

inclusion in the decision record; and b) explaining their significance to the issues pending before the Secretary.” NOAA Letter at 3. Appellants are filing this request in accordance with these instructions in the NOAA Letter, and accordingly provide for each document listed herein a statement of its relevance and significance to the issues pending before the Secretary in these appeals, as well as a statement justifying its inclusion in the record.

II. Individual Document Descriptions and Justifications

Appellants submit that each document identified in this Section should be included in the consolidated record for the reasons set forth below:

Document No. 1: **Letters From The New England Regional Council Of Carpenters Local 1305, Local 51 Plumbers And Pipefitters, Construction And General Laborers Local 610, And Massachusetts Chemistry & Technology Alliance To The Federal Energy Regulatory Commission**

These letters are relevant to the issues pending before the Secretary in these appeals because they provide further support for Appellants’ conclusion that the Projects satisfy Element 1, and clarify the information in the consolidated record supporting that conclusion.

Specifically, each of these letters discusses the important energy and economic benefits that the Projects will provide, including, for example, the creation of five hundred (500) construction jobs for three years and about one hundred (100) permanent jobs, a \$500 million commercial investment, and much-needed natural gas supply for New England generally as well as Massachusetts manufacturing facilities.

These letters are also relevant to the issues pending before the Secretary because they refute a statement made in the letter from the Coalition for Responsible Siting of LNG Facilities (admitted to the record by NOAA on February 22, 2008) that there is “unanimous support for ending this project now.”

In consideration of the foregoing, these documents should be included in the decision record in this appeal because they provide both clarifying information related to information already in the record, and supplemental information requested by the Secretary in the NOAA Letter. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii). Further, inclusion of these documents into the record is appropriate because they were made part of the decision record at the Federal Energy Regulatory Commission between August 16, 2007 and October 29, 2007, and thus would have been part of the initial consolidated record were this appeal filed today. *See* Letter from NOAA to the Parties in the Consistency Appeals of Weaver’s Cove

Energy, LLC and Mill River Pipeline, LLC, January 2, 2008, at 2 (citing this justification in its decision to supplement the record).

Document No. 2: **U.S. Department of Energy, Energy Information Administration, Supplemental Tables To The Annual Energy Outlook 2007, Energy Consumption In New England By Sector And Source - Table 1**
(February 2007)

This document is relevant to issues before the Secretary in these appeals because it provides further support for Appellants' conclusion that the Projects satisfy Element 1, and clarifies the information in the consolidated record supporting that conclusion.

Specifically, this data from the Energy Information Administration shows that demand for natural gas will continue to grow in New England during the period 2008 to 2030 in the residential, commercial, industrial and electric power sectors. Accordingly, this document provides additional support for the point that the Projects further the national interest significantly and substantially because they will help meet this growing demand. *See* WCE Br. at 12-13; MR Br. at 12-13.

In consideration of the foregoing, this document should be included in the decision record in this appeal because it provides both clarifying information related to information already in the record, and supplemental information requested by the Secretary in the NOAA Letter. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii).

Document No. 3: **Weaver's Cove's Response To The U.S. Fish and Wildlife Service Comments On The Dredging Proposal And Modeling** (dated June 8, 2006)

This document is relevant to issues before the Secretary in these appeals because it provides further support for Appellants' conclusion that the Projects satisfy Element 2, and clarifies the information in the consolidated record supporting that conclusion.

Specifically, this document provides a detailed, science-based response to comments made by Mr. Vern Lang of the U.S. Fish and Wildlife Service ("FWS"), a federal agency within the U.S. Department of the Interior ("DOI"), in a May 10, 2006 e-mail (the text of which is reproduced in this document). This response has never been contested and further validates Weaver's Cove's modeling and the results generated, which are part of the record and were questioned by Fall River in its *amicus* brief, *see* FR Br. at 17. It also demonstrates that the impacts to fisheries resources in the Taunton River as a result of project dredging will not be significant, and that further time-of-year dredging restrictions are not necessary to protect these fisheries resources. Thus, this document lends further support to the demonstration made in Appellants' briefs that the national interest furthered by the Projects will outweigh any adverse impacts on coastal resources.

This response is also relevant to the issues pending before the Secretary because it refutes Fall River's assertion that Weaver's Cove filed a lawsuit against the DOI without first trying to

resolve the dredging and related Wild and Scenic River Act issues directly with DOI, FR Br. at 4, 20.

In consideration of the foregoing, this document should be included in the decision record in this appeal because it provides both clarifying information related to information already in the record, and supplemental information requested by the Secretary in the NOAA Letter. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii).

Document No. 4: **E-mail From Michael Thabault, Assistant Northeast Regional Director, U.S. Fish And Wildlife Service, To Michael Bartlett, New England Field Office Supervisor, U.S. Fish And Wildlife Service** (dated November 6, 2006)

This document is relevant to issues before the Secretary in these appeals because it provides further support for Appellants' conclusion that the Projects satisfy Element 2, and clarifies the information in the consolidated record supporting that conclusion.

Specifically, this document provides the views of the staff of a resource agency with fisheries expertise that the mitigation measures committed to by Weaver's Cove in its October 25, 2006 Mitigation Plan are "more than sufficient to deal with impacts" of dredging on fisheries resources.

This response is also relevant to the issues pending before the Secretary because it provides evidence that FWS staff did not find additional time-of-year dredging restrictions were necessary if Weaver's Cove were to implement the mitigation measures in the October 25, 2006 Mitigation Plan. *Cf.* FR Br. at 20-21.

In consideration of the foregoing, this document should be included in the decision record in this appeal because it provides both clarifying information related to information already in the record, and information addressing an area of disagreement identified by the parties in their briefs. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii).

Document No. 5: **Weaver's Cove Response To Massachusetts Department Of Environmental Protection Inquiry Regarding Water Quality Issues** (dated April 17, 2007)

Document No. 6: **Weaver's Cove Response To Massachusetts Department Of Environmental Protection Inquiry Regarding SSFATE Modeling** (dated July 2, 2006)

These documents are relevant to issues before the Secretary in these appeals because they provide further support for Appellants' conclusion that the Projects satisfy Element 2, and clarify the information in the consolidated record supporting that conclusion.

The first document provides a detailed, science-based response to a request by Mr. Ken Chin, *et al.* of the Massachusetts Department of Environmental Protection ("MADEP") for

certain water quality information pertaining to the Projects. This document, which was prepared on behalf of Weaver's Cove by Epsilon Associates, Inc. (an environmental consulting firm), contains a copy of Weaver's Cove's water quality monitoring plan for dredging activities, as well as chemical sampling data. This information lends further support to the conclusion that project dredging will only have a minor and temporary impact on water quality, and clarifies the information in the record supporting that conclusion.

The second document provides a detailed, science-based response to an inquiry by Mr. Dave Noonan of MADEP concerning SSFATE modeling. This document, which was prepared on behalf of Weaver's Cove by Applied Science Associates (an environmental consulting firm), further validates Weaver's Cove's modeling and the results generated, which are part of the record and were questioned by Fall River in its *amicus* brief, *see* FR Br. at 17. The results of this modeling show that the impacts to fisheries resources in the Taunton River as a result of project dredging will not be significant, and that further time-of-year dredging restrictions are not necessary to protect these fisheries resources.

In consideration of the foregoing, these documents should be included in the decision record in this appeal because they provide both clarifying information related to information already in the record, and supplemental information requested by the Secretary in the NOAA Letter. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii).

Document No. 7: **Appeal Of Weaver's Cove Under 33 C.F.R. § 127.015(b) Of The Letter Of Recommendation And Response To Request For Reconsideration** (dated January 11, 2008)

This document is relevant to the issues pending before the Secretary in these appeals because it provides clarifying information related to materials already in the record, including the Preliminary Assessment, Letter of Recommendation ("LOR") (admitted to the record by NOAA on January 2, 2008), and Response To Request For Reconsideration ("Reconsideration Response") (admitted to the record by NOAA on February 22, 2008), which were all prepared by the U.S. Coast Guard Captain of the Port, Southeast New England.

As explained in Weaver's Cove's Initial Supplemental Brief, neither the LOR nor the Reconsideration Response constitute final agency action, and both are subject to two additional levels of appeal within the Coast Guard, *see* 33 C.F.R. § 127.015. On January 11, 2008, Weaver's Cove exercised its right to avail itself of the next level of review pursuant to the Coast Guard regulations, and filed this document, the appeal of the LOR and Reconsideration Response, with the U.S. Coast Guard Commander, First Coast Guard District. That appeal is pending and will be the first time that another Coast Guard officer other than the Captain of the Port, who issued the LOR, will review Weaver's Cove's vessel transit plan. Included with this document are over eight hundred (800) pages of exhibits filed with the appeal, which provide full support for Weaver's Cove's conclusion that the Captain of the Port's decisions in both the LOR and the Reconsideration Response were contrary to the Coast Guard's practices and the record evidence.

In consideration of the foregoing, this document should be included in the decision record in this appeal because it provides both clarifying information related to information already in the record, and supplemental information requested by the Secretary in the NOAA Letter. *See* 16 U.S.C. § 1465(b)(3)(A)(ii); 15 C.F.R. § 930.130(a)(2)(ii).

III. Conclusion

For the foregoing reasons, Appellants respectfully request that the Secretary supplement the consolidated record in these appeals with the documents identified in Section II of this request.

Respectfully submitted:



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Dated: March 14, 2008

CERTIFICATE OF SERVICE

Consistent with 15 C.F.R. § 930.127, copies of this Joint Request have been sent to the following:

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