitat and a permanent loss of winter flounder spawning habitat.

Page 6 – habitat will not be created in front of bulkhead – habitat will be permanently lost.

Page 7 – project specific information is very limited and does not include information on loss of intertidal and/or shallow water habitats.

As stated at meeting with MA DEP, City of New Bedford and consultants (APEX) on 3/25/10 and 4/12/10, an expanded EFH assessment is required for this project. Currently the EFH assessment is not adequate. Should be noted that many of the resource impacts assumptions in EFH assessment are based on project document and functions/values document. NMFS is not in agreement with many of the conclusions stated in these documents. An assessment should include a full description of the proposed project, anticipated impacts to specific EFH species and life stages, as well as alternatives that could avoid and minimize adverse impacts to EFH. NMFS can provide further guidance if necessary.

Mitigation document

Prior to evaluation of potential mitigation options, adverse impacts need to be fully accounted for, and alternatives for avoidance and minimization should be fully explored. Once that is done, EPA can make a determination whether the proposed project is the LEDPA. At that time, compensatory mitigation options should be fully evaluated.

Page 3-12, section 2.0 – impacts have not been fully assessed, therefore cannot determine whether this is the LEDPA. Does not provide an accurate accounting of impacts.

Page 11 – Not in agreement that 49.5 acres that have been remediated under the SER should be utilized for mitigation. SER work is currently done outside of the permitting process, and has removed PCB's and improved navigation in the harbor. However, this was not done under the assumption that this would serve as a form of mitigation bank. This would suggest that any environmental improvement project should serve as credit for future environmental impact projects (e.g. EPA cleanup of Boston harbor). In Fisheries Management, project proponents have suggested that due to rebounding of certain fish stocks (resulting from restrictions on the fishing industry), there should be an allowance for increased level of impacts. NMFS does not agree with this thought process.

Page 13 – Based on statements above regarding remedial dredging to date, NMFS believes that compensatory mitigation should account for all impacts, not 1.87 acres of impact.

Page 14 – Mitigation options should first look at habitat creation, rather than enhancement, to offset permanent losses. The document should discuss combinations of various alternatives that would avoid and minimize environmental impacts, and still meet project goals.

Page 19 – paragraph regarding capping of OU3 states that this action is currently required. Not clear why this is required and whether for mitigation for other impact.