

New Bedford Harbor CDF project comments to EPA

The comments below express the National Marine Fisheries Service's (NMFS) issues and concerns regarding the proposed project to construct and operate a confined disposal facility (CDF) within New Bedford harbor. While that State has addressed many of our earlier concerns and provided additional information, these comments outline our outstanding concerns. Upon receipt of the EPA's public document for review, NMFS will provide official comments, as appropriate.

ALTERNATIVES

- 1) There remains a concern over project segmentation due to potential linkages to Cape Wind. It is our understanding that the BOEMRE will consider any proposed changes to the Cape Wind project relative to the proposed staging area in a subsequent NEPA analysis, if appropriate. In order to ensure compliance with ARAR's, EPA should ensure that a single and complete project is being considered. For example, if this was a section 10/404 permit application through the ACOE, NMFS would seek to ensure that all related aspects of the project were being considered.
- 2) The implication that the Port of Davisville (Quonset) is an impractical location for offshore wind energy facility needs further clarification. How does the fact that the Cape Wind EIS (page 2-7) identified Quonset as the proposed site, relate to this assessment? The EIS states that "the applicant has identified an existing, industrial port facility at Quonset, Rhode Island as having the attributes required for staging of an offshore construction project of the magnitude of the (Cape Wind) project". Assessments are inconsistent. It is questionable that the BOEMRE would approve and issue a lease for a project that does not have a viable shoreside staging site.
- 3) The detailed analysis of port suitability described in the Port Infrastructure Analysis, only included Massachusetts ports and therefore does not provide an equal analysis of Quonset, RI. There are conclusions regarding the use of Quonset that require further justification. Section 3.6 of the Port Infrastructure Analysis noted landside requirements being a minimum of 10 acres with 15-25 as being desirable. This is contrary to the needs detailed in the State's analysis document. As noted in the appendix, meetings between Cape Wind, the City of New Bedford, and Siemens, suggest that a minimum of 20 acres is needed for shoreside support. Based on the document, Quonset currently has 27.5 acres available for lease. The statements on page 21 and 23 regarding the need for state ownership of the site or the state need for a long-term lease with Quonset, should be clarified.

- 4) Originally, the need the disposal of clean material from the construction of the CAD cell was driving the CDF development. Now, the document appears to suggest that the project itself (associated navigational dredging) is being used for the CDF construction, and the CAD cell material may be used for mitigation capping of OU#3 (page 213). NMFS is concerned that the current linkage to the SER is limited to the surficial dredging of contaminated areas for navigational dredging associated with the proposed project.
- 5) Previously, NMFS raised the concern over the potential conflicts between the transit of construction vessels and the commercial fishing fleet in New Bedford harbor. While the state has provided a response to this issue, further clarification is necessary. The state's response concludes that that based existing low level of traffic at the hurricane barrier and the levels of skill and experience of the fleet, conflicts are not anticipated. This response misses the point. According to the state's analysis on page 31 of the response, 7,500 commercial fishing vessel trips occur each year. This does not seem to consider the fact that conflicts may occur at the hurricane barrier during both exiting and entering the harbor. Therefore, it appears that approximately 15,000 one-way trips occur each year in/out of New Bedford harbor. Based on this, the number of trips for all vessels per year, and particularly per day, should be reassessed. Depending on the volume and construction vessel and barge transit times, conflicts with industry (and other vessels) remain a concern. This consideration of potential vessel impacts should consider the "high priority" that Siemens placed on having a location where vessels can dock and enter the harbor without waiting for other vessels (memo April 8, 2010).
- 6) It appears that the south parcel (7 acres) will impact the Gifford Street boat ramp. The state should describe the usage of the site by the public for recreational fishing activities.

FUNCTIONS AND VALUES

- 7) NMFS is not in agreement with the statement that existing resources have limited value. Shellfish resources provide a seed source, and intertidal mudflat and shallow water habitat provides refuge and spawning habitat for fish. Based on sampling efforts, benthic invertebrates utilize the site and area present in project footprint.
- 8) Of the proposed 21.73 acres of resource impacts, the project will result in the permanent loss of 13.73 acres of winter flounder spawning habitat. It should be noted that essential fish habitat for winter flounder spawning has been designated for shallow subtidal areas and not for intertidal habitats as noted throughout the document. Due to the current status

of Southern New England/Mid-Atlantic winter flounder stocks, and subsequent harvest restrictions, NMFS considers this to be a substantial impact to spawning habitat

- 9) The impacts (temporal and spatial) associated with the use of jack-up barges while loading and unloading does not appear to have been considered in the document.

MITIGATION

- 10) As noted above, NMFS views this proposed project as having substantial impacts. As such, there needs to be a solid analysis of whether the impacts can be adequately mitigated. It should be very clear that any state- proposed winter flounder spawning habitat mitigation will likely be viewed as a precedent for the mitigation of impacts associated with Weavers Cove LNG.
- 11) As currently proposed, the OU#3 capping mitigation alternative appears to be capping contaminated subtidal areas and placement of material over uncontaminated sediments for the purpose of creating more intertidal areas. The raising of the elevation of the seabed as a result of capping should not be considered an improvement as winter flounder spawning habitat, since the areas currently serves as spawning habitat. In addition, the proposal to place material over uncontaminated areas in the intertidal/subtidal in order to make a greater portion of intertidal, will simply be trading shallow subtidal (winter flounder spawning habitat) for intertidal. Furthermore, it is not clear whether this proposal anticipates sea-level rise in its design.
- 12) Currently, it appears the only mitigation option to address winter flounder spawning habitat is enhancement via capping of subtidal contaminated sediments (see # 8 above). However, it remains unclear whether the capping of the contaminated subtidal areas should be viewed as enhancement, since it is based on premise that PCB-contaminated areas are poor habitat. As this statement is made throughout document, this should be justified further
- 13) The document states that the capping of OU#3 will be associated with planned Phase IV dredging of the harbor, which is depending on funding. This raises the issue of timing and whether the mitigation, if deemed appropriate, can even be performed in a proper time frame.

- 14) NMFS does not concur that areas that have been previously remediated under the SER should be credited 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.
- 15) While a shellfish seeding program is proposed, it does not appear that the state is proposing compensatory mitigation for the permanent loss to shellfish habitat. This should be required to offset the permanent loss of shellfish habitat.
- 16) Although a time of year restriction (Page 216) has not been incorporated for previous superfund dredging, NMFS maintains that a time of year restriction of January 15-June 30 be incorporated into the project planning. This will help to minimize fishery impacts associated with turbidity and suspended sediments (page 168-169).