

CP04-36



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United States Department of the Interior

NATIONAL PARK SERVICE
Northeast Region
United States Custom House
200 Chestnut Street
Philadelphia, PA 19106

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FEDERAL ENERGY
REGULATORY COMMISSION

ORIGINAL

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St., N.E. Room 1A
Washington, DC 20426

Dear Secretary Bose:

Thank you for your May 28, 2010 response to Director Jarvis' May 12 letter concerning the status of the Taunton River as a component of the National Wild and Scenic Rivers System. As you know, R. Gordon Shearer of Hess LNG, representing the applicant, has also responded to Director Jarvis' letter with a lengthy comment letter dated July 9, 2010. Based upon these communications, the National Park Service (NPS) believes that the interests of all parties can best be served by providing additional information to the Federal Energy Regulatory Commission (FERC) and to Weaver's Cove Energy at this time.

Additional Background:

The main purposes of Director Jarvis' letter of May 12 was to enter officially into the FERC record information that the NPS believes to be pertinent and critical to the evaluation of the proposed Weaver's Cove LNG facility. Specifically, in the time that has passed since the FERC issued the Final Environmental Impact Statement (EIS) for the original Weaver's Cove Energy proposal (May, 2005), PL 111-11 has established the entire Taunton River as a component of the National Wild and Scenic Rivers System. This designation followed lengthy debate in the Congress that was specifically centered around the lower Taunton River and the likely effect of the designation to block development of the proposed Weaver's Cove LNG facility. As you know, the May, 2005 Final EIS for the Weaver's Cove project (CP04-36-000) contains the following condition related to the Wild and Scenic River (WSR) status of the Taunton River:

Prior to Construction: Weaver's Cove Energy shall file with the Secretary documentation of concurrence from the U.S. Department of the Interior that the project would not have a substantial adverse affect on the Taunton River's potential designation as a WSR and that the project would be consistent with the Wild and Scenic River Act if the Taunton River were designated a WSR.

By letter dated July 5, 2005, the Department of the Interior (DOI) filed additional comment with the FERC which contained an analysis of DOI's understanding of the implications of the FERC

condition cited above, including the following (under the heading “Site Impacts to the Lower Taunton River”):

The relevant State and Federal fishery agencies, in their comments on the DEIS, have indicated that there may be unavoidable adverse site impacts related particularly to the enlargement of the turning basin and development of the Weaver’s Cove site. These include the permanent loss of 11 acres of winter flounder habitat and 1.15 acres of saltmarsh and intertidal /subtidal habitat. The FEIS appears to agree that these impacts to this portion of the Lower Taunton River are unavoidable.

In addition, the proposed development of the Weaver’s Cove site for LNG purposes appears to be contrary to the goals and intentions of the City of Fall River as it relates to the desire to seek Federal Wild and Scenic River designation and endorse the Taunton River Stewardship Plan. Development of this site would foreclose opportunities for the City to connect a significant portion of their waterfront to the Taunton River through redevelopment, emphasizing public access and recreation as an important aspect of economic revitalization and quality of life improvement.

For these reasons, we do not feel that the proposed development can be made compatible with Wild and Scenic River designation of the lower Taunton River in the vicinity of the project area.

To ensure that the implications were fully considered by Congress, the NPS’ Taunton Wild and Scenic River Study Draft Report and Environmental Assessment (June, 2007) presented two alternatives: Alternative B: Designation of the Entire Mainstem of the Taunton River (full designation); and Alternative C: Designation of the Mainstem from its headwaters to the confluence with Steep Brook in North Fall River (partial designation). The latter, partial designation alternative, would have excluded the lower-most four miles from the Wild and Scenic Designation, including the area abutting the proposed Weaver’s Cove LNG storage facility in Fall River.

By offering the two alternatives, the report asked Congress to consider the future of this portion of the Lower Taunton River and the implications of applying WSR protections to this segment. The two designation alternatives were debated vigorously in the Congress in the context of the language that ultimately became part of PL111-11 and its predecessors in the 110th Congress (H.R. 415 and S. 868). In fact, the designation of the lower-most, urbanized four miles of the Taunton , and the likely effect of such designation to block the proposed Weaver’s Cove LNG project was central to debate at the Committee level and on the floor of the House and Senate.

Weaver’s Cove Energy Offshore Berth Proposal and Onshore Storage Facility:

Contrary to the impression that Mr. Shearer’s July 9, 2010 letter may leave, Weaver’s Cove Energy made no effort to contact or consult with the NPS prior to redesigning the project in early 2008. NPS first learned about the project by attending the June 25, 2008 FERC-sponsored agency scoping meeting. The Service’s initial reactions to the project included stating for the record at the meeting that the agency anticipated that the entire Taunton would likely be designated as a WSR. The other comments reflected in the minutes are accurately noted by Mr. Shearer, except for omission of the following important sentence:

NPS echoed other agencies in wishing to see alternatives evaluated, including a Northeast Gateway type facility which would allow elimination of the on-shore storage facility, **further reducing conflicts with the designation.**(emphasis added)

Having already placed into the FERC record (by virtue of its July 5, 2005 comment letter quoted above) DOI's view that the siting of the proposed Weaver's Cove Energy LNG storage facility on the banks of the Taunton River in Fall River would be likely to conflict with the WSR designation of the lower Taunton River, NPS wished to make certain that alternatives that would avoid this conflict would be evaluated by FERC. To date, pending release of the DEIS, the NPS has no knowledge of whether and to what extent the FERC will undertake such an evaluation, what alternatives to the land-based facility will be reviewed, or what conclusions it will draw. The FERC has since confirmed verbally and in writing that the original Weaver's Cove Energy docket for the siting of the storage facility remains open, and that the stated WSR condition (quoted above) is still in effect (email of April 17, 2009).

As noted by Mr. Shearer in the July 9 letter, the NPS participated in as many of the informal agency information meetings sponsored by Weaver's Cove Energy as it could, even bringing in its fisheries expert from the national office for one of the meetings. Unfortunately, agency attempts at these meetings to engage the applicant in discussion of alternatives and impact avoidance met with little success, and any attempt to discuss the siting of the storage facility was met with a standard response that Weaver's Cove Energy considered the storage facility "already approved" by FERC. Ultimately, the NPS concluded, as did other state and federal agencies, that the applicant's purpose in holding the meetings was principally to craft a mitigation plan that it could (and did) submit to the FERC as having been based on agency feedback. As such, the NPS was compelled to file its August 14, 2009 letter to set the record straight. Other agencies filed similar letters.

The informal meetings have, however, heightened the NPS' awareness of critical issues regarding the health of Mt. Hope Bay and the lower Taunton River estuary. The Taunton River Estuary is one of the focus areas of the Taunton River Stewardship Plan by which the NPS is to manage the Taunton WSR and which has been formally submitted into the FERC record in conjunction with Director Jarvis' May 12, 2010 letter. DOI/NPS has stated many times that it will conduct its review of the proposed Offshore Berth Project in a coordinated, inter-agency manner, working closely with agencies including the MA Division of Marine Fisheries; National Marine Fisheries Service, and US Environmental Protection Agency, all of whom have filed detailed scoping comments on the project.

Project impacts to winter flounder appear to be one area of particular concern. Permanent habitat loss due to project dredging, recurrent habitat impacts due to vessel transit and sediment resuspension, impingement and entrainment impacts due to ballast and cooling water intakes, temperature impacts from cooling water discharges, and dissolved oxygen levels are all potential project impacts that must be evaluated. These factors are of concern to winter flounder and to other marine resources, including anadromous and catadromous fish resources that are of particular concern related to the WSR. Anadromous and catadromous fish species that spend portions of their life cycles within the Taunton WSR, migrate through Mt. Hope Bay and are thus vulnerable to effects of activities associated with project construction, operation and maintenance both in the Bay and in the lower River. While working outside known migration periods may reduce some of the impacts associated with construction and maintenance, the longer term effects of day to day operations represent an ongoing risk. Given that these species are identified in the Taunton River Stewardship Plan as outstanding resources with additional restoration potential, the NPS must carefully evaluate any project with the potential to adversely affect the abundance of these species within the WSR.

Regarding the exact number of acres of permanent winter flounder spawning habitat loss, the NPS' August 14, 2009 letter referenced five acres of winter spawning habitat loss within the Taunton River based on data presented by Weaver's Cove's consultants at one of the informal agency information sessions. Correspondence since that time from Weaver's Cove Energy has indicated that this was mistaken. Regardless, the NPS will evaluate the impacts to winter flounder closely in the context of a full review of the anticipated DEIS, and, as noted in the July, 2005 letter, be particularly concerned with permanent habitat loss or degradation within the designated river itself. NPS reserves the right to comment on such issues within the scope of CP04-36-000 since that docket remains open, Weaver's Cove Energy is proposing significant project changes related to that docket, and the NPS' frame of reference for project review has fundamentally changed with the March, 2009 designation of the entire Taunton River as a WSR.

As noted by Mr. Shearer, NPS has raised shoreline restoration within the lower Taunton River as a concept that it had not heard raised by other agencies or Weaver's Cove Energy itself (either as a mitigation concept or as a potential permitting issue to address site conditions at the Weaver's Cove Energy - owned proposed storage facility). As stated in our August 14, 2009 letter to FERC, NPS has not reached any conclusions in this regard and cannot address this topic area in the absence of an adequate and current interagency impact review process. NPS will need to conduct a full review of site impacts within the Taunton River related to both FERC dockets, including the disposition of streambank conditions, scenery and recreation impacts, impacts to existing and potential future waterfront conditions and public access, and related aspects of the Taunton River Stewardship Plan.

We believe that the evaluation in the 2005 EIS is fundamentally out of date. We believe that the 2005 FEIS does not adequately support a shore-based LNG facility both because critical factors were not evaluated in that document and other factors have changed since that review was conducted. It is our position that FERC must address these changes in a comprehensive fashion as a part of environmental review documents currently under preparation prior to making any decisions regarding any of the permits needed for this facility. CEQ's NEPA regulations require that a Supplemental EIS be prepared whenever "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact." 40 CFR section 1502.9. These significant changes include:

- Permitting and construction of two new LNG facilities off the coast of Massachusetts and a third in New Brunswick all delivering (or soon to be delivering) LNG to the New England market.

- Designation of the entire Taunton River as a National Wild and Scenic River.

- US EPA's major breakthrough in the restoration of Mt. Hope Bay and winter flounder stocks through permitted cooling infrastructure changes at the Brayton Point Power Plant.

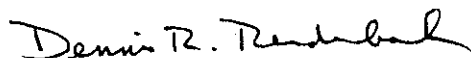
- Heightened concern and additional federal protections in place to foster recovery of winter flounder stocks.

As discussed in the body of this letter, NPS has previously identified its position that the siting of the LNG storage facility on the banks of the Taunton River would likely present a conflict with the WSR designation, and has specifically requested consideration of alternatives that would avoid these impacts and avoid preclusion of the shoreline from public use. Based upon the FERC response to Director Jarvis' letter, we anticipate that the DEIS will include an analysis of these factors and are hopeful that the FERC will not promote a project alternative in conflict with the Taunton WSR designation and Congressional intent therein.

We trust that this letter clarifies any outstanding questions that may have been raised in earlier correspondence. If you require additional information, please contact Jamie Fosburg, he can be reached at (617) 223-5191.

Thank you for your interest in the National Park Service.

Sincerely,



Dennis R. Reidenbach
Regional Director
Northeast Region

cc:

R. Gordon Shearer, Hess LNG
Louis Bosquet, Chair, Taunton River Stewardship Council