



Division of Fisheries & Wildlife

Wayne F. MacCallum, *Director*

August 3, 2010

Chet H Myers, PE, LSP
Apex Companies, LLC
184 High Street, Suite 502
Boston, MA 02110

RE: South Terminal Extension
NHESP Tracking No. 10-28430

Dear Mr. Myers:

Thank you for contacting the Natural Heritage and Endangered Species Program ("NHESP") of the Massachusetts Division of Fisheries & Wildlife regarding state-listed rare species associated with the above referenced site. Based on the information provided, it appears that a portion of the project site is located within *Priority & Estimated Habitat* (PH 926/EH 755) as indicated in the *Massachusetts Natural Heritage Atlas* (13th Edition). Our database indicates that this area is mapped as foraging habitat for the Roseate Tern and Common Tern, state-listed as "Endangered" and "Special Concern," respectively. As acknowledged in your letter, the Roseate Tern is also Federally listed as "Endangered." These species are protected under the Massachusetts Endangered Species Act (MESA) (M.G.L. c. 131A) and its implementing regulations (321 CMR 10.00). State-listed wildlife are also protected under the state's Wetlands Protection Act (WPA) (M.G.L. c. 131, s. 40) and its implementing regulations (310 CMR 10.00). Fact sheets for most state-listed rare species can be found on our website (www.nhesp.org).

However, I understand that projects falling under the jurisdiction of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) [42 u.s.c. sec. 9601 et seq. (1980)] are exempt from state review and permitting requirements although the EPA still applies the substantive standards of certain federal and state laws in its review of projects authorized under CERCLA. The NHESP cannot say with certainty whether this project would, or would not cause harm to foraging state and federally listed terns without seeing detailed project plans, but in your letter you requested preliminary comments from this office.

Based on a preliminary review of the information that has been provided and information that is currently contained in our database, it appears that the proposed dredging and terminal extension would only impact a small acreage of shallow-water feeding habitat for terns. Given the relatively small project footprint within mapped tern habitat, it does not appear that the project will result in any measurable harm to state-listed species, and our office would not require a "take" permit for the activity were the proposal to be in our permitting jurisdiction. However, an effort should be made to avoid the suspension of sediments and any potential sediment plume during dredging operations. Finally, given that this project will result in some unavoidable impacts to aquatic habitat, we encourage the project proponent to consider the implementation of a tern mitigation plan. For example, targeted tern foraging surveys and/or support for habitat management efforts would aid the conservation of state and federally listed terns in the Commonwealth. If you are interested in exploring mitigation options, please feel free to contact Carolyn Mostello, our Tern Project Leader, at (508) 389-6372.

www.nhesp.org



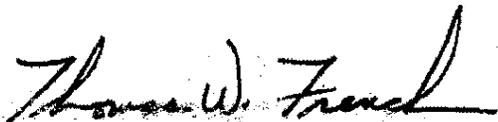
Natural Heritage & Endangered Species Program

North Drive, Route 135, Westborough, MA 01581 Tel: (508) 389-6360 Fax: (508) 389-7891

Page Two

This evaluation is based on the most recent information available in the Natural Heritage database, which is constantly being expanded and updated through ongoing research and inventory. If you have any questions regarding this letter please contact Emily Holt, Endangered Species Review Assistant, at (508) 389-6361.

Sincerely,

A handwritten signature in black ink that reads "Thomas W. French". The signature is written in a cursive style with a long, sweeping underline.

Thomas W. French, Ph.D.
Assistant Director

cc: Michael Amaral, USFWS