Bellantuono, Kristen

From: Kathy Middleton - NOAA Federal [kathy.middleton@noaa.gov]
Sent: Monday, February 11, 2013 3:23 PM
To: Desista, Robert J NAE; Jenna Pirrotta - NOAA Affiliate; Christopher Boelke; Lou Chiarella; Ray, Diane M NAE; Bellantuono, Kristen; Margason.nathan@epa.gov
Subject: Stamford Boat Works letter
Attachments: 2001-1169_ Stamford Boat Works_Feb2013.pdf

Please find the attached letter from NMFS for your files.
Thank you

RECEIVED

FEB 20 2013

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF ADJUDICATIONS

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

FEB 11 2013

Mr. Robert J. DeSista
Chief, Permits and Enforcement Branch
Regulatory Division
U.S. Army Corps of Engineers
696 Virginia Road
Concord, MA 01742-2751

Re: NAE-2001-1169, Stamford Boat Works, new boat yard and launch system

Dear Mr. DeSista:

We reviewed public notice NAE-2001-1169, dated December 26, 2012, for the construction of a boat rack storage and launch facility in the East Branch of Stamford Harbor, Stamford, Connecticut. In a letter dated January 8, 2013, we requested additional information from you so that we may provide you with conservation recommendations for the proposed project. On January 14, 2013, we received additional information from the applicant, including the permit application and detailed plans of the proposed boatyard facility that was previously submitted to you and the Connecticut Department of Energy and Environmental Protection. The proposed boatyard includes upland storage for approximately 292 boats, a 64-foot by 20-foot travel lift well with steel sheet piles, a 38-foot by 40-foot pier with backfilled steel bulkhead sides and concrete cap (of which, 720 square feet (sf) is below the high tide line), 1,280 sf of pile supported piers beyond mean high water, 2,933 sf of floating docks, additional bulkheads above the high tide line and new dredging of a 25,293 sf area to varying depths between -5 and -12 feet below mean low water, plus a two-foot overdredge. Approximately 4,600 cubic yards of material will be dredged and disposed of in an upland location. The proposed project will impact approximately 26,094 sf of subtidal and intertidal essential fish habitat (EFH), including approximately 500 sf of tidal wetland vegetation.

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act require federal agencies to consult with one another on projects such as this. Insofar as a project involves EFH, as this project does, this process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in this consultation procedure. We also note your permitting obligations at 33 CFR Parts 320 through 330, and particularly at 40 CFR Part 230, as well as the process mutually agreed upon in our Memorandum of Agreement (MOA) concerning Section 404(q) of the Clean Water Act. Our ability to thoroughly assess potential impacts to EFH and associated marine resources was complicated by the absence of a complete EFH assessment; however, we offer the following comments and recommendations pursuant to the above referenced regulatory process, using the best scientific information available.

General Comments

Stamford Harbor is a protected inlet in western Long Island Sound, with jetties located at the east and west sides of the entrance. Further north, Stamford Harbor is separated into the East and West Branches. The proposed boatyard is located above the hurricane barrier in the East Branch of Stamford Harbor. Stamford Harbort supports a number of marine resources including federally managed species such as bluefish, black sea bass and winter flounder; shellfish such as hard clam and oyster; and anadromous fish. With limited habitat remaining in portions of Stamford Harbor, projects resulting in loss of intertidal and shallow water habitats have the potential to result in lasting cumulative impacts to these local resources.

The proposed boatyard would require dredging, filling and construction of overwater structures, and would impact EFH through the temporary and permanent loss of intertidal and shallow subtidal habitats. Although this is an urbanized area, studies have found little difference in fish habitat uses despite variations in anthropogenic inputs (Meng and Powell 1999). Unvegetated shallows are known to be an important habitat for juvenile winter flounder (Meng and Powell 1999, Manderson et al. 2004). Shallow water habitats such as this provide effective refuges even when lacking complex physical structures.

In addition to direct impacts through habitat loss, dredging activity results in elevated sediment levels in the water column, which have been shown to restrict or inhibit habitat use and functions, including reproduction (Newcombe and MacDonald 1991). High turbidity can impact fish species through greater expenditure of energy, gill tissue damage and mortality (Johnson et al. 2008, Newcombe and Jensen 1996). Particularly, egg and larval life stages may be more sensitive to turbidity impacts (Newcombe and Jensen 1996). Furthermore, sub-lethal effects to estuarine fishes can include decreased feeding, impacts from lowered oxygen levels, as well as impacts on gills and associated respiratory impacts (Wilber and Clarke 2001).

Sediment testing revealed that the substrate within the proposed dredge footprints contain elevated levels of hydrocarbons, pesticides and metals. The testing also concluded the proposed dredged materials are unsuitable for in-water disposal and as a result, an upland disposal site will be used. Disturbance of bottom sediments during dredging can release these substances into the water column and allow them to become biologically available in the water column or through trophic transfer (Wilbur and Pentony 1999; USEPA 2000; Nightingale and Simenstad 2001). The toxic effects of metals on fish include body lesions, damage to gill tissue, and interrupted cellular functions (Gould et al. 1994). Organic contaminants such as PCBs, DDT and chlordane are highly toxic and persistent in marine ecosystems (Kennish 1998) and can lead to a reduction in reproduction success in marine fishes (Nelson et al. 1991). The information included in the permit application package indicates that a silt curtain and oil boom may be used to enclose the area of active dredging. Details or descriptions of the silt curtain and oil boom were not provided. Furthermore, their effectiveness at minimizing the transport of contaminated sediments in a location such as this is unclear due to the average 8.5-foot tidal range in this area. A solid containment device would minimize turbidity and release of contaminants in the water column.

Fringing wetland vegetation including marsh elder, smooth cordgrass, waterhemp, and common reed is present along the existing shoreline and at the previous restoration site on the property

directly to the south. The proposed solid-fill pier will be partially located in intertidal habitat and will impact approximately 500 sf of tidal wetland vegetation. In addition, the steel sheetpile bulkheads used in the construction of the travel lift well will be located within and perpendicular to this fringing marsh. Salt marsh wetlands are identified by the U.S. Environmental Protection Agency as "special aquatic sites" pursuant to 40 CFR Part 230 Section 404(b)(1) of the federal Clean Water Act due to its important role in the marine ecosystem for foraging species. Impacts to such habitat would result in negative consequences for fisheries resources, as these environments are particularly valuable in exporting nutrients, filtering runoff from upland sources and providing spawning, nursery and shelter habitat for most of the species utilizing the area, including those managed under the MSA. With limited habitat remaining in this portion of Stamford Harbor, it is important to protect and enhance existing habitat where possible.

Conflicting information on mitigation for tidal wetland impacts was provided in the application packet that we received. We read that a phragmites eradication program may be proposed in the constructed wetland at the adjacent property, and another document describes that the applicant may remove debris and garbage from a 1,500 sf area on the shoreline as mitigation. In addition to direct impacts from filling the wetland vegetation, we are also concerned that the placement of the new bulkheads could lead to scour and erosion of the area due to wave refraction, leading to additional wetland loss. It will be necessary to provide appropriate compensatory mitigation and monitoring to ensure success of the mitigation site and no further loss of the existing wetland.

Essential Fish Habitat Conservation Recommendations

As mentioned above, Section 305(b)(2) of the MSA requires you to consult with us on any action you authorize, fund or undertake that may adversely affect EFH. Stamford Harbor and its surrounding waters have been identified as EFH under the MSA for 16 federally managed species. We recommend, pursuant to Section 305(b)(4)(A) of the MSA, that you adopt the following EFH conservation recommendations:

1. Areas proposed for dredging and excavation should be isolated by sheetpiles or cofferdams and dewatered, prior to sediment removal to minimize turbidity and release of contaminants into the water column. The location of the isolation devices should be depicted on the plans.

2. Compensatory mitigation for temporary and permanent impacts to salt marsh and intertidal habitats should be provided at a minimum mitigation ratio of 2:1. In addition, compensatory mitigation should be initiated within 90 days and completed within one year of initiation of proposed project impacts. A compensatory mitigation plan should be submitted to resource agencies for review.

3. A salt marsh mitigation monitoring plan should be developed to evaluate the success of the compensatory mitigation site per your Compensatory Mitigation Guidance. A copy of the plan should be submitted to resource agencies for review.

   The monitoring plan should include:
   a. Monitoring for at least 3 years;
   b. Standard success criteria per your mitigation guidance;
   c. A contingency plan in the event the mitigation does not meet the success criteria.

Please note that Section 305(b)(4)(B) of the MSA requires you to provide us with a detailed written response to these EFH conservation recommendations, including a description of measures you have adopted that avoid, mitigate or offset the impact of the project on EFH. In the case of a response that is inconsistent with our recommendations, Section 305(b)(4)(B) of the MSA also indicates that you must explain your reasons for not following the recommendations. Included in such reasoning would be the scientific justification for any disagreements with us over the anticipated effects of the proposed action and the measures needed to avoid, minimize, mitigate or offset such effects pursuant to 50 CFR 600.920(k).

Please also note that a distinct and further EFH consultation must be reinitiated pursuant to 50 CFR 600.920(1) if new information becomes available or the project is revised in such a manner that affects the basis for the above EFH conservation recommendations.

Conclusions

In summary, we recommend that the applicant pursue less environmentally damaging alternatives to the proposed project. Specifically, we recommend that dredge and excavation areas are isolated and dewatered in order to minimize the transport of contaminated sediments, compensatory mitigation be conducted at a minimum of a 2:1 ratio and that a salt marsh mitigation plan be developed to include monitoring and contingency plans. The mitigation, monitoring and contingency plans should be submitted to us for review. If you have any questions regarding these recommendations, please contact Jenna Pirrotta at (978) 675-2176 or Jenna.Pirrotta@noaa.gov.

Sincerely,

Louis A. Chiarella
Assistant Regional Administrator
For Habitat Conservation

cc: Diane Ray, US ACOE
Nathan Margason, US EPA
Kristen Bellantuono, CT DEEP

Resources

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Klein-MacPhee, G., Cardin, J.A. and Berry, W.J. 1984. Effect of silver on eggs and larvae of the winter flounder. Transactions of the American Fisheries Society 113(2):247-51.

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Wilbur, A.R. and Pentony, M.W. 1999. Human-induced nonfishing threats to essential fish habitat in the New England region. American Fisheries Society Symposium 22:299-321.

- E-mail to same list above (*EXCEPTIONS*: No permit to Commission on Culture and Tourism; Kim and Heidi (AG's office) receive a list of the issued permits at the end of the month
- Certified copy to: Owner of franchised shellfish ground/lessee of shellfish bed
  Permittee, if no e-mail address provided
- First Class mail to Adjacent Property Owners and Permittee (and the permit is e-mailed)

Note: Permittee receives *copy* of permit with original cover letter and original Appendix B and original Permit Notice. A copy of the cover letter with the original permit stays in the file.

Updated 9-25-12