

ADDITIONAL
CORRESPONDENCE



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

April 6, 2021

Mr. Dan Martino
Cottage City Oysters
PO Box 4500
Vineyard Haven, MA 02568

Dear Mr. Martino,

Thank you for your recent email concerning fishing in the Stellwagen Bank National Marine Sanctuary (SBNMS). The Council is well aware of the value of the SBNMS. Indeed, we participate in the Sanctuary Advisory Committee and the Sanctuary Superintendent regularly briefs the Council on relevant issues.

The National Marine Sanctuaries Act (16 U.S.C 1431 et seq., NMSA) does not prohibit fishing within the SBNMS. As noted in the part of the NMSA that you quoted, the prohibition applies to “any sanctuary resource **managed under laws or regulations for that sanctuary**” (emphasis added). When a sanctuary is established, 16 U.S.C. 1434(a)(4), requires a designation document that includes the “...types of activities that will be subject to regulation by the Secretary to protect those characteristics.” The SBNMS designation document does not list fishing as an activity subject to regulation under the NMSA, nor is it prohibited.

The Council manages fisheries consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.). We use a variety of measures to promote sustainable fishing activity, including closures. In reference to your suggestion to limit bottom trawling, we have prohibited bottom trawling in an area larger than the state of Connecticut (5,447 sq. miles, six times the size of the Sanctuary), and are waiting for implementation of another closure to bottom-tending gear of about 25,000 square miles. The Western Gulf of Maine Closure Area and Western Gulf of Maine Habitat Closure Area partially overlap SBNMS, and prohibit bottom trawling, among other types of fishing activities.

Each fall the Council identifies its activities for the following year. Should you wish to suggest that the Council initiate a management action to consider a prohibition on bottom trawling in the SBNMS, please submit a recommendation in mid-August and I will present it to the Council for consideration. The final decision for the following year’s activities is typically made in December.

Thank you for your interest in fishery management. Please contact me if you have questions.

Sincerely,

Thomas A. Nies
Executive Director

cc: Pete DeCola, SBNMS



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

Mr. John Kennelly
Chief, Planning Division
U.S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751

Re: Cape Cod Canal and Sandwich Beaches Section 111 Shore Damage Mitigation Study

Dear Mr. Kennelly:

We received your EFH consultation request letter dated March 10, 2021 and Essential Fish Habitat (EFH) Assessment, regarding the Cape Cod Canal and Sandwich Beaches Section 111 Shore Damage Mitigation Study. The project is being conducted under the authority provided by Section 111 (Shoreline Damage Attributable to a Federal Navigation Project) of the Rivers and Harbor Act of 1968. The Town of Sandwich requested the study to investigate the effects of the jetties located at the east entrance of the Cape Cod Canal Federal Navigation Project (FNP) on downdrift beaches which experience continual erosion, especially along Town Neck Beach and Springhill Beach. The study area is the approximately 2.5 miles of directly impacted shoreline, including Scusset Beach, the east entrance to the Canal, Town Neck Beach, Old Harbor Inlet and Springhill Beach. Analysis conducted during the first phase of the study indicated that the jetties located at the east entrance to the Canal interrupt natural longshore sediment transport and starve the downdrift littoral system of sediment needed to maintain a stable shoreline. The current study delineates the extent of erosion impacts directly attributable to the Cape Cod Canal FNP and describes measures and alternatives for mitigating those impacts. Your Recommended Plan includes the construction of an engineered beach at Town Neck Beach using approximately 388,000 cubic yards of beach compatible material. The 388,000 cubic yards of nourishment has been authorized through the Town of Sandwich permit NAE-2014-00259 and subsequent modification on November 2019. The amount of sand to be dredged from the Scusset beach site is proposed to increase from 224,500 to 388,000 cubic yards. The initial 224,500 cubic yards was authorized through the Town of Sandwich permit NAE-2016-00624. Therefore, conservation recommendations provided as part of this EFH consultation will be specific to the additional 143,500 cubic yards of material to be dredged from the Scusset Beach borrow site. We anticipate that all special conditions resulting from previous EFH consultations¹ (NAE-2016-00624 and NAE-2014-00259) will remain in effect, however, project components that are inconsistent with these recommendations have been identified in the General Comments section of this letter.

¹ See Appendix A for special conditions relevant to prior EFH consultations.

The proposed project includes hydraulic dredge excavation of an additional 143,500 cubic yards of sand and gravel from a 39 acre subtidal borrow site off Scusset Beach, Sandwich, MA, for a total dredge volume of 388,000 cubic yards. However, the work could ultimately include use of a mechanical dredge, if deemed necessary due to cost considerations. The average excavation depth across the site is approximately 5.7 feet with side slopes grading up to a 1V:3H slope to meet the surrounding grade, however, the boundaries and excavation depth are subject to change. The majority of the site will be dredged to an excavation depth of approximately -26 feet NAVD88. The proposed borrow site dredging and nourishment is proposed to be completed between October 1 and December 31 of the years in which funding is received. All dredged material will be transported to Town Neck Beach where it will be hydraulically pumped onto the beach, dewatered, and used for dune and beach nourishment. No mitigation is proposed for these activities.

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 the relevant consultation procedure. We offer the following comments and recommendations on this project pursuant to the above referenced regulatory process.

General Comments

Species found within Cape Cod Bay include: striped bass (*Morone saxatilis*), black sea bass (*Centropristis striata*), bluefish (*Pomatomus altatrix*), mackerel (*Scomber scombrus*), bonito (*Sarda sarda*), tautog (*Tautoga onitis*), scup (*Stenotomus chrysops*), cod (*Gadus morhua*), summer flounder (*Paralichthys dentatus*), weakfish (*Cynoscion regalis*), pollock (*Pollachius pollachius*), halibut (*Hippoglossus hippoglossus*), yellowfin (*Thunnus albacares*) and bluefin tuna (*Thunnus thynnus*), haddock (*Melanogrammus aeglefinus*), wolffish (*Anarhichas lupus*), winter flounder (*Pseudopleuronectes americanus*), rainbow smelt (*Osmerus mordax*), and shortfin mako (*Isurus oxyrinchus*) and blue sharks (*Prionace glauca*).

Massachusetts Division of Marine Fisheries has identified eelgrass beds in subtidal waters along the western and middle portions of the nourishment area. The U.S. Environmental Protection Agency has designated submerged aquatic vegetation, including eelgrass, as "special aquatic sites" under the Section 404(b)(1) of the federal Clean Water Act, due to its important role in the marine ecosystem for nesting, spawning, nursery cover and forage areas for fish and wildlife. Direct and indirect impacts to this critical habitat should be minimized during nourishment activities.

Intertidal and inshore subtidal mixed sand, gravel, cobble, and boulder habitats with epifauna and attached macroalgae serve as important shelter and forage habitat for a variety of species including Atlantic cod, pollock, black sea bass, ocean pout, red hake, white hake, windowpane flounder, winter skate, little skate, striped bass, cunner, tautog, and scup. The structural complexity of rocky habitats are important for fish in that they provide shelter and refuge from predators (Auster 1998; Auster and Langton 1999; NRC 2002; Stevenson et al. 2004). It is also

well established that intertidal zones serve as areas of refuge from predation and foraging habitat for juvenile fish during periods of high tide (Helfman et al. 2009). Multiple managed fish species within the beach nourishment project vicinity have life history stages that are found in the intertidal zone including, Atlantic cod, pollock, ocean pout, red hake, white hake, and windowpane flounder. Of particular concern is the juvenile life history stage for Atlantic cod. Howe et al. and the MA DMF Trawl Surveys revealed high abundance of age 0 cod offshore of the Sandwich nourishment site (2002). In reference to complex rocky habitat found on Sheets #4, #5, #6, #7, #8 and #10 of the original permit, the Main Report states that “according to WHG surveys from 2018, the ecological value of resources in this area is low,” however this assumption is not validated based on the scientific literature referenced above. In addition the Main Report states that, “since the primary sediment source to Town Neck Beach has been starved by the Canal jetties, a large portion of the beach is composed of coarse-grained sands, gravel, and cobble.” However, it takes 10 years or more for the attached epifauna and macroalgal complexity to develop, which reveals this habitat is not new to this area and also underlines the importance of avoiding impacts since replication of complex rocky habitat with epifauna and macroalgae is difficult.

The project area also provides habitat for winter flounder spawning and juvenile development. Winter flounder eggs, once deposited on the substrate, are vulnerable to sedimentation effects in less than 1 mm of sediment. Decreased hatching success of winter flounder eggs is observed when covered in as little as 1 mm of sediment and burial in sediments greater than 2.5 mm may cause no hatch (Berry et al. 2011). Elevated turbidity can also impact fish species through greater utilization of energy, gill tissue damage and mortality. Egg and larval life stages may be more sensitive to suspended sediments, resulting in both lethal and sub-lethal impacts (Newcombe and Jensen 1996). To avoid such impacts, turbidity producing activities should be suspended during periods when these sensitive life stages are present.

Based on the sediment grain size analyses provided, the majority of the Scusset borrow site material consists of sand, however core 8 contained 17.8% gravel and included ‘gravel’ in the visual description of the sample. The borrow site should be visually inspected for the presence of natural boulder, cobble, gravel, pebble habitat prior to dredging, and areas containing this material, specifically towards the westernmost edge of the borrow site, in the vicinity of core 8, should be avoided. In addition, NAE-2014-00259 includes special condition 3, the proposed source of beach nourishment material be of a compatible grain size as the existing beach. The Main Report indicates the predominant grain size of the borrow site material is fine to medium grain sand, while the nourishment site contains predominantly medium to coarse grained sand. According to Haney et al. “if the grain size of the source material is finer than the grain size of the receiving beach, it will be more susceptible to erosion. If it is susceptible to an erosion rate greater than the historic rate, then beach fill could drift into adjacent coastal resources. The likelihood of eroded sediment drifting into these resources needs to be quantified as part of the regulatory review process”. Supplemental sediment sources should be considered to meet this existing special condition, enhance the longevity of the nourishment project and to avoid potential indirect impacts to nearby eelgrass and complex rocky intertidal habitats.

The Main Report indicates that Section 111 work will comply with the Town of Sandwich permits NAE-2014-00259 (as amended November 2019) and NAE-2016-00624. Extensive EFH

coordination and resulting Conservation Recommendations were incorporated into permit special conditions to avoid and minimize impacts to federally managed EFH. The special conditions that relate to our prior EFH consultations with the Town of Sandwich are provided at the end of this document.

The subsequent addition of special condition 10 to the November 2019 NAE-2014-00259 modification contradicts prior special conditions. Special condition 10 calls out specific areas of complex bottom habitat, thereby negating existing special condition 4 which included all complex rocky habitat (see sheets #4, #5, #6, #7, #8 and #10 of the original permit). In addition, the slope of 15:1 has been added to special condition 10, which contradicts the requirements of existing special condition 5 to maintain 10:1 slopes to accommodate piping plover habitat replication. We recommend that language be consistent with earlier special conditions to avoid confusion and avoid additional adverse effects to juvenile cod HAPC.

Essential Fish Habitat

Scusset Beach is designated as EFH under the MSA for multiple managed fish species, including winter flounder, Atlantic cod, and pollock. In addition, this area is designated as a Habitat Area of Particular Concern (HAPC) for juvenile Atlantic cod. As described above, the proposed Cape Cod Canal and Sandwich Beaches Section 111 Shore Damage Mitigation Study may adversely affect EFH by impacting nearby winter flounder habitat, eelgrass beds, complex rocky habitats, and shellfish habitat located within the project area. We recommend pursuant to Section 305(b)(4)(A) of the MSA that you adopt the following EFH conservation recommendations:

1. No dredging should occur from February 1 to June 30, of any calendar year, to protect sensitive life history stage winter flounder EFH.
2. If the proposed dredge footprint includes exposed rocky habitats, as indicated in sediment core 8, the footprint should be modified to avoid all dredging of natural rocky habitats (including gravel).
3. Proposed sources of beach nourishment should be free of contaminants and of a compatible grain size with the existing beach. Supplemental sediment sources should be considered to minimize transport of fine grained material into nearby eelgrass and complex rocky intertidal habitats and to enhance the longevity of the nourishment project.

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 adopt for avoiding, mitigating or offsetting 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.

Endangered Species Act

Threatened and endangered species under our jurisdiction may be present in the action area. A consultation pursuant to section 7 of the Endangered Species Act of 1973 is required. If you have any questions regarding the status of this consultation, please contact Roosevelt Mesa at 978-281-9186 or roosevelt.mesa@noaa.gov.

Conclusion

In summary, we recommend that no dredging should occur from February 1 to June 30, of any calendar year, to protect sensitive life history stage winter flounder EFH. We also recommend avoiding gravel substrate identified in the westernmost extent of the dredge footprint (sediment core 8) and that the source material be of a consistent grain size as the existing beach. We look forward to your response to our EFH conservation recommendations, and continued coordination on this project. Please contact Kaitlyn Shaw at 978-282-8457 or kaitlyn.shaw@noaa.gov if you would like to discuss this further.

Sincerely,



for
Louis A. Chiarella
Assistant Regional Administrator
for Habitat Conservation

cc: Grace Moses, US ACOE
Roosevelt Mesa, PRD
John Logan, MA DMF
Bob Boeri, MA CZM
Tom Nies, NEFMC
Chris Moore, MAFMC
Lisa Havel, ASMFC

Appendix A
Town of Sandwich Permit Special Conditions
Resulting from prior EFH consultations

NAE-2016-00624

7. No dredging shall occur from January 1st to June 30th of any year, to avoid impacts to North Atlantic Right Whales and to protect sensitive life history stage winter flounder EFH.

NAE-2014-00259

3. Proposed sources of beach nourishment shall be free of contaminant and of a compatible grain size with existing beach as approved by Army Corps of Engineers.

4. Beach nourishment shall avoid direct impacts to complex bottom habitat which has live growth (macroalgae) to the extent practicable. Complex habitat consists predominantly of cobbles and boulders. Cobbles and boulders are defined as having a grain size greater than 2.52 inches in length.

NAE-2014-00259 (as amended November 2019) Phillip Nimeskern provided the modified permit language on October 11, 2019 and gave 10 days for Alison to reply.

10. The applicant or their agents will use the delineation of complex rocky intertidal habitat as shown on Sheets #11 and #12 and in Transect #8A on Sheet #17 for the placement of beach nourishment sand and avoid the area labeled "Potential Area of No Fill", unless the plans and permit are modified in the future. A 15: 1 slope is proposed for this transect in these plans.

11. The applicants will invite representatives of USA CE-NAE and NOAA to participate in pre-construction surveys for this project. If the survey shows that complex rocky intertidal habitat is extant and the delineation line has not moved, Special Condition # 10 will still apply. If the survey shows that complex rocky intertidal habitat is no longer extant or the delineation line has moved, the applicants and representatives will confer and decide if the line can be moved and more of the "Potential Area of No Fill" can be filled. No change in beach nourishment will be done until the Corps approves the modified plans.

References

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