



STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001

DAVID A. PATERSON
GOVERNOR

LORRAINE A. CORTÉS-VÁZQUEZ
SECRETARY OF STATE

April 11, 2008

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

FILED
OFFICE OF THE
SECRETARY
2008 APR 21 P 3:26
FEDERAL ENERGY REGULATORY COMMISSION

ORIGINAL

RE: *Broadwater Energy, LLC, Docket Nos. CP06-54-000;*
Broadwater Pipeline, LLC, Docket Nos. CP06-55-000 and CP06-56-000

Dear Ms. Bose:

Attached is the New York State Department of State's federal coastal consistency objection to the Broadwater Project.

Respectfully submitted,

Kathleen L. Martens
Senior Attorney

Enclosures

Typographical Corrections

Page 1, first paragraph, first sentence:

- Insert "the" before "Federal"
- Insert ending parenthesis after "Broadwater"

Page 2, top (partial) paragraph:

- second line: capitalize "State"
- twelfth line: insert an "s" after "egg", and substitute "on" for "in", and insert "and the LNG carriers" after "FSRU"

Page 2, first paragraph under "SUBJECT OF THE REVIEW"

- fifth line: substitute "21.7" for "21.3"

Page 2, second paragraph under "SUBJECT OF THE REVIEW"

- first line: take out commas after "District" and "Corps"
- footnote 4, first line: delete "however" and the commas before and after that word

Page 3, first full paragraph

- fourth line: substitute "Statement" for "Study"

Page 3, third full paragraph

- first line: substitute "an" for "a"

Page 9, first full paragraph

- third line: substitute "deposition" for "disposition"

Page 16, after "Policy 1" Insert: "Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development."

Please insert the following corrected pages 1, 2, 3, 9 and 16 into the attached decision document.



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 SECRETARY OF STATE

April 10, 2008

Mr. Jimmy Culp
 Commercial Manager - Broadwater
 Shell US Gas & Power
 910 Louisiana, Room 4116B
 Houston, TX 77002

Re: F- 2006-0345
 Federal Energy Regulatory Commission, U.S.
 Army Corps of Engineers/New York District -
 Broadwater Energy, LLC and Broadwater
 Pipeline, LLC to Site, Construct and Operate a
 Floating Storage and Regasification Unit for
 LNG, a Yoke Mooring System/Tower, LNG
 Carrier Transits, a Pipeline and Onshore
 Support Facilities in Suffolk County

Dear Mr. Culp:

The New York State Department of State (DOS) has completed its evaluation of the Federal Consistency Assessment Form and certification submitted by Broadwater Energy LLC and Broadwater Pipeline LLC (Broadwater¹) that the above proposed Project complies with, and will be conducted in a manner consistent with, New York State's approved Long Island Sound Coastal Management Program (LISCMP). Pursuant to the Coastal Zone Management Act (CZMA), its regulation at 15 CFR 930.63, and the project information and public comments submitted, the DOS objects to your consistency certification on the basis that it is not consistent with Policies 1, 3, 6, 9, 10 and 11 of the LISCMP.

The Broadwater Project would create an immense floating complex, longer than the height of the Empire State Building, that would industrialize the center of Long Island Sound. The proposed safety and security zones around the Floating Storage Regasification Unit (FSRU)

¹ Broadwater Energy LLC is jointly owned by TransCanada Pipelines Limited (TCPL) USA LNG, Inc. (a subsidiary of TransCanada Corporation) and Shell Broadwater Holdings LLC (a subsidiary of Shell Oil Company). Broadwater Pipeline LLC is owned by Broadwater Energy LLC.

and the Liquefied Natural Gas (LNG) carriers would exclude the public from great expanses of New York State-owned submerged lands and waters where vessels and boats presently transit and where heavy commercial and recreational fishing is conducted. The exclusion zone around the FSRU is larger than Central Park in Manhattan. The exclusion zone surrounding transiting LNG carriers, at 2,040 acres, is larger than Caumsett State Historic Park on the North Shore in Huntington (1,750 acres) and almost 3.5 times the size of Wildwood State Park on the North Shore in Wading River (600 acres). The FSRU terminal would be located close to a busy shipping lane and may be vulnerable to catastrophic accidents. The LNG carriers berthing at the FSRU, ranging from 886 feet to 1,132 feet in length, would also be larger than 99% of the other vessels currently transiting the Sound. The size of the FSRU terminal and the giant LNG tankers that supply it would disrupt the views and character of Long Island Sound. The mortality of fish eggs, larvae and juvenile fish through entrainment and impingement on the FSRU and the LNG carriers, estimated at 270 million organisms annually, would further stress a decimated fishery. The coastal effects of the Broadwater project render it inconsistent with the LISCMP.

As a result of this objection, the Federal Energy Regulatory Commission (FERC) and the U.S. Army Corps of Engineers (Corps) cannot authorize this Project unless this objection is overridden on appeal by the U.S. Secretary of Commerce.

SUBJECT OF THE REVIEW

On January 30, 2006, Broadwater Energy LLC and Broadwater Pipeline LLC (Broadwater²) Broadwater filed an application with FERC under Sections 3(a) and 7(c) of the Natural Gas Act to moor and operate a floating LNG import, storage and regasification complex in Long Island Sound for a period of at least 30 years. Broadwater also proposed installing a new 21.7 mile offshore submerged natural gas pipeline to connect with the existing cross-Sound Iroquois Gas Transmission System (IGTS).³ The average annual output of the Broadwater facility is projected at 1 billion cubic feet of gas per day. On March 20, 2008, FERC, in advance of this consistency determination, provisionally approved the Broadwater project subject to 87 conditions. Without a consistency concurrence, however, FERC's decision cannot become effective⁴.

Broadwater also applied to the New York District of the Corps for authorization to

² Broadwater Energy LLC is jointly owned by TransCanada Pipelines Limited (TCPL) USA LNG, Inc. (a subsidiary of TransCanada Corporation) and Shell Broadwater Holdings LLC (a subsidiary of Shell Oil Company). Broadwater Pipeline LLC is owned by Broadwater Energy LLC.

³ One of Broadwater's two partners, TCPL and its affiliates own 44.48% of the IGTS. See www.iroquois.com/new-Internet/igts/CorporateInformation/ourpartners.asp

⁴The CZMA precludes FERC from issuing an order or license until it receives the State's consistency decision or the State fails to act during the review period. (16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. Sections 930.53(d) and 930.64). Additionally, the Office of Ocean and Coastal Resources Management's consistency guidance reads: "If State objects, Federal agency does not authorize the activity to commence." (Item #8, Federal Consistency Overview, August 10, 2007). Therefore, DOS objects to FERC's granting of a "conditional approval" to Broadwater prior to receipt of DOS' decision.

construct a yoke mooring system with an attached FSRU and a 30-inch, 21.7-mile subsea lateral product delivery pipeline with service connection to an existing pipeline, as well as to place fill material related to the project, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The U.S. Coast Guard is the federal agency responsible for waterway safety and maritime security in Long Island and Block Island Sounds. The Waterways Suitability Report (WSR) prepared by the Captain of the Port Long Island Sound is appended to the Final Environmental Impact Statement (FEIS) and becomes part of FERC's record. It analyzes the *potential navigation safety and maritime security risks to the public from the LNG facility operations and the LNG carrier transits.*⁵ The Coast Guard has proposed measures in the WSR, including recommended safety and security zones for the facility and the carriers that would manage identified risks from accidents or attacks. These zones would reduce risks by limiting public access to the geographic area where a fire could occur (safety), and where the facility and the carriers could be vulnerable to an attack (security). The Coast Guard's Letter of Recommendation (LOR) to Broadwater determines whether the waterways are suitable for LNG facility operations and LNG carrier traffic. Later, the Coast Guard establishes the exact size of the safety and security zones in a separate federal regulatory proceeding that requires subsequent NEPA and the CZMA reviews.

Concomitantly with its federal applications, Broadwater submitted consistency certifications pursuant to the Coastal Zone Management Act. DOS commenced the consistency review for this activity on November 17, 2006. DOS and Broadwater entered into an initial agreement to stay the running of the consistency review period and additional stays that resulted in the consistency decision being due no later than April 11, 2008.

In an April 2, 2008 letter to the Department, Broadwater proposed commitments for the purpose of reducing the effects of the Activity on certain coastal uses and resources in Long Island Sound. *Broadwater's commitments are addressed in the Policy analyses below.*

THE BROADWATER PROJECT

The Broadwater Project includes:

1. **A Floating Storage Regasification Unit (FSRU)** which would be moored at a fixed offshore location in 90 feet of water near the center of Long Island Sound. Currently projected at 1,215 feet long and 200 feet wide, its deck would rise between 75 and 100 feet above the water line. FERC has observed that, for the purposes of its cryogenic design, the FSRU is essentially an LNG carrier with vaporization equipment onboard.⁶ It will be moored approximately 9 miles from the nearest shoreline of Long Island in the Town of Riverhead, New York and about 11 miles from the nearest shoreline in Connecticut. Large LNG tankers would deliver up to three shipments of LNG each week. Once offloaded into the FSRU, the LNG would

⁵ Maritime Transportation Security Act of 2002 (46 USC § 70101, et seq and 33 CFR Part 105)

⁶Testimony of J. Mark Robinson, Director, FERC Office of Energy Projects before the Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation U.S. House of Representatives, Hearing on Safety and Security of Liquefied Natural Gas, May 7, 2007

endangered roseate tern (*Sterna dougallii dougallii*), which breeds only at a few Long Island colonies; federally and New York State threatened loggerhead sea turtle (*Caretta caretta*), which migrates through Plum Gut; federally and New York State endangered Atlantic ridley sea turtle (*Lepidochelys kempii*), which uses Long Island's waters for development during the early stages of life (2-5 years); and the federally and New York State-endangered marine mammals including the northern right whale (*Eubalaena glacialis*), finback whale (*Balaenoptera physalus*), and humpback whale (*Megaptera novaeangliae*) which migrate through the area and feed near shore throughout most of the year.²⁵

Critical Habitats in the Area of the Project

Stratford Shoal and Middle Ground Complex is an important underwater habitat in Long Island Sound. The Stratford/Middle is a large topographic rise that influences patterns of water flow, sediment erosion and sediment deposition. A deep valley separates the northern and southern parts of the shoal where the east-west tides flow back and forth. The crest of the shoal is a reef that is surrounded by coarse sand and gravel sediments, a rare area of hard substrate, that hosts colonies of finger sponges, northern star coral, blue mussels, and erect bryozoans.²⁶ The area attracts significant seasonal populations of striped bass and bluefish.

Fisheries Resources

The area proposed for the Broadwater Project, including the open water location for the LNG facility, the pipeline locations and the waters in Long Island Sound and off eastern Long Island through which the LNG carriers would transit, are rich in fish species, and, therefore, attract commercial and recreational users from the Mid-Atlantic and New England regions.

The National Marine Fisheries Service (NMFS) designated Essential Fisheries Habitat (EFH) occurs in the area of the LNG facility and pipeline for various lifestages of 19 species, with nine species (ocean pout, red hake, winter flounder, windowpane flounder, scup, Atlantic mackerel, king mackerel, Spanish mackerel, and cobia) requiring habitat in these areas for every lifestage. Designated EFH also occurs within the LNG carrier transit route for various lifestages of 30 species, and eight species (bluefish, summer flounder, silver hake (whiting), Atlantic cod, yellowtail flounder, Atlantic sea scallop, monkfish, and Atlantic butterfish) have designated EFH in these waters for every lifestage.²⁷

The Race, located off eastern Long Island between Plum Island and Fishers Island, and through which the LNG carriers would pass, is also a state-designated Significant Coastal Fish and Wildlife Habitat under the NYCMP, characterized by deep, turbulent waters and shoals that combine to generate a productive and diverse habitat for marine fishes. The habitat area represents a physical environment unusual to New York State. Significant concentrations of many fish species forage in this area, including striped bass, bluefish, tautog, summer flounder, and scup. The Race is also one of two primary migration corridors for striped bass, which move into Long Island Sound in spring en route to their breeding grounds.

²⁵ NYS Department of Environmental Conservation (DEC) Endangered Species Program; NYS Significant Coastal Fish and Wildlife Habitat (SCFWH) documentation; U.S. Dept. of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service NOAA NMFS letter in Broadwater's EIR-1.

²⁶ Long Island Sound Resource Center. See http://www.lisrc.uconn.edu/lis_uwtour/news.asp.

²⁷ FEIS, App. E, EFH Report, p. E-21.

community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development. (Policy 1)

- Enhance visual quality and protect scenic resources throughout Long Island Sound. (Policy 3)
- Protect and restore the quality and function of the Long Island Sound ecosystem. (Policy 6)
- Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area. (Policy 9)
- Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations. (Policy 10)
- Promote sustainable use of living marine resources in Long Island Sound. (Policy 11)

Applicable Policies and Policy Analysis

Policy 1: Foster a pattern of development in the Long Island Sound coastal area that enhances community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development.

- 1.1: Concentrate development and redevelopment in or adjacent to traditional waterfront communities.**
- 1.2: Ensure that development or uses take appropriate advantage of their coastal location.**
- 1.4: Maintain and enhance natural areas, recreation, open space, and agricultural lands.**
- 1.5: Minimize adverse impacts of new development and redevelopment.**

LISCMP Policy 1 fosters " a development pattern that provides for beneficial use of the Sound's coastal resources. The primary components of the desired development pattern are: strengthening traditional waterfront communities as centers of activity, encouraging water-dependent uses to expand in maritime centers, enhancing stable residential areas, and preserving open space."⁶⁵

The area in which Broadwater proposes a new industrial complex is a busy thoroughfare for transiting commercial vessels in North Shore coastal waters as well as an open space area recognized in management plans approved by state and federal governments (after extensive public input) as a place of high natural resource value and scenic quality.⁶⁶ Although Broadwater

⁶⁵ LISCMP Chapter 4, p. 72.

⁶⁶ These attributes and planning efforts are described above under "Long Island Sound Setting" and "Long Island Sound Investment."



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 Commercial Manager - Broadwater
 Shell US Gas & Power
 910 Louisiana, Room 4116B
 Houston, TX 77002

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construct a yoke mooring system with an attached FSRU and a 30-inch, 21.7-mile subsea lateral product delivery pipeline with service connection to an existing pipeline, as well as to place fill material related to the project, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

The U.S. Coast Guard is the federal agency responsible for waterway safety and maritime security in Long Island and Block Island Sounds. The Waterways Suitability Report (WSR) prepared by the Captain of the Port Long Island Sound is appended to the Final Environmental Impact Study (FEIS) and becomes part of FERC's record. It analyzes the potential navigation safety and maritime security risks to the public from the LNG facility operations and the LNG carrier transits.⁵ The Coast Guard has proposed measures in the WSR, including recommended safety and security zones for the facility and the carriers that would manage identified risks from accidents or attacks. These zones would reduce risks by limiting public access to the geographic area where a fire could occur (safety), and where the facility and the carriers could be vulnerable to an attack (security). The Coast Guard's Letter of Recommendation (LOR) to Broadwater determines whether the waterways are suitable for LNG facility operations and LNG carrier traffic. Later, the Coast Guard establishes the exact size of the safety and security zones in a separate federal regulatory proceeding that requires subsequent NEPA and the CZMA reviews.

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⁵ Maritime Transportation Security Act of 2002 (46 USC § 70101, et seq and 33 CFR Part 105)

⁶Testimony of J. Mark Robinson, Director, FERC Office of Energy Projects before the Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation U.S. House of Representatives, Hearing on Safety and Security of Liquefied Natural Gas, May 7, 2007

construction.

STATUTORY FRAMEWORK FOR CONSISTENCY REVIEW

The CZMA authorizes a coastal state to review activities, in or outside of the coastal zone affecting any land or water use or natural resource of the coastal zone, requiring federal agency authorizations for their consistency with the enforceable policies of the state's approved Coastal Management Program (CMP) a process referred to as "consistency review".⁷ An applicant seeking federal permits to conduct activities in or affecting the coastal zone must certify that its proposed use is consistent with "the enforceable policies of the state's approved [CMP]." A federal agency cannot issue a permit "until the state ... has concurred with the applicant's certification."⁸

In accordance with the consistency provisions of the federal CZMA and implementing regulations at 15 C.F.R. Part 930, the proposed Broadwater Project, which requires authorizations and approvals from multiple federal agencies and which is located in New York's Coastal Area, is subject to the consistency provisions of the CZMA and must be conducted in a manner which is consistent with the enforceable policies of New York's federally approved LISCMP and any applicable Local Waterfront Revitalization Programs (LWRP).⁹

In 2002 the U.S. Department of Commerce Office of Ocean and Coastal Resource Management (OCRM), approved designation of the Long Island Sound as a regional "special management area" under the NYCMP. The resulting LISCMP, with its 13 coastal policy standards, comprehensively focuses on the economic, environmental, and cultural characteristics of the Long Island Sound coastal region. DOS used these policy standards when making the Broadwater consistency determination.

VISION FOR LONG ISLAND SOUND

Long Island Sound is one of the most productive estuarine waters in the world. It provides valuable breeding, nesting and feeding habitats for myriad aquatic, avian and animal species, and provides commercial fishing, tourism and recreational benefits to the communities along its shoreline. The Long Island Sound region is also one of the most densely populated areas in North America; more than 8.4 million people live in the Sound's watershed. The Sound is used for recreational boating, commercial and recreational fishing and shellfishing, shipping and recreational beach-going. It is one of New York's most valuable natural resources. For these reasons, the protection of Long Island Sound is of paramount importance.

New Yorkers have begun to "turn back toward Long Island Sound as a source of pride

⁷ 16 USC § 1456(c)(3)(A).

⁸ 16 U.S.C. § 1456.

⁹ An LWRP is a comprehensive planning document for a municipality's coastal area. When prepared, it contains detailed inventories of land and water uses in the municipality's coastal area, a statement of applicable state or local policies and a means for implementing the program. LWRPS are authorized by Executive Law § 915 and § 916, and become part of the federally enforceable CMP.

and sustenance, supporting both our economy and ecosystems."¹⁰ There is a continued and growing public recognition of the uniqueness and value of Long Island Sound, the North Shore, and the many open space, natural and scenic resources of the region, which is evidenced by public investment, partnerships, resource restoration, and planning for continued environmental and economic improvements.

Over two decades, New York State has continued to honor the "commitment to act," made in 1987 when Long Island Sound was designated an Estuary of National Significance, to restore and protect the environmental quality of Long Island Sound. The Sound and its watershed must be managed as an ecosystem through the active participation of government, organizations and citizens.

The federally approved LISCMP guides land use and development, ensures public access to the shore, and protects important habitats. The LISCMP articulates a vision for the Long Island Sound coastal area that "encompasses the tapestry of natural, economic, and cultural resources that make it unique – a Long Island Sound coastal area enriched by enhancing community character, reclaiming the quality of natural resources, reinvigorating the working waterfront, and connecting people to the Sound."¹¹ This vision reflects not only the value placed on the Long Island Sound ecosystem as a significant resource past and present, but looks specifically toward the future, emphasizing a trajectory of positive change. It is this vision of positive change that must guide human actions, investments, and decisions to ensure the future health of Long Island Sound. The LISCMP sets the ecosystem context for comprehensive management of actions affecting Long Island Sound to ensure a healthy coastal ecosystem that can provide the services people want and need – clean water, fisheries, recreation, commercial navigation, and scenic quality.

The trajectory of positive change envisioned by the LISCMP encompasses 20 years of assessment and mapping of habitats and natural resources – including the Northeast Coastal Area Study (1991), the Significant Habitats and Habitat Complexes of the New York Bight Watershed report (1997), the Long Island Sound Study's Habitat Restoration Initiative (established 1998), and the 2006 Stewardship Atlas – all of which contribute to the ecological integrity as well as the identity of the Long Island Sound region. New York has invested nearly \$7.2 billion to clean up Long Island Sound.

As an early and visionary leader in ecosystem-based management, New York is working to innovate and expand on past planning for its oceans and coasts. New York's "commitment to act" continues today by the partnership among nine state agencies on the New York Ocean and Great Lakes Ecosystem Conservation Council.

LONG ISLAND SOUND SETTING

In 1987 Long Island Sound was designated by the federal government as an Estuary of National Significance under the Clean Water Act's National Estuary Program.¹² The Sound is shared by the states of New York, Connecticut, and Rhode Island. The New York - Connecticut boundary runs the length of Long Island Sound through its approximate center until reaching the

¹⁰ North Shore Heritage Area vision statement, Long Island North Shore Heritage Area (LINSHA) Management Plan, p. 6.

¹¹ LISCMP, Chapter 1, p. 3.

¹² 33 U.S.C. 1330.

waters of Rhode Island. The Estuary is hydrologically connected to the Atlantic Ocean at its eastern end through The Race and Block Island Sound, and to New York Harbor at its western end through the East River.

The U.S. Fish and Wildlife Service (FWS) characterizes the larger regional setting encompassing Long Island Sound as "an extensive and diverse interconnected system of sounds, bays, lagoons, coves, harbors, coastal streams, tidal rivers and shorelands extending from the western Narrows of Long Island Sound to the islands of Monomoy and Nantucket south of Cape Cod, Massachusetts and south to Montauk Point, New York. This broad mixing zone of seawater and freshwater lying between the Atlantic Ocean and the coastal shorelands of Connecticut, Rhode Island, Massachusetts and New York, has been historically renowned for its rich fisheries, abundance of waterfowl, diverse wildlife, productive marshes, scenic beaches, and outstanding recreational opportunities."¹³

Long Island Sound has been described as an assemblage of "diverse and distinctive habitats including tidal wetlands and flats, beaches, dunes, bluffs, rocky intertidal areas, submerged aquatic vegetation (particularly eelgrass and kelp), natural and artificial reefs, the water itself and the sediment floor....Each habitat not only supports its own community of plants and animals but contributes to the productivity of the whole Sound. All of the habitats that make up the Sound are interconnected through the food web and are integral parts of the whole."¹⁴

Land Use Trends

Land use in Suffolk County is trending toward increased residential development, including the establishment of second homes and the conversion of seasonal housing to year-round use, particularly in eastern Long Island where the scenery and lifestyle, based on the area's small-scale agricultural and maritime uses, are a draw.¹⁵

Long Islanders, with the support of New York State, have enacted an array of preservation initiatives to ensure that, as land use changes, the character of the Long Island Sound setting and of the communities along the North Shore is preserved. Maintenance of parks and open space alongside residential development is a priority of North Shore communities.¹⁶

Industrial uses in the coastal area in both western and eastern Suffolk County account for extremely small area percentages. In the four western north shore watershed municipalities, industrial land use comprises just 0.5% of the total land use acreage,¹⁷ while in the east end, industrial land accounts for 2% of the total area.¹⁸ An important trend along Long Island Sound relates to clean-up and redevelopment of underutilized and former industrial sites, which has accelerated in part due to State and County incentive programs. For example, industrial uses at Mattituck Creek have been discontinued: oil storage tanks have been abandoned and there has

¹³ Northeast Coastal Areas Study 1991.

¹⁴ The Long Island Sound Study Comprehensive Conservation and Management Plan (LISS CCMP, 1994) Long Island Sound in Perspective, p. 2.

¹⁵ LISCMP, Chapter 3 Findings and Recommendations, p. 14.

¹⁶ Suffolk County Dept. of Planning, Population Analysis - Suffolk County North Shore Watershed Management Program, January 2005, p. 12.

¹⁷ Suffolk County Dept. of Planning; April 2004, p. 14.

¹⁸ Suffolk County Dept. of Planning, July 2000, p. 11. The majority of industrial acreage in eastern Suffolk County documented in this report is comprised of the 2,900 acre former Calverton Naval Weapons Facility in Riverhead.

been a phase-out and removal of various industrial uses on the west side of the creek mouth.¹⁹ Where industrial sites have been maintained, they are being limited to existing areas, such as on the west side of Port Jefferson Harbor where regionally important transshipment, power generation, and marine service facilities exist. The Village of Port Jefferson has also been active in removing obsolete and non-water-dependent industrial uses along its waterfront, replacing them with recreational and public access uses.²⁰

Scenic Resources

The scenic resources of Long Island Sound are a major contributor to the character of the region and its communities. As noted in the LISCMP, scenic resources are the primary basis for public appreciation of the Sound's landscape.²¹ The extensive land/water interface and diversity of views, including vast expanses of open water, create the generally high scenic quality. The LISCMP found that "scenic quality is an important part of a community's character and sense of place" and the program recommended that scenic resources within the Long Island Sound coastal region be protected (Recommendation #9).

In 1998, the New York State Legislature designated the North Shore of Long Island for inclusion in the State Heritage Area System as a place where unique qualities of geography, history, and culture create a distinctive identity. As part of management planning, the Long Island North Shore Heritage Area (LINSHA) Planning Commission conducted an inventory of heritage and scenic resources, which included "distant views of water and land, over Long Island Sound and other water" and "panoramic views over Long Island Sound and Great Peconic Bay" as two of the four types of scenic resources compiled.²² Broadwater's FSRU and the attendant LNG tankers would be visible by land and water in this panoramic viewshed.

Suffolk County, through its Open Space Acquisition Policy Plan, released in 2007, also emphasizes the protection of scenic vistas, in particular the views of its waterways, among its open space goals:

"Preservation of scenic vistas and open areas - Open space in rural and semi-rural areas helps to preserve a rural way of life. Scenic vistas from high elevations and scenic roadways are also important to preserve. Protecting special views of the County's waterways is important to our unique maritime environment... A scenic community entranceway may symbolize the character of the community and attract people to spend time there."²³ (emphasis added)

Protected Species in the Area of the Project

The Long Island Sound ecosystem includes more than 1,200 species of invertebrates and 170 species of fish, in addition to the sea birds, sea turtles and marine mammals that are present for all or part of the year.²⁴ Protected species using the waters of Block Island Sound, Long Island Sound and Fishers Island Sound include the federally and New York State-

¹⁹ LISCMP, Vol. 2, p. 30.

²⁰ Suffolk County Dept. of Planning, Incorporated Village of Port Jefferson Marina-Waterfront District Study, June 2006.

²¹ LISCMP Policies p. 74.

²² LINSHA Management Plan, Oct. 2006, App. p.116.

²³ Suffolk County Dept. of Planning, June 2007, p. 42.

²⁴ Long Island Sound Resource Center (a partnership between the Connecticut Department of Environmental Protection and the University of Connecticut).

endangered roseate tern (*Sterna dougallii dougallii*), which breeds only at a few Long Island colonies; federally and New York State threatened loggerhead sea turtle (*Caretta caretta*), which migrates through Plum Gut; federally and New York State endangered Atlantic ridley sea turtle (*Lepidochelys kempii*), which uses Long Island's waters for development during the early stages of life (2-5 years); and the federally and New York State-endangered marine mammals including the northern right whale (*Eubalaena glacialis*), finback whale (*Balaenoptera physalus*), and humpback whale (*Megaptera novaeangliae*) which migrate through the area and feed near shore throughout most of the year.²⁵

Critical Habitats in the Area of the Project

Stratford Shoal and Middle Ground Complex is an important underwater habitat in Long Island Sound. The Stratford/Middle is a large topographic rise that influences patterns of water flow, sediment erosion and sediment disposition. A deep valley separates the northern and southern parts of the shoal where the east-west tides flow back and forth. The crest of the shoal is a reef that is surrounded by coarse sand and gravel sediments, a rare area of hard substrate, that hosts colonies of finger sponges, northern star coral, blue mussels, and erect bryzoans.²⁶ The area attracts significant seasonal populations of striped bass and bluefish.

Fisheries Resources

The area proposed for the Broadwater Project, including the open water location for the LNG facility, the pipeline locations and the waters in Long Island Sound and off eastern Long Island through which the LNG carriers would transit, are rich in fish species, and, therefore, attract commercial and recreational users from the Mid-Atlantic and New England regions.

The National Marine Fisheries Service (NMFS) designated Essential Fisheries Habitat (EFH) occurs in the area of the LNG facility and pipeline for various lifestages of 19 species, with nine species (ocean pout, red hake, winter flounder, windowpane flounder, scup, Atlantic mackerel, king mackerel, Spanish mackerel, and cobia) requiring habitat in these areas for every lifestage. Designated EFH also occurs within the LNG carrier transit route for various lifestages of 30 species, and eight species (bluefish, summer flounder, silver hake (whiting), Atlantic cod, yellowtail flounder, Atlantic sea scallop, monkfish, and Atlantic butterfish) have designated EFH in these waters for every lifestage.²⁷

The Race, located off eastern Long Island between Plum Island and Fishers Island, and through which the LNG carriers would pass, is also a state-designated Significant Coastal Fish and Wildlife Habitat under the NYCMP, characterized by deep, turbulent waters and shoals that combine to generate a productive and diverse habitat for marine fishes. The habitat area represents a physical environment unusual to New York State. Significant concentrations of many fish species forage in this area, including striped bass, bluefish, tautog, summer flounder, and scup. The Race is also one of two primary migration corridors for striped bass, which move into Long Island Sound in spring en route to their breeding grounds.

²⁵ NYS Department of Environmental Conservation (DEC) Endangered Species Program; NYS Significant Coastal Fish and Wildlife Habitat (SCFWH) documentation; U.S. Dept. of Commerce National Oceanic and Atmospheric Administration national Marine Fisheries Service NOAA NMFS letter in Broadwater's EIR-1.

²⁶ Long Island Sound Resource Center. See http://www.lisrc.uconn.edu/lis_uwtour/news.asp.

²⁷ FEIS, App. E, EFH Report, p. E-21.

species, and accounted for 36 percent of the total.³³

Lobster remains the most commercially valuable species, accounting for more than a third of total annual value harvested from Long Island Sound for each of the past three years.³⁴ This lobster fishery persists despite a catastrophic die-off in 1999. The bi-state Steering Committee for Lobster Disease Research documents:

*State and federal landings data indicate that prior to the die-off, bi-state commercial lobster harvests ranged from 7 to 11.7 million lbs. annually, valued at \$18 to \$40 million. Twelve hundred resident commercial lobster licenses were issued in 1998; in 2002, fewer than 900 lobstermen remained licensed. Commercial harvests of Long Island Sound lobsters totaled about 1.6 million lbs. in 2004, worth slightly less than \$7 million.*³⁵

More than \$10.8 million has been invested by partners including NMFS, the U.S. Environmental Protection Agency (EPA), Connecticut Sea Grant, New York Sea Grant, and the states of Connecticut and New York to advance research, resource monitoring, and outreach related to the impact of the lobster mortality event on the Long Island Sound Commercial fishing industry.³⁶ While surveys subsequent to the die-off documented a decreased abundance of legal size lobsters for harvest in Long Island Sound, "an abundance of small lobsters indicate that the industry is likely to rebound".³⁷ However, because two-thirds of all lobster larvae captured for genetic study across all Long Island Sound originate from resident adults, "over the long term, stock rebuilding and stock stability will depend principally on an increase in the production and/or survival of local adult lobsters."³⁸ Protecting the existing Long Island Sound adult lobster population, including the availability of appropriate habitat, is critical to this endeavor. Broadwater notes that "nearly all of the western two-thirds of the Sound, including the area being considered for the FSRU and pipeline, are classified as a high-use lobster fishery area".³⁹ The Atlantic States Marine Fisheries Commission management plan for the Southern New England lobster fishery (which encompasses the Sound) seeks to restore stocks to a level greater than the abundance target reference point by 2022.⁴⁰

In addition to the commercial sector, recreational fishing and boating are also significant, both economically and culturally. In 2006, nearly 10% of the 55 million marine recreational fishing trips that occurred in all of the U.S. Atlantic were taken in New York waters, accounting

³³ The Economic Contribution of the Sport Fishing, Commercial Fishing, and Seafood Industries to New York State, Prepared by TECHLAW for New York Sea Grant, NYSGI-T-01-001, April 2001, p. 29.

³⁴ DEC, 2007, Anderson P. "A Financial Analysis of Long Island Sound Commercial Finfish and Crustacean Fishery 2004-2006."

³⁵ Responding to a Resource Disaster: American Lobsters in Long Island Sound, 1999 - 2004, N. Balcom and P. Howell, CTSG-06-02, p. 1.

³⁶ Balcom and Howell, CTSG-06-02, Table 1, p. 1.

³⁷ The Economic Contribution of the Sport Fishing, Commercial Fishing, and Seafood Industries to New York State, Prepared by TECHLAW for New York Sea Grant, NYSGI-T-01-001, April 2001, p. 29.

³⁸ Balcom and Howell, CTSG-06-02, p. 11.

³⁹ Broadwater EIR-19, Marine/Land Use Compatibility Assessment, April 2006 p. 7.

⁴⁰ Atlantic States Marine Fisheries Commission, Addendum XI to Amendment 3 to the American Lobster Fishery Management Plan, May 2007.

for more than 14 million pounds of landings.⁴¹ There is a large recreational boating community on Long Island Sound, derived in part from the approximately 126,000 boats registered in Suffolk, Nassau and Westchester Counties,⁴² and the 180,000 recreational vessels registered statewide in Connecticut.⁴³ The Coast Guard's Ports and Waterways Safety Assessment (PAWSA) also notes that the major volumes of small craft occur around Stratford Shoal/Middle Ground, and seasonally in The Race.⁴⁴

Stratford Shoal/Middle Ground is widely regarded by recreational fishermen as a top fishing spot in the western Sound, and one of the best places to find striped bass and bluefish. Data collected weekly by Connecticut reflects the importance of the Stratford Shoal/Middle Ground as fishing location.⁴⁵

Recreational boating, including commercial charter and party boats for recreational fishing, is a major economic contributor in the region. Sport fishing contributed \$3.6 billion to New York's economy in 1996, 37% of which was derived from the marine sport fishing.⁴⁶ Charter and party boats provide on-water access to recreational fishermen who do not own boats. These operations work primarily from May through November, and operate during both the day and night (targeting nocturnal-feeding striped bass).⁴⁷ Within the Long Island Sound region, there are an estimated 100 charter and party boat enterprises operating out of City Island, Port Washington, Huntington, Northport, Port Jefferson, Mount Sinai and Mattituck. Many charter and party boats operating out of ports in the western Sound are traveling with greater frequency to the eastern Sound due to declining fish populations in their area.⁴⁸

In 2003, direct, trip-related expenditures by recreational boaters were estimated at \$162 million in the New York City-Long Island metropolitan area. Indirect expenditures, such as boat purchases and insurance, were estimated at \$907 million in the downstate region, and additional economic effects associated with recreational boating were estimated at \$843 million.⁴⁹

A variety of other on-water events also showcase Long Island Sound's maritime culture, including regattas, parades, fireworks and power boat races. The Coast Guard identified 92 registered marine events held in 2005. Most occur close to shore, but larger sailing events and power boat races transit through central Long Island Sound, across the Sound, run out through

⁴¹ NOAA NMFS Office of Science and Technology Fisheries Statistics Division, *Fisheries of the United States - 2006*, July 2007, p. 21.

⁴² NYS Office of Parks Recreation and Historic Preservation (OPRHP), 2006 *Recreational Boating Report*, 2007, pp. 20-21.

⁴³ WSR p. 33.

⁴⁴ WSR Appendix B - Final PAWSA Report p. 17.

⁴⁵ Connecticut Department of Environmental Protection "Weekly Fishing Report", http://www.ct.gov/dep/cwp/view.asp?a=2696&q=322752&depNav_GID=1630, accessed 3/20/08.

⁴⁶ *Economic Contribution of the Sport Fishing, Commercial Fishing, and Seafood Industries to New York State*, Prepared by TECHLAW for New York Sea Grant, NYSGI-T-01-001, April 2001, p. 82. See, *Broadwater Cons. Cert. App. F (Table F-4-8)*, p. 55.

⁴⁷ Telephone communication between Captain Robert Busby, President, North Fork Captain's Association, and DOS staff, August 13, 2007.

⁴⁸ LISCMP, Vol. 2, pp. 216-217.

⁴⁹ Connelly et al., 2004, "Recreational Boating Expenditures in 2003 in New York State and Their Economic Impacts", NYSGI-S-04-001, September 2004. See <http://www.seagrantsunysb.edu/CoastalGeo/BoatingReport-FINAL.pdf>

The Race, and continue on to Block Island Sound and around Block Island.⁵⁰

Commercial Shipping and Transportation

The area of Long Island Sound where Broadwater's FSRU is proposed is a busy waterway supporting significant levels of transiting commercial activity, including the movement of freight, bulk materials and fuels. The LISCMP states that the 200 existing water-dependent uses on Long Island Sound are vital to the economic health of the Region.⁵¹ These water-dependent uses include "...tug and barge combinations, bulk carriers, general dry cargo, passenger ships, refrigerated tank ships, tank vessels, towing vessels, naval vessels (including submarines), other government vessels, ferries, commercial fishing vessels, charter fishing and tour boats, and recreational vessels."

Commercial vessel traffic contributes a substantial volume of the overall on-water presence, with the total annual commercial vessel traffic movements increasing over each of the last three years.⁵² Between 2003 and 2005, Long Island Sound ports received an average of 2,300 commercial vessel arrivals originating outside the Sound, and again, these numbers appear to be increasing.⁵³ The Coast Guard estimates that 2,000 to 4,000 commercial vessels through-transit (passing through but not stopping) Long Island Sound annually, mainly traveling mid-Sound.⁵⁴

Vessels transit along standard, well-known routes, including a central east-west channel down the middle of Long Island Sound, and a route close to the Connecticut border from western Long Island Sound into Bridgeport and New Haven. Regular north-south cross-sound routes also connect New Haven and Bridgeport, Connecticut to Northport, Port Jefferson, and Riverhead (Northville), New York. The Coast Guard identifies two major commercial shipping routes that pass close to the proposed FSRU site, with the predominant east-west traffic route passing on the south side.⁵⁵ Currently, there are no moored structures located in this busy east-west thoroughfare.

Commercial vessels transiting Long Island Sound can be destined for ports in Connecticut and Long Island as well as other ports in New England, New York and New Jersey.⁵⁶ The majority of industrial uses and port activity in Long Island Sound itself, however, are sited not in New York, but in Connecticut.

Shipping routes to shore are also concentrated in Connecticut coastal waters. Coast Guard data on port arrivals demonstrate that a large majority of the commercial vessel traffic into Long Island Sound arrives in Connecticut ports, including New Haven, Groton, and Bridgeport. Between 2003 and 2005, Connecticut ports in Long Island Sound received more than 2.5 times the number of arrivals as did the Long Island Sound New York ports (2,537 compared to 1,014).⁵⁷

⁵⁰ WSR, pp. 35-37.

⁵¹ LISCMP Vol. 2, p. 187-188.

⁵² FEIS p. 3-188, Table 3.7.1-2.

⁵³ WSR p. 21, Table 2-1.

⁵⁴ WSR p. 21. (Analysis of AIS transponder data estimates 1,607 annual through transits - FEIS p. 3-191).

⁵⁵ WSR p. 33.

⁵⁶ WSR p. 21.

⁵⁷ Data from 2003 through April 21, 2005, FEIS p. 3-190.

The LISCMP identifies existing maritime industrial centers on the North Shore of Long Island serving as destinations of commercial vessel traffic, including other fuel shipping, receiving and distributing facilities that support industrial and power generation uses. The LISCMP also specifically recognizes the existing offshore oil offloading platforms in Riverhead (located 1 mile offshore) and in Northport (located 1.8 miles offshore).

Commercial vessels also arrive, and briefly remain, at lightering zones, anchorages, and fuel offloading areas. The Coast Guard identifies six lightering zones within Long Island Sound: off of Niantic, New Haven, and Bridgeport in Connecticut, and off Riverhead, Northport and Port Jefferson in New York.⁵⁸

The largest commercial vessels currently operating on the Sound are deep draft vessels in excess of 800 feet in length, generally carrying liquid petroleum and coal.⁵⁹ However, only 81 vessels of this size were recorded in Long Island Sound by the Coast Guard between 2003 and 2005.⁶⁰ During this time frame, only 1,006 vessels between 500 and 900 feet in length (the maximum recorded) transited in Long Island Sound, compared to 6,031 vessels under 500 feet in length.⁶¹ A total of 307 vessels transiting Long Island Sound during this time frame were longer than 700 feet in length.⁶² For comparison, the FSRU structure will be 1,215 feet long, and all of the 104 to 156 LNG carriers that would arrive at the FSRU would be longer than 700 feet.

The economic value of commercial shipping on Long Island Sound is significant. In 2000, 311.5 million tons of land and water-borne freight moved through the Sound region, representing \$797.6 billion worth of goods. Of this, approximately 62 million tons, or 20% of the total freight volume, was moved by water. Regional transportation plans, such as the Long Island Sound Waterborne Transportation Plan and the Port Inland Distribution Network, are already planning to fully develop the region's opportunities for waterborne transportation and shipping, including increasing cargo arrivals at Bridgeport, Connecticut⁶³ and expanding ferry services to better move people throughout the Sound.⁶⁴

LONG ISLAND SOUND INVESTMENT

In its consistency review process, DOS considered the trend of focused public investment and effort in improving Long Island Sound to evaluate whether the proposed Broadwater Project supports these efforts and furthers the goals and objectives of these many programs. For more than 30 years, the federal government, the states of New York and Connecticut, regional groups, and local governments have invested significant effort and funds in a variety of studies, plans, programs and projects to improve water quality, preserve and maintain habitat and open space, enhance public access, balance competing uses, and responsibly manage the resources of Long Island Sound.

As early as 1973, the New England River Basins Commission, a partnership including the federal government and the states of New York and Connecticut, developed the Long Island

⁵⁸ WSR p. 42.

⁵⁹ WSR, p. 25.

⁶⁰ WSR, p. 25, Table 2-3: 2003-2005 Long Island Sound Commercial Vessel Arrivals sorted by length.

⁶¹ WSR, p. 25, Table 2-3.

⁶² WSR, p. 25, Table 2-3.

⁶³ Broadwater FEIS p. 3-198.

⁶⁴ See Long Island Sound Waterborne Transportation Plan, prepared by Cambridge Systematics, November 2005.

Sound Regional Study to protect, conserve and wisely develop the Sound as a major economic and life-enriching resource for the region.

In 1985, the federal EPA and the states of New York and Connecticut formed the Long Island Sound Study (LISS), a bi-state partnership to research, monitor, and assess the water quality of Long Island Sound, which, at the request of the two states, was officially designated an Estuary of National Significance under the federal Clean Water Act's National Estuary Program in 1987. The Management Conference for the LISS, convened in 1988, focused on the priority concerns of water quality and habitat protection, supported by the recognition that land use, social, institutional, economic, and political choices impact the estuary as a whole.

Key resulting management goals included: ensuring that opportunities for water-dependent recreational activities are maximized without conflict with ecosystem management; and ensuring that social and economic benefits associated with the use of the Sound are realized to the fullest extent possible, consistent with social and economic costs. The LISS CCMP was approved by the Governors of Connecticut and New York in 1994. Federal funding through the LISS has provided more than \$54 million in water quality improvement grants.

Certain Long Island Sound communities have also invested substantial effort in the development and adoption of LWRPs as a further refinement of the NYCMP and the LISCMP at the local level of government. An LWRP reflects and implements the unique vision that each community has for managing its coastal uses and resources. Smithtown, through which the pipeline would pass, and Southold, which would be in proximity to LNG carrier traffic, both have approved LWRPs. Greenport, one of the two sites where onshore facilities could be located, also has an approved LWRP.

New York State, through the Environmental Protection Fund Local Waterfront Revitalization Program (EPF LWRP), has invested over \$17 million in Long Island Sound projects to advance the goals and objectives of the LISCMP and LWRPs by enhancing public access and recreation, promoting coastal education, redeveloping deteriorated waterfronts, and advancing harbor management, habitat restoration, water quality improvement, and preservation of scenic and historic resources. New York also provided \$345 million for water quality improvements in Long Island Sound through New York State's 1996 Clean Water/Clean Air Bond Act and other EPF programs. In addition, since establishment of the Clean Water State Revolving Fund in 1990, the New York State Environmental Facilities Corporation has spent approximately \$6.7 billion on Long Island Sound, almost entirely for Sewage Treatment Plant projects, but also including a small amount of stormwater management and other water quality-related projects.

Thus, since 1990, \$7.2 billion has been invested to implement federal and state plans and programs that protect and restore Long Island Sound habitat, key species, and water quality; increase public access, use and enjoyment of the Sound's coast and waters; and improve local, state and regional economies that are linked to the Sound's unique heritage and resources.

POLICY ANALYSIS

DOS has determined that Broadwater is not consistent with the following applicable LISCMP Coastal Policies:

- Foster a pattern of development in the Long Island Sound coastal area that enhances

community character, preserves open space, makes efficient use of infrastructure, makes beneficial use of a coastal location, and minimizes adverse effects of development. (Policy 1)

- Enhance visual quality and protect scenic resources throughout Long Island Sound. (Policy 3)
- Protect and restore the quality and function of the Long Island Sound ecosystem. (Policy 6)
- Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area. (Policy 9)
- Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations. (Policy 10)
- Promote sustainable use of living marine resources in Long Island Sound. (Policy 11)

Applicable Policies and Policy Analysis

Policy 1:

- 1.1: Concentrate development and redevelopment in or adjacent to traditional waterfront communities.**
- 1.2: Ensure that development or uses take appropriate advantage of the their coastal location.**
- 1.4: Maintain and enhance natural areas, recreation, open space, and agricultural lands.**
- 1.5: Minimize adverse impacts of new development and redevelopment.**

LISCMP Policy 1 fosters " a development pattern that provides for beneficial use of the Sound's coastal resources. The primary components of the desired development pattern are: strengthening traditional waterfront communities as centers of activity, encouraging water-dependent uses to expand in maritime centers, enhancing stable residential areas, and preserving open space."⁶⁵

The area in which Broadwater proposes a new industrial complex is a busy thoroughfare for transiting commercial vessels in North Shore coastal waters as well as an open space area recognized in management plans approved by state and federal governments (after extensive public input) as a place of high natural resource value and scenic quality.⁶⁶ Although Broadwater

⁶⁵ LISCMP Chapter 4, p. 72.

⁶⁶ These attributes and planning efforts are described above under "Long Island Sound Setting" and "Long Island Sound Investment."

asserts that "the Sound has been 'industrialized' for quite some time,"⁶⁷ the majority of the maritime industrial activities they describe occur both onshore and in Connecticut. The LISCMP articulates enforceable policies for development in the region, paying particular attention to identifying and protecting established, active ports and maritime centers, protecting the traditional maritime activities and industries they support, and preserving and restoring the publicly-valued scenic and natural resources that define the region's character. New York, through its LISCMP, has established where, what types and the manner in which new industrial uses should be developed in Long Island Sound's coastal area. The industrial scenario proposed by Broadwater - which includes construction of permanent, private industrial facilities in the center of the Sound's open space area, and frequent transit of LNG carriers and their mammoth, exclusionary security zones through traditional fishing grounds and recreational areas - differs markedly from the parameters of New York's straightforward, established policies for development of the Long Island Sound coastal area.

The LISCMP describes the community character the intended development pattern is designed to foster:

Suffolk County offers a wide variety of scenic appeal in its north shore coastline. The attractions of recreational boating harbors with their maritime ambience contrast with the many kinds of highly scenic natural areas ranging from wetlands, ponds and beaches, to high bluffs, dunes, islands, and upland forests. While the western and middle parts of the county's shoreline are highly developed with mostly residential uses, the terrain and the large, wooded lots hide much of the development and give many areas a scenic, semi-rural feeling. The significant amounts of agricultural lands remaining in the eastern part of the county, sometimes with historic farmhouses, lend a captivating rural atmosphere to the coastal landscape. There are many places with extensive, long views over land and water, sometimes across the Sound to Connecticut.⁶⁸

Preservation of community character, comprising the interrelated elements of natural and scenic resources, traditional uses, and open space, including the open waters of Long Island Sound, is a central tenet in a suite of local and regional plans for Long Island's North Shore coastal area.

The New York State Legislature has included the North Shore in the State Heritage Area System and identified it as a place where unique qualities of geography, history, and culture create a distinctive identity (LINSHA Management Plan). The Heritage Area includes the waters of the Sound north to the Connecticut line within its boundary, viewing this resource as an integral component of area heritage: "Long Island Sound is our Heritage Area's central, defining element."⁶⁹ Preservation of heritage in this region, therefore, requires preservation of Long Island Sound as a scenic landscape feature, and a component of historic and cultural protection and promotion. The LINSHA Management Plan envisions a day when North Shore communities "turn back toward Long Island Sound as a source of pride and sustenance, supporting both our economy and ecosystems."⁷⁰

⁶⁷ Broadwater fact sheet: "Broadwater: Just the Facts", http://www.broadwaterenergy.com/pdf/Broadwater_Fact_and_Fiction.pdf.

⁶⁸ LISCMP Vol. 2, pp. 27-30.

⁶⁹ LINSHA MP, Oct. 2006, Section 1.4.4., p. 16.

⁷⁰ LINSHA MP, Oct. 2006, Section 1.2.5, p. 6.

Other local programs arrive at the same conclusion. The Town of Riverhead's Comprehensive Plan discusses community character as something that includes scenic, environmental and open space attributes, stating that "[e]conomic development and environmental conservation should be balanced; to not only sustain expansion of Riverhead's strong economic base, but also promote livable communities, preserve farmland and agricultural activity, and protect Riverhead's natural, historic, and scenic resources."⁷¹ The Town describes its identity as intrinsically linked to its coastal resources:

Riverhead is a coastal community, bounded by water on much of its perimeter. In addition to its waterfront along the Peconic Estuary system (which includes the Peconic River, Flanders Bay and the Great Peconic Bay), Riverhead is bounded to the north by Long Island Sound. Many of the shoreline and coastal areas in Riverhead are scenic - particularly the Sound waterfront, with its picturesque bluffs - and all of them have distinctive plant and animal communities. Finally, the Town is an agricultural community, where natural resources play an important role in the livelihood of residents, property owners, and businesspeople.⁷²

The Town further notes that this coastal identity is not just intrinsically important, but is also linked to local economic issues including jobs and tax revenue:

Water resources are important economic assets to the community. In Riverhead, local fishermen depend upon the water for their livelihood; fish and shellfish must be safe to eat and must occur in high enough abundance so that fish populations are sustainable. Because of the scenic beauty of the Town's water bodies, many of the waterfront areas in Riverhead attract water sports enthusiasts, as well as hikers, bikers, motorists, and tourists. Thus, from the point of view of the tourism industry, water bodies serve as attractions that draw potential customers. Residential property values are also tied to water resources and their quality. Coastal property is generally valued higher, because of the views.... According to research commissioned by the Long Island Sound Study (LISS), more than \$5 billion is generated annually in the regional economy from boating, commercial and sport fishing, swimming and beachgoing associated with the Sound. The ability of the Sound to support these activities depends on the quality of its waters, living resources and habitats - all of which are affected by the amount and type of development that occurs along the borders of the Sound and throughout its watershed. Communities, like Riverhead, along the north shore of Long Island are closely tied to the Sound and its overall health and visual character.⁷³

The LISCOMP requires the State to maintain and enhance aesthetic values associated with community character, which is defined in New York as the "natural environment, land use patterns, and scenic and cultural resources."⁷⁴ Scenic resources - open water vistas in particular - are the primary basis for public appreciation of the Sound's landscape.⁷⁵ The extensive land/water interface and diversity of views, including vast expanses of open water, contribute to the generally high scenic quality. The LISCOMP finds that "scenic quality is an important part of a

⁷¹ Town of Riverhead Comprehensive Plan, 11/2003, p. 2-1.

⁷² Town of Riverhead Comprehensive Plan, 11/2003, p. 4-2.

⁷³ Town of Riverhead Comprehensive Plan, 11/2003, pp. 4-3 - 4-4.

⁷⁴ LISCOMP Vol. 2, p.16.

⁷⁵ LISCOMP Vol. 1, p.74.

community's character and sense of place⁷⁶ and it requires the State to protect scenic resources.

Broadwater's industrial operation does not fit into this context. As a visual feature on the horizon, it is discordant – at variance with the existing visual character of Long Island Sound, which is open water transited by vessels. It is a stationary interruption of the open water vista. Broadwater's permanent industrial complex contravenes and does not advance the goals and policies of State and local governments. All are aligned in their desire to preserve the open space and high scenic quality that forms the basis of the Long Island Sound setting's unique character, and the character of their localities and the region. The proposed industrial operation would interrupt the open space of the Sound, fragmenting the open water with a permanent fixed structure, thereby eliminating a key element of the setting's appeal, which centers on the integrity of the open water experience, its unimpeded access and uninterrupted views. For these reasons, the effects of this new development in the middle of Long Island Sound could not be minimized to the extent that it could be found consistent with Policy 1 and Subpolicy 1.5.

Broadwater states the Project would be consistent with Policy 1 in general because "introduction of a new, reliable natural gas supply will sustain and promote growth that is consistent with the objectives of enhancing community character, preserving open space, maximizing use of infrastructure, and minimizing adverse effects of development."⁷⁷ Broadwater also states that a new supply of natural gas "is paramount" to sustaining historic and current development patterns that establish community character. This indirect linkage of imported natural gas to enhanced community character is not supported by the completed inventories and plans and overlooks the direct and immediate effects on community character uses that can not be mitigated and that are not consistent with Policy 1.

The proposed industrial facility would irrevocably distort the connection that Long Islanders, their town and village communities, and visitors have with the marine resources, natural landscapes and open water vistas from the North Shore. According to the LISCMP:

The need to ease the limitations on the general public's ability to exercise its rights of physical and visual access to the Sound coast is reflected in the theme for the public coast: **Connect people to the Sound and its public resources by improving visual and physical access and providing a diversity of recreational opportunities....**there are a variety of ways by which this theme can be advanced. These include: ...establishing travelways to and through public open spaces and public trust lands and waters; maintaining and creating visual access to the Sound and to significant land and water vistas that define the Sound's unique qualities;...and reasserting and guaranteeing the public's rights and interests in the waters and foreshore of the Sound and its natural and scenic resource base.⁷⁸

Located outside the context of existing shoreline development, Broadwater would create a drastically different visual profile of the mid-Sound area, altering the visual quality of that open water expanse. Its size and permanence would constantly remind the public that public trust submerged land, the water column and navigable waters are being occupied by a private, large industrial use that is obstructing and excluding existing traditional public and commercial water-dependent uses, currently available to the general public. This potential affront to the character

⁷⁶ LISCMP Vol. 1, p. 19 (Recommendation #9).

⁷⁷ Broadwater Cons. Cert. p. 2.

⁷⁸ LISCMP Vol. 2, p. 147.

of the region is stated by the East Hampton Town Commercial Fisheries Advisory Committee: "[Broadwater] callously suggests that the lobstermen and trawl fishermen receive monetary compensation for their losses. This proposed mitigation measure is inadequate because it fails to consider the impacts on Montauk harbor, our economy and, most important, it ignores the character of our community and our way of life."⁷⁹

The LISCMP also requires that new development remain concentrated in areas of existing development. Broadwater would not be located in a maritime center or another area of concentrated infrastructure, but in the middle of a vast open water expanse, nine miles offshore.

Although Broadwater asserts that Long Island Sound is "industrialized," they also acknowledge that the majority of industrial uses and port activity in the Sound are sited in Connecticut's coastal area and not on the North Shore of Long Island:

. . . the Connecticut ports receive significantly more traffic than the New York ports. Bridgeport is the most active commercial port in the Sound, with over 10,000 vessels per year. New London registers 5,000 vessels per year, and New Haven approaches 2,000 vessels per year. Typical cargo for these ports includes oil, other petroleum products, bulk chemicals, and containerized goods.⁸⁰

Shipping routes to shore are also concentrated in Connecticut coastal waters:

The main shipping route extends in a generally east-west direction through the center of the Sound, on a straight course from deepwater areas in the eastern Sound inside the Race through to the Stratford Shoal area. From this main route, vessel traffic branches to the north and south to enter ports throughout the Sound. Due to the greater port development in Connecticut, more routes branch toward Connecticut than New York."⁸¹

The FEIS presents Coast Guard port arrival data from 2003 to 2005 (ending April 21, 2005).⁸² It includes barges, freight ships, passenger ships, tank ships, and towing vessels, but does not include ferry traffic. The majority of the commercial vessel traffic into Long Island Sound arrives at Connecticut ports. In 2003, the Connecticut ports received 1,212 arrivals to New York's 388. In 2004, Connecticut received 799 arrivals to New York's 465. In 2005 (up to April 21), Connecticut received 526 to 161 for New York.⁸³

Further, more than 80% of the marine oil facilities on Long Island Sound regulated by the Coast Guard are located in Connecticut (28 out of 34). Connecticut hosts all nine marine facilities located in eastern Long Island Sound, while New York hosts the only facility in central Long Island Sound at Riverhead, and five others in western Long Island Sound. The remaining 19 facilities in western Long Island Sound are located in Connecticut.⁸⁴

⁷⁹ Written Comments from East Hampton Town Commercial Fisheries Advisory Committee (LA-10), FEIS Appendix N RTC Part 7. (Emphasis added)

⁸⁰ Broadwater Cons. Cert. App. E, The Marine/Land Use Compatibility Assessment, p. 21.

⁸¹ FEIS p. 3-187 (emphasis added).

⁸² This table was derived from the USCG's Ports and Waterways Safety Assessment (PAWSA) Vessel Arrival Data.

⁸³ FEIS p. 3-190.

⁸⁴ WSR Table 2-7, p.38.

The LISCMP does plan for continuing transshipment uses: it identifies two offshore areas on the North Shore where fuel transshipments - at a much smaller scale than that proposed by Broadwater - should occur. These are the existing oil platforms off Riverhead, noted above, and Northport. In addition, the program recommends that the offloading and loading facilities in Port Jefferson be re-located outside the harbor to protect the environment and promote inland storage.⁸⁵ These are the only three discrete existing offshore areas identified in the LISCMP for transshipment of fuel. The Broadwater proposal is not consistent with this plan; the LISCMP does not sanction siting a transshipment, industrial vaporization and storage facility in an offshore open water area.

Broadwater's proposed large-scale shipping and offloading activities are also out of character with the current activities at the existing Riverhead offshore platform. Between 2003 and 2005, the Coast Guard recorded 307 vessels greater than 700 feet arriving into Long Island Sound. During those same years, 124 vessels greater than 700 feet arrived at Riverhead's offshore platform, or on average slightly more than 41 vessels per year. Annually, between 104 to 156 LNG carriers greater than 700 feet in length would berth, offload and deb berth in Riverhead's open waters if the LNG facility were placed there. This would result in a 253% to 380% increase in the number of vessels greater than 700 feet arriving in Riverhead. In addition, Riverhead presently hosts less than one vessel per week; Broadwater proposes up to 3 LNG carriers per week.

The LISCMP reserves the Sound's open waters for commercial shipping, commercial and recreational fishing, recreational boating and, as discussed above, it protects the long, extensive water views from the shoreline. The presence of an industrial structure in the open waters of the middle Sound, far from the identified maritime centers and other developed areas, and requiring new supporting infrastructure, would not be consistent with LISCMP Policy 1 and Subpolicy 1.1. According to the LISCMP Policy 1, the existence of Broadwater's industrial facility and its associated infrastructure could effectively require the State to concentrate additional, similar uses in proximity, forever altering the character of the offshore, open water setting. This is a consequence not envisioned, planned for, or provided for in the LISCMP.

Policy 1 also requires that any new development and new uses make beneficial use of a coastal location. This should be viewed as adding value, improving conditions, and capitalizing on the most valued resources and features. The resources and features that are valued by the *federal, state, and local governments, their many partners throughout the region and the public*, are **"the tapestry of natural, economic, and cultural resources that make it unique—a Long Island Sound coastal area enriched by enhancing community character, reclaiming the quality of natural resources, reinvigorating the working waterfront, and connecting people to the Sound."**⁸⁶

The LISCMP supports the current land use trend on the North Shore, requiring consolidation in maritime centers of the remaining commercial and industrial uses that have comprised 2-4% of overall land uses during the past 50 years. Broadwater's new industrial center would be located outside Connecticut's major ports and New York's maritime centers in undeveloped open water near a major east-west corridor currently used primarily by transiting commercial vessels and recreational boats. The Project neither adds value to, nor improves the conditions of, nor fits discreetly into the existing coastal fabric.

LISCMP₈₅ Vol. 1, p. 66, Recommendation # 43.

⁸⁶ LISCMP Vol. 1, p. 3.

Broadwater is the first applicant to propose converting the coastal waters of the Long Island Sound Estuary to a potentially non-stop LNG shipping, berthing, offloading, deberting and industrial operation (storage, regasification, addition of nitrogen and odorant and send-out) that would directly displace and interfere with commercial shipping, recreational and commercial finfishing, lobstering, trawling and recreational boating. To maximize Broadwater's benefit, it takes advantage of an undeveloped open water site that is held in trust for the benefit of New Yorkers. It also requires that existing uses, as well as established goals for the region (protection of open space and scenic resources, re-establishment and growth of the lobster and fishing industries, planning for waterborne transit) be modified to accommodate its parameters. This is not consistent with Policy 1 and Subpolicies 1.1 and 1.2.

In an effort to diminish the perception of its Project as a discordant use, Broadwater identifies "an unmistakable pattern of mixed commercial, residential, recreational, and industrial uses within Long Island's coastal communities and the Sound,"⁸⁷ noting that "linear industrial infrastructure in the Sound already includes several cables, existing pipelines and other utilities that traverse the seafloor and provide energy and communications to businesses and residents throughout the region."⁸⁸ Broadwater also reminds us that "vessel traffic within the Sound has long included waterborne transportation for a substantial portion of the region's energy supply, including petroleum and coal."⁸⁹ These statements, while correct, fail to account for critical differences between existing, permitted uses and the Project.

As a fixed, permanent, above-water structure, the FSRU would be fundamentally different than any other visible, above-water uses currently encountered in the middle of the Sound, all of which consist of transient vessels. The FEIS acknowledges:

Although there are existing industrial and commercial uses of the Sound, approval of the Project would result in an industrial/commercial use of the Sound that would differ from most existing industrial or commercial uses for two reasons. First, the Project would be a permanent visible structure as opposed to most current industrial applications conducted on the shoreline, below the surface of the water, or as a transient activity on the surface of the water. Second, it would be farther offshore than the two petrochemical transfer stations currently in operation.⁹⁰

The LISCMP planned for continued operation at the two petrochemical transfer stations. It does not support development of industrial structures and zones in the center of Long Island Sound. Broadwater, therefore, conflicts with Policy 1 and Subpolicy 1.1.

The other identified difference between Broadwater and existing industrial and commercial uses - its permanence and visibility - is also a cause for concern. Unlike any previously approved pipeline project, the above-water FSRU disrupts both the physical use of the area, and its visual character. The FEIS notes that because "[t]he primary visual difference between the FSRU and existing commercial traffic would be its "lack of movement," there will result "a moderate, long-term impact to visual resources in a limited portion of Long Island Sound and along the associated shorelines."⁹¹ Further, the Project, unlike a transient industrial

⁸⁷ Broadwater Energy LLC and Broadwater Pipeline LLC Response to Comments on Broadwater's Petitions and Application for Easements Over New York State Lands, (Response to Comments) January 2008, p. 42.

⁸⁸ Response to Comments, January 2008, p. 43.

⁸⁹ Response to Comments, January 2008, p. 43.

⁹⁰ FEIS, p. 3-134.

⁹¹ FEIS p. ES-9.

vessel, permanently changes a 950 acre area, currently valued as public open space and used for water-dependent commercial and recreational uses, into a private industrial zone. This conversion is not consistent with Policy 1 and Subpolicy 1.4.

Once established, this industrial zone itself becomes a justification for siting additional industrial uses in proximity in order to comply with LISCMP Policy 1 and Subpolicy 1.1. The FEIS maintains that the Project "is unlikely to represent a new trend in offshore industrial development of the Sound" because of the unique nature, constraints and cost of such projects, and because upon approval "most of the fuel needs in the region would be met for the near future."⁹² This analysis, however, is flawed.

The Department acknowledges Broadwater's agreement in Commitment #2 to not expand beyond the proposed FSRU footprint. Broadwater's Commitment is confined to the "joint venture partners," who would agree to not construct other in-water, offshore regasification facilities in Long Island Sound, contingent on receipt of a conditional concurrence from DOS. This limited Commitment, however, evidences that Broadwater understands DOS' concern with the precedent-setting nature of its Project.

Additionally, as Broadwater has noted, it is not such a unique enterprise that subsequent, similar proposals are hard to foresee. FERC notes on that as of March 2008 "[t]here are about 40 LNG terminals that are either before FERC or being discussed by the LNG industry for North America. Six terminals are already operating on the East Coast, Puerto Rico and Alaska."⁹³ FERC highlights the complex forces driving LNG proposals: "The market ultimately determines whether an approved LNG terminal is ever built. Even if an LNG terminal project receives all of the federal and state approvals, it still must meet complicated global issues surrounding financing, gas supply and market conditions."⁹⁴ With this knowledge, it is not possible for the FEIS to realistically anticipate the future conditions driving industrial development proposals, including offshore energy facilities, for the Sound.

It is also not unreasonable to anticipate future energy facility proposals that are prompted by energy consumption as it grows beyond the needs of the "near future". Like Broadwater and FERC, DOS acknowledges New York's need for new energy supplies. Broadwater itself is proposed as a response to identified growth in energy needs: "Our analysis indicated that the proposed natural gas supplies are needed as a replacement fuel for existing coal and oil-fired facilities, and to support the future growth projected by government and private analyses."⁹⁵ It is for exactly this reason - the growing need for energy supplies to serve the expanding New York City metropolitan market - that DOS is gravely concerned about the consequences of allowing a precedent-setting industrial facility and use in the center of this Estuary of National Significance.

The FEIS acknowledges how an approval for Broadwater could serve as a "permitting template"⁹⁶ for additional, similar activities. As noted above, LISCMP Subpolicies 1.1 and 1.4 would require concentration of new, industrial uses around the industrial zone created by the Broadwater facility, if constructed. The federal Coastal Zone Management Act also requires, to the extent practicable, that new energy facilities be built or installed adjacent to existing facilities:

Priority consideration [should be] given to coastal-dependent uses and orderly processes for siting major facilities related to.. Energy,... and the location, to the

⁹² FEISp. 3-134.

⁹³ FERC website: <http://www.ferc.gov/industries/lng.asp> (3/26/08).

⁹⁴ FERC website: <http://www.ferc.gov/industries/lng.asp> (3/26/08).

⁹⁵ FEISp. 5-7.

⁹⁶ FEISp. 3-134.

maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists.⁹⁷ (emphasis added)

The presence of existing submerged pipelines and Broadwater's business relationship with IGTS may have induced it to propose its facility in the Sound. These existing natural gas pipelines, presently located in Long Island Sound on State-submerged land that DOS previously found consistent with State coastal policies, are energy facilities. A pipeline component, however, is only one part of Broadwater's proposed energy facility. The effects on coastal uses and resources from Broadwater's precedent-setting industrial facility in the Sound are more significant by orders of magnitude than the effects from the existing submerged pipelines that DOS previously found consistent with coastal policies. Given the CZMA language requiring consolidation of energy facilities, if DOS were to find Broadwater consistent, it is foreseeable that other similar LNG import facilities and pipelines would also expect placement in the Sound. This would result in additional subsequent, adverse effects on coastal uses and resources.

Broadwater's new industrial use proposed for the open water of the Sound would convert public open space and natural and recreational areas into a private industrial zone, would disrupt existing water-dependent uses, would set a precedent for other industrial and energy facilities and pipelines to locate here, and would result in substantial adverse effects to community character. For these reasons, Broadwater is not consistent with Policy 1 of the LISCOMP and its Subpolicies 1.1, 1.2, 1.4 and 1.5.

Policy 3: Enhance visual quality and protect scenic resources throughout Long Island Sound.

3.1: Protect and improve visual quality throughout the coastal area.

3.2: Protect aesthetic values associated with recognized areas of high scenic quality.

Policy 3 explains that "[v]isual quality is a major contributor to the character of the Long Island Sound region and its communities, and the primary basis for public appreciation of the Sound's landscape."⁹⁸ The elements comprising the *impressive visual qualities of the Sound's* near shore coastline include a range of natural landscapes such as bluffs, beaches, bays and inlets, and characteristic coastal flora and fauna, as well as human uses including boating, residences, parkland, agriculture, harbors, historic villages and commercial activities in defined maritime centers. The mid and far-shore visual landscapes of Long Island Sound are valued for their sweeping open water vistas, with views to the distant landform of the Connecticut shore, and the transient passage of freighters, ferries, commercial fishing vessels, boats and sailboats. Policy 3 and its Subpolicies repeatedly emphasize protection and improvement of these scenic qualities. A new, fixed, permanent industrial structure that would be visible 80% of the time from approximately 44 miles of North Shore coastline⁹⁹ would not be consistent with the long-established, well-articulated goals of the many federal, state, regional and local governments and their partners who have decades of investment in the Sound, its resources, and its communities.

⁹⁷ 16 U.S.C. §1452 (2)(D).

⁹⁸ LISCOMP p. 74 (emphasis added).

⁹⁹ Broadwater FEIS, p. 3-152, p. 3-147: "The data suggest that those Project components would be visible from at least one onshore location between 76 and 83 percent of the time. For the purposes of this EIS, we have assumed that the proposed FSRU, YMS, and LNG carriers in Long Island Sound would be visible about 80 percent of the time."

Broadwater correctly notes that Long Island Sound is not a designated Scenic Area of Statewide Significance. However, the Sound is recognized for its aesthetic and scenic value under a wide array of governmental designations, and therefore, is an aesthetic and visual resource of significant national, regional, State and local importance and must be protected as described under Policy 3 and its Subpolicies 3.1 and 3.2. These recognitions include the Clean Water Act's National Estuary Program, the Long Island Sound Coastal Management Program, New York State Heritage Area Program, New York State Scenic Byways Program, the Town of Southold Local Waterfront Revitalization Program, and the Town of Riverhead Comprehensive Plan.

As stated by the Long Island Sound Study:

Long Island Sound is a national treasure, to be prized for its beauty, abundant and diverse resources, and recreational and commercial opportunities. For many, it is a source of inspiration and renewal. For others, it is the basis of economic survival. In spite of differing perspectives, people share a conviction that Long Island Sound (the Sound) is worthy of preservation, restoration, and protection.¹⁰⁰

As discussed in the Policy 1 analysis, the North Shore is also a designated Natural Heritage Area. A required inventory of heritage and scenic resources included "distant views of water and land, over Long Island Sound and other water" and "panoramic views over Long Island Sound and Great Peconic Bay" as two of the four types of scenic resources compiled.¹⁰¹ A total of 309 scenic resources were identified and more than half rated 3 or higher on the 5-point quality rating scale. The plan documents 39 distant views, 12 scenic overlooks, and 104 panoramas, stating: "The scenic resources of the Long Island North Shore Heritage Area are the essence of the area and reflect the character of the area."¹⁰²

The LINSHA Management Plan recommends developing a special corridor plan for the Scenic and Historic Route 25A corridor, with the intention of eventual nomination of the road as a New York State Scenic Byway, National Scenic Byway, and All-American Road. Route 25 between Southold and Orient Point is already designated under the New York State Legislature's 1992 Scenic Byways Program as the "North Fork Trail Scenic Byway." The character of the route is inseparable from its pastoral, coastal setting. The Byway application states: "Water views comprise a major component of the scenic experience in Southold. These views range from very long vistas across the Long Island Sound to smaller-scale views of the many roads that meander around the Town's marine inlets."¹⁰³

The Town of Riverhead's Comprehensive Plan requires protection of the scenic vistas of its major water bodies and requires the town to "[m]aintain and increase waterfront access and views," explaining that "Riverhead is a community in many ways defined by its proximity to significant water features. Access to and views of the water are important in determining and maintaining the Town's overall quality of life. Public access to and views of water currently exist at certain points throughout Riverhead. The Town should work to increase public access to and views of water even further."¹⁰⁴

¹⁰⁰ See <http://www.longislandsoundstudy.net/ccmp/intro.html>

¹⁰¹ LINSHA Management Plan, Oct. 2006, App. p.116.

¹⁰² LINSHA Management Plan App. p. 122.

¹⁰³ The North Fork Trail: Farmlands and Seascapes, Hamlets and Heritage, application for Designation as a NYS Scenic Byway, Town of Southold, Ferrandino & Assoc., November 2000.

¹⁰⁴ Town of Riverhead Comprehensive Plan, 11/2003, p. 5-12.

Although public appreciation of the Long Island Sound visual landscape is important, perhaps more tangible is the role it plays in regional and local economies. Tourism and recreation sectors depend on the area's scenic attributes. Tourism-related employment on Long Island encompassed nearly 122,000 jobs in 2001.¹⁰⁶ "The visitor industry is an important economic sector on Long Island (Nassau-Suffolk Primary Metropolitan Statistical Area), accounting for 107,000 jobs and a payroll of \$2.2 billion in mid-2002, according to statistics gathered by the New York State Department of Labor."¹⁰⁶

Local plans also make this link between the Long Island Sound setting, in particular its scenic character, and their economies. The Town of Riverhead says: "Because Riverhead's scenic character helps maintain the Town's economic vitality and overall quality-of-life, it is important to understand the factors that contribute to the scenic character....Major water bodies and their shorelines or banks serve as scenic vistas in and of themselves: Long Island Sound, Flanders Bay, the Great Peconic Bay, and the Peconic River."¹⁰⁷

Collectively, these public plans and documents demonstrate the high scenic quality of Long Island Sound and the value placed on the Sound by citizens and governments. Subpolicy 3.2 requires that aesthetic values be protected and impairments to scenic quality, such as locating a large industrial facility in the middle of the public and open waters of the Sound be rejected.

Broadwater claims that it is simply another among the existing industrial uses and activities discussed in and even promoted by the LISCMP. However, Broadwater, as a new, permanent, fixed, above-water industrial structure out in the open waters of the Sound is fundamentally different from existing uses that are either transiting vessels, or underwater pipelines and located on the sea floor out of view. The transiting commercial and industrial vessels provides dynamic, visual interest because they do not permanently alter the setting or the character of Long Island Sound as a recognized, scenic open water resource. They, instead, contribute and improve the visual quality of Long Island Sound because of their dynamic nature.

The LNG carriers berthing at the FSRU, ranging from 886 feet (125,000 cubic meter capacity) to 1,132 feet (250,000 cubic meter capacity) in length, would also be larger than 99% of the other vessels currently transiting the Sound. The largest commercial vessels currently operating on the Sound are deep draft vessels in excess of 800 feet in length, generally carrying liquid petroleum and coal.¹⁰⁸ However, only 81 vessels of this size were recorded in the Sound by the Coast Guard between 2003 and 2005.¹⁰⁹ This represents about 1% of the total vessels recorded during this period (7,079). Between 2003 and 2005, only 1,006 vessels between 500 and 900 feet in length (the maximum recorded) were recorded, compared to 6,031 vessels that were under 500 feet in length.¹¹⁰ A total of 307 vessels transiting the Sound during this time frame were greater than 700 feet in length.¹¹¹ The LNG carriers with spherical (Moss) design are characterized by distinctive, dome-shaped Moss tanks that rise above the main deck and are higher in profile than membrane tanks, used by some LNG carriers. These would be large, visually distinctive ships that are highly distinguishable from other transiting vessels.

¹⁰⁶ LINSMA Management Plan App. p. 41.

¹⁰⁶ LINSMA Management Plan App. p. 42.

¹⁰⁷ Town of Riverhead Comprehensive Plan, 11/2003, p. 5-2.

¹⁰⁸ WSR, p. 25.

¹⁰⁹ WSR, p. 25, Table 2-3: 2003-2005 Long Island Sound Commercial Vessel

Arrivals sorted by length.

¹¹⁰ WSR, p. 25, Table 2-3.

¹¹¹ WSR, p. 25, Table 2-3.

even a moderate adverse visual impact ¹¹² is not acceptable, and is not consistent with Policy 3 and Subpolicies 3.1 and 3.2.

Aspects of the FSRU will be visible a majority of the time approximately 25 miles in any direction: "[P]otential viewing locations are distributed along approximately 44 miles of Long Island coastline and 92 miles of Connecticut coastline, all of which are within 25 miles of the proposed location of the FSRU."¹¹³ Thus, in addition to the physical disruption of open water, there are also few views of the Sound and within the Sound that would not be affected by the presence of Broadwater. This is a critical difference between the project and the existing, ongoing industrial uses in the region to which Broadwater likens itself, such as the two offshore petroleum transfer platforms identified in the LISCMP and the FEIS. However, these facilities, which are the only industrial structures in Suffolk County analogous in use (not in scale) to the proposed project, have minimal visual impact on the vast open space of the Sound because they are located less than 2 miles offshore, are significantly smaller in size, and are affiliated with nearby, onshore, working waterfronts. The Broadwater project, which would result in a permanent, large, visible structure, is not grouped or oriented to preserve the Sound's open space visual element, and is therefore not consistent with Policy 3 and its Subpolicy 3.1.

There is high visitorship at North Shore public areas, such as the many New York State park sites along the shore. Immediately south of the proposed project, Wildwood State Park is visited by an average of 300,000 people annually. Other north shore state parks, including Caumsett, Sunken Meadow, Nissequogue, and Orient Beach had over 2.4 million visitors in 2006/2007.¹¹⁴ A survey by the Long Island Sound Study (LISS) found that 79% of north shore residents visit the Sound at least one a year simply to sit, picnic and enjoy the view.¹¹⁵ This view, one of sweeping open water vistas across the Sound to Connecticut, would be altered by the presence of Broadwater and associated LNG carrier berthing operations. On-water viewers, including significant numbers of recreational boaters, fishermen, and ferry riders, would have an even closer view.

There are acknowledged adverse visual impacts that will be caused by the project,¹¹⁶ and affect public lands, including an array of New York State and local park sites, therefore, it is not consistent with Policy 3 and Subpolicy 3.1.

FERC concludes Broadwater would result in a moderate impact to visual resources¹¹⁷ that they deem acceptable. However, this "moderate impact" to the scenic quality of Long Island Sound would be experienced by millions of residents, recreational boaters and visitors. It would result from the introduction of a large, permanent, incongruous visual feature into a recognized scenic resource, physically and visually disrupting the wide open water area by its presence near the center of the waterbody. It would take the use of public land and open water away from the public and disrupt treasured views from the many public parks, beaches and wildlife reserves along the shore. In keeping with the repeated recognition of the Sound as a significant scenic resource by the federal, state, regional and local programs discussed above, the LISCMP has developed a coherent plan for the protection of the Sound's many resources, noting that scenic quality is of primary importance in the public's valuation of the resource. The Department acknowledges Broadwater's agreement in Commitment #1 to use a blue-gray color scheme and

¹¹² FEIS p. ES-9

¹¹³ FEIS p. 3-147.

¹¹⁴ NYS OPRHP, North Shore Parks Attendance Data 2007.

¹¹⁵ Public Perception Survey of Long Island Sound Watershed Residents, U.S. EPA Region 2, Final Report, November 16, 2006.

¹¹⁶ FEIS, Executive Summary p. ES-9.

¹¹⁷ FEIS, Executive Summary p. ES-9.

best lighting practices to dim lights at night on the FSRU and investigate other design changes to lower its profile in the water. These changes would minimize discordant features as required by Subpolicy 3.1. However, the LISCMP Policy 3, does not emphasize minimizing visual impact, rather it requires protection and enhancement of the Sound's scenic value. Therefore, it is not consistent with Policy 3 and Subpolicies 3.1 and 3.2.

Policy 6: Protect and restore the quality and function of the Long Island Sound ecosystem.

6.1: Protect and restore ecological quality throughout Long Island Sound

6.4: Protect vulnerable fish, wildlife and plant species, and rare ecological communities.

Broadwater would affect the Long Island Sound ecosystem through entrainment and impingement and potentially affect an ecologically-important shoal that supports a prime fishing area. The natural resources of Long Island Sound are recognized as important to the region and the nation by several federal, state and regional programs, and must be protected as described under Policy 6 and its Subpolicies.

The "coastal habitats of Long Island Sound have historically been an exceptionally productive and biologically diverse ecosystem important to the economic and ecological integrity of the Northeast and the nation"¹¹⁸ and "Long Island Sound is recognized as a National treasure of great cultural, environmental, ecological and economic importance."¹¹⁹

The LISCMP was developed to manage the Sound's resources on a regional scale. The program emphasizes protection of not just discrete significant habitat areas but those natural resources, species and communities that support the ecological integrity of the system as whole:

In addition to specifically identified discrete natural resources, the quality of the Sound ecosystem also depends on more common, broadly distributed natural resources, such as the extent of forest cover, the population of overwintering songbirds, or benthic communities. These more common natural resources collectively affect the quality and biological diversity of the Sound ecosystem.¹²⁰

Policy 6 and Subpolicy 6.1 require that the quality and functions of Long Island Sound's fragile estuarine ecosystem be protected and restored. Long Island Sound has been designated as an Essential Fish Habitat (EFH) under the Magnuson Stevens Fishery Conservation and Management Act (MSFCMA) for various life stages of 19 species with federal fishery plans. According to the National Marine Fisheries Service (NMFS) there would be major adverse effects on benthic habitats and marine species from Broadwater. These include:

¹¹⁸ LISS Policy Committee MOU on Restoration of Coastal Habitats of Long Island Sound, September 28, 2006. Signed by the Regional Administrators for USEPA New England Region and Region 2, and the Commissioners of Connecticut Department of Environmental Protection and New York State Department of Environmental Conservation.

¹¹⁹ LISS Policy Committee MOU on Long Island Sound Stewardship, September 28, 2006. Signed by the Regional Administrators for USEPA New England Region and Region 2, and the Commissioners of Connecticut Department of Environmental Protection and New York State Department of Environmental Conservation.

¹²⁰ LISCMP p. 79.

... significant adverse effects on EFH primarily by altering many acres of benthic habitat in conjunction with pipeline installation, disrupting forage communities, operating water intake and discharge structures, and introducing chronic light and acoustic disturbances at the FSRU where presently there are none.¹²¹

A major concern raised by NMFS is the impact on benthic habitat and communities all along the proposed 21.7-mile pipeline route from pipeline construction. Broadwater has verbally accepted the recommendation to backfill the entire length of the pipeline trench with native material but the FERC conditions are ambiguous. FERC Condition 16 requires Broadwater to coordinate with the U.S. Army Corps of Engineers, the EPA and the NMFS "to identify the conditions under which backfilling would be required." Contrast this language with Condition 17 which requires "a backfilling plan for the 2-mile-long pipeline section closest to the FSRU." It is also unclear whether backfilling would result in re-establishment of important benthic communities in the Sound. Through Commitment #17, Broadwater agreed to monitor the pipeline, restore areas impacted, and report on those restoration efforts.

In particular, significant adverse effects on benthic habitat and communities would occur at Stratford Shoal Middle Ground where approximately 4,000 feet of pipeline travels to its interconnection with the IGTS pipeline.¹²² During construction, the pipeline trenching is expected to result in temporary suspension of large amounts of sediment in the water column and affect the benthic communities. Thirteen to 20 days of mechanical dredging could be required to cross the Complex. Broadwater, in Attachment 2, page 21 of its April 2, 2008 submission to DOS has agreed to "develop an approach and plan for returning the material removed from Stratford Shoal to its original location to ensure that any native hard-bottom habitat remains in Long Island Sound rather than ending up at a distant open-water or upland disposal facility."

DOS acknowledges Broadwater's commitment to restoration at the Stratford Shoal/Middle Ground, but returning material removed is not guaranteed restoration. Policy 6, therefore, requires the pipeline be re-routed south or one of the other routes be chosen to avoid trenching and potential dredging at this area. Further, Policy 6 states that New York must "[P]rotect and restore the quality and function of the Long Island Sound ecosystem." Protection can be achieved by routing around the shoal, which is acknowledged in the FEIS. The stated reasons for not rerouting the pipeline were that: it would be 0.8 mile longer; complex engineering would be required to cross existing cables; and the presence of an historic dump site.¹²³

The Stratford Shoal/Middle Ground is a "large topographic rise that influences patterns of water flow, sediment erosion and sediment deposition. This unique feature significantly influences the distribution of sedimentary habitats and the organisms that use them."¹²⁴ It provides the "northern boundary for incoming oceanic bottom water"¹²⁵ and its geomorphology plays an important role in the "classical estuarine circulation"¹²⁶ of saline and fresh waters in the Sound. Researchers note the fragile balance of ecosystem characteristics present at this unique

¹²¹ NMFS, DEIS Comments 1/23/2007. p. 5.

¹²² FEIS. p. 3-31.

¹²³ FEIS, p. 4-48.

¹²⁴ Office of Long Island Sound Programs, Dept of Env. Protection and National Undersea Research Center and Associate Research Professor, Department of Marine Sciences, University of Connecticut at Avery Point. "OSV Bold Survey Report. Benthic Habitat Characterization of the Stratford Shoal Region of Long Island Sound. (OSV Bold Survey Report) May 29 to June 2, 2007", Final Report July 17, 2007, p. 3.

¹²⁵ Vieira, Mario E.C. "The Long-Term Residual Circulation in Long Island Sound," *Estuaries*, Vol. 23, No. 2, pp. 199-207 at p. 205.

¹²⁶ Vieira, Mario E.C., *Estuaries*, Vol. 23, No. 2, pp. 199-207, at p. 207.

site: "We hypothesize that the accelerated flows over the shoal maintain suspension feeding epibenthic communities (i.e., sponge, coral and bryozoan species) and enhance prey/food particle delivery while keeping particulates from smothering these organisms."¹²⁷ Suspension feeding organisms filter food, such as plankton and organic detritus, that drifts by as a result of water flow and are sensitive to disturbances, such as activities that scrape them off the substrate or bury them with sediment.

A recent study found Stratford Shoal/Middleground's "central transect, as well as southernmost transect which followed the proposed route for the Broadwater natural gas pipeline, were also characterized by finger sponge dominated communities and coral was observed along both transects."¹²⁸ This study also identified high densities of American lobster and other burrowing organisms in sampling areas both west and east of Stratford Shoal.¹²⁹ The researchers documented forests of finger sponge (*Haliclona oculata*) and populations of the unique, cold-water northern star coral (*Astrangia poculata*). Professor Sean Patrick Grace, a researcher at Southern Connecticut State University and an expert on cold-water scleractinian corals, has noted the unique characteristics of this cold-water species, and its presence in Long Island Sound:

"One unique temperate coral that has been found recently in Long Island Sound is the scleractinian (hard) coral *Astrangia poculata*. It is unique in that it is one of four corals known world-wide to exhibit a facultative symbiosis with its zooxanthellae (single-celled plants living within the coral host). Most tropical corals die or "bleach" when they lose their zooxanthellae, however, this coral can be found subtidally existing both with and without....The Sound represents a unique habitat for this coral, in that constant freshwater input would seem to put this coral at a disadvantage. This input results in salinity changes and increased sedimentation (particles suspended into the water column) which could interfere with coral feeding (tentacular) by smothering the coral."¹³⁰

The FEIS, citing a recent article on Dr. Grace's research, incorrectly characterizes the northern star coral community as fundamentally different from tropical, reef-building species, and hardy and plentiful in Long Island Sound.¹³¹ The article referenced by the FEIS actually states that the cold-water corals have the same attributes and structure as Caribbean corals, and their very hardiness in the face of extremely cold conditions results in unique ecological adaptations that make the Long Island Sound population worthy of study.¹³²

Further, the coral and sponge communities identified by the OSV Bold survey occurred primarily in hard substrate areas, as opposed to other sediment types,¹³³ as is typical of cold-water scleractinian species globally.¹³⁴ The FEIS depicts the rarity of hard substrate in Long Island Sound, with the linear outcropping of bedrock and gravel that comprises Stratford Shoal

¹²⁷ OSV Bold Survey Report p. 18.

¹²⁸ OSV Bold Survey Report p. 17-18.

¹²⁹ OSV Bold Survey Report p. 14-15.

¹³⁰ 2007-2008 University Research Grant Proposal from S.P. Grace, PhD, Department of Biology, Southern Connecticut State University.

¹³¹ FEIS p. 3-67.

¹³² Grace, S. P. 2006. The Skeletons of Long Island Sound. February 2006. Available online at <http://www.southernct.edu/faculty/paffairs/news/?file=view.php&id=679>

¹³³ OSV Bold Survey Report p. 17.

¹³⁴ Freiwald, A., Fosså, J.H., Grehan, A., Koslow, T., Roberts, J.M. 2004. Cold-water Coral Reefs. UNEP-WCMC, Cambridge, UK, p. 21.

immediately visible on Figure 3.1-1, "Distribution of Surficial Sediment in Long Island Sound."¹³⁵ With only a small percentage of appropriate substrate available to support them, these rare *ecological communities in Long Island Sound are clearly subject to the protection of Subpolicy 6.4, and should not be disrupted by the construction of the Broadwater pipeline.*

Additionally, unlike warm-water corals, cold-water corals grow, mature and recruit much more slowly, generally at rates between 4 - 25 mm/year, as compared to shallow tropical corals that grow up to 150 mm/year. These characteristics make cold-water corals highly susceptible to anthropogenic and natural disturbances, and regeneration and recovery might take decades to centuries for a damaged reef.¹³⁶ Reef communities, particularly cold-water reefs, are frequently damaged by activities such as oil and gas exploration and drilling, mineral mining, cable laying and other activities that increase turbidity and sedimentation.¹³⁷

The physical characteristics and the resulting presence of a unique benthic community, described above, make the Stratford Shoal/Middle an important fishing area in Long Island Sound, and as such, NMFS raises a second concern with the Broadwater Project. DOS agrees with NMFS and disputes the FEIS' cursory analysis of the importance of the Stratford Shoal/Middle habitat, and the inadequate discussion of potentially significant effects on fish, wildlife and other living resources that would be caused by pipeline construction.

Species richness and abundance of the fish community is notably higher in a cold-water reef as compared to the off-reef seabed.¹³⁸ The cold-water corals and erect sponges, like those found on Stratford Shoal/Middle Ground, as well as the unique physical structure of the Shoal itself, enhance habitat value by providing microhabitat for diverse fish and invertebrate assemblages, including juvenile life stages of commercially important fisheries species. The structural features of the coral and sponge community provides enhanced feeding possibilities among aggregating species, a hiding place from predators, a nursery area for juveniles, and substrate for invertebrates.¹³⁹

¹³⁵ FEIS p. 3-16.

¹³⁶ See Table 1 in Frejwald, A., Fossá, J.H., Grehan, A., Koslow, T., Roberts, J.M., 2004. Cold-water Coral Reefs. UNEP-WCMC, Cambridge, UK, p.11.

¹³⁷ "Cold-water coral ecosystems are long lived, slow growing and fragile, which makes them especially vulnerable to physical damage. Regardless of the depth at which these reefs occur, the impact of human activities is evident in almost every survey undertaken. Bottom fisheries, especially using trawls and heavy gear, have already destroyed or scarred several reefs, and represent one of the major threats to cold-water corals. Other documented and potential sources of impact are hydrocarbon and mineral exploration and production, cable and pipeline placement, repair and dumping." Frejwald, A., Fossa, J.H., Grehan, A., Koslow, T., Roberts, J.M. 2004. Cold-water Coral Reefs. UNEP-WCMC, Cambridge, UK, P. 21.

¹³⁸ The United Nations Environment Program - World Conservation Monitoring Centre (UNEP-WCMC) notes:

"One of the most obvious features when diving with a submersible over a cold-water reef is the species richness and abundance of the fish community compared with the off-reef seabed (Costello et al., in press; Husebø et al., 2002)...Reefs may be attractive for fish in several ways. The complex three-dimensional reef provides enhanced feeding possibilities, hiding places and nursery areas (Fossá et al., 2000)."

¹³⁹ NOAA National Marine Fisheries Service Ecosystem Assessment Division, see <http://www.nmfs.noaa.gov/habitat/ead/coldwatercorals.htm>.

The reef communities located on Stratford Shoal/Middle Ground would be adversely affected by pipeline trenching: "The communities of northern star coral and dead man's fingers located along the proposed pipeline route across Stratford Shoal would be impacted by construction of the proposed pipeline."¹⁴⁰ The pipeline route selected "requires complex dredged trenching and engineered fill to cross the Stratford Shoal Middle Ground Complex."¹⁴¹

In the event that test plowing across Stratford Shoal/Middle Ground using Broadwater's preferred technique is unsuccessful, Broadwater proposes a contingency plan involving excavation of a trench 26 to 54 feet wide, extending up to 4,000 feet in length prior to laying the pipe and resulting in greater turbidity and sedimentation. A heavy-duty excavator would remove between 3,000 to 5,000 cubic yards of sediment per day for approximately 13 days. The overall trench volume would be 40,000 cubic yards. If the excavator used in the dredging operation were unable to replace sediment to the required depth of cover, then rock, concrete mats or sand bags would be used atop the seafloor to protect and stabilize the pipeline.¹⁴² The contingency dredging plan in the application records would require disposal of dredged material upland or in an open-water site in Long Island Sound.

There are several feasible alternatives to the proposed pipeline route that Broadwater did not adequately explore, including a North Route, a Stratford Shoal Reroute, and a South Route.¹⁴³ For example, the FEIS describes the Stratford Shoal Reroute:

The Stratford Shoal Reroute Alternative follows the same alignment as the proposed pipeline route for most of its length (see Figure 4.5-1). In the vicinity of the Stratford Shoal, this alternative deviates approximately 2.5 miles south of the proposed route to traverse an area south of Stratford Shoal, where sandy and silty sediments are present (USGS 2000, 2005b). While the Stratford Shoal Reroute Alternative would avoid the need to install a pipeline through the hard ground of the Stratford Shoal, a pipeline constructed along this route would be 0.8 mile longer than the proposed pipeline. This alternative also would require that the pipeline be installed through a historic dredged material disposal site offshore of Port Jefferson. However, Broadwater's investigations of the historic dump indicated that contamination problems are not likely.¹⁴⁴

Broadwater asserts problems associated with the proposed route crossing the Flag Atlantic-North fiber optic cable at two locations as described in the FEIS and the Corps permit application. However, proper engineering has allowed successful cable crossings at many other sites in New York. Further, the 0.8-mile increase in pipeline length for this reroute alternative is minimal. The elimination of this alternative, and the other route alternatives, coupled with the assertion that no natural resource value is present at Stratford Shoal/Middle Ground along the proposed route, indicates that the examination of feasible alternatives is deficient.

Both the proposed trenching and the contingency dredging plan would impose significant adverse effects on the ecological communities found on Stratford Shoal/Middle Ground that are rare in Long Island Sound, and consequently on their associated fish and invertebrate habitat and species assemblages. The destruction of these communities during construction of the pipeline would result in a long term, if not permanent, loss, due to the unique physical structure

¹⁴⁰ FEIS, p. 3-70.

¹⁴¹ Memorandum from Drew Carey, Ph.D to Save the Sound dated 1/22/07 citing Broadwater's Resource Report-1, Appendix C Stratford Shoal Contingency Plan.

¹⁴² FEIS p. 3-31 to 3-32.

¹⁴³ FEIS p. 4-47 to 4-49.

¹⁴⁴ FEIS p. 4-48.

of the shoal, the slow growth rate of northern star coral, and, potentially, the existing stress and impairment generally present in the Long Island Sound aquatic environment. Long term or permanent loss of these communities would subsequently alter the highly valued and heavily used lobster and fin fishery at Stratford Shoal/Middle Ground.

Another major effect on living resources in Long Island Sound would result from the FSRU's and LNG carriers' withdrawal of an average 28.2 million gallons per day of seawater for ballasting, power generation and other uses.¹⁴⁵ As this water is drawn into the FSRU, it would be treated with chlorine as an antifouling agent. Based on this volume of water intake, the FEIS estimates that the FSRU alone will impinge or entrain (or kill as a result of application of biocide) from 49.8 to 101.9 million eggs (the most valid estimate is stated to be 53.1 million),¹⁴⁶ and also from 67.4 to 173.1 million larvae (the most valid estimate is stated to be 78.4 million).¹⁴⁷ Collectively, this represents the mortality of an estimated 131.5 million organisms annually. The FEIS notes that, with respect to impacts caused by LNG carriers, "[e]ntrainment of fish eggs and larvae would be possible during transit from withdrawal of water for vessel engine cooling."¹⁴⁸ However, no numerical estimates have been provided. LNG carriers would cause higher mortality of eggs, larvae and juvenile fish than will the FSRU because of their substantially higher water needs.

Estuaries like Long Island Sound are critical settings for fisheries reproduction, and serve as home to the fragile larvae and juvenile fish that support the sustainability of their parent populations. The Long Island Sound estuary already hosts an array of facilities that impose equal and greater impacts to aquatic species as a result of impingement, entrainment and the use of biocide to prevent fouling of infrastructure. State and federal agencies are currently increasing their efforts to reduce or eliminate the ecological impacts of these water withdrawals by existing uses. Allowing additional, incremental increases in larval and juvenile mortality in these stressed, ecologically and commercially important populations further exacerbates this situation, conflicts with the goals of New York and its partners, described previously, with regard to protection and restoration of these populations and would not be consistent with Policy 6.

Of the mortality totals cited above, the annual losses of EFH-managed species (which include bluefish, flounders, mackerels, whiting, cod and scallop)¹⁴⁹ from Broadwater are estimated to be approximately 3.5 million eggs and 5.3 million larvae, or approximately 3% of the ichthyoplankton losses for the overall finfish community.¹⁵⁰ NMFS states: "[e]ntrainment of fish or invertebrate eggs and larvae as well as small prey items is likely to be lethal and have consequences for both aquatic resources on both the Connecticut and New York sides of LIS."¹⁵¹

DEC also highlighted the potential effects of entrainment/impingement on the State's fisheries resources. Focusing on the potential higher range estimates observing that over 270 million eggs and larvae, and an unknown number of (Young of Year) (YOY) and small adult fish, could be potentially entrained by the FSRU and LNG carrier operations, DEC has stated:

¹⁴⁵ FEIS p. 3-90.

¹⁴⁶ FEIS p. 3-90.

¹⁴⁷ FEIS p. 3-90.

¹⁴⁸ FEIS p. 3-93.

¹⁴⁹ FEIS, App. E, EFH Report, p. E-21.

¹⁵⁰ FEIS p. 3-99.

¹⁵¹ U.S. Dept of Commerce, NOAA, National Marine Fisheries Service (NMFS). Re: OEP/DG2E/Gas Branch 3; Broadwater LNG Project, Docket No. CP06-54-000, CP06-55-000. Received by FERC on January 30, 2007. FERC generated pdf of 20070207-0013.

"The Department restates its opinion that the loss of 274 million eggs, larvae and juveniles from impingement and entrainment into the intake systems of the Floating Storage and Regasification Unit (FSRU) and the LNG carriers, is a significant adverse impact to the aquatic ecology of Long Island Sound. The FEIS incorrectly concludes that these impacts are of minimal importance to the Sound."¹⁵²

DEC has made several recommendations regarding the intake structures to reduce impingement and entrainment and prevent fish mortality from exposure to chlorine. In *Commitment #15, Broadwater states it would work with DEC to minimize impacts using Best Technology Available (BTA)*. According to DEC, "even with these design changes, however, the project will result in the death of approximately 210 million eggs and larvae and an unknown number of YOY and small adult fish, through entrainment in the LNG carriers' intake systems. This would be a significant adverse effect on the LIS aquatic environment and fishery, caused as a direct result of the Project's operations."¹⁵³

DOS concurs with DEC and NMFS that the potential loss of eggs, larvae, and other young and small fish from Broadwater would represent a significant adverse effect on coastal fisheries resources and the ecosystem. These resources are precisely the "more common, broadly distributed natural resources"¹⁵⁴ upon which the food web of Long Island Sound depends, and that are targeted for protection under Policy 6. DOS acknowledges Broadwater's Commitments #15 and #16 to comply with the Clean Water Act, and develop and finance stocking programs for commercial fisheries.

Because of the above-described effects on vulnerable fish and wildlife, particularly adverse effects to the base of the food chain through impingement and entrainment,¹⁵⁵ and the devastation to the rare cold-water coral and sponge community present on the unique and fragile Stratford Shoal and Middle Ground complex, both construction and operation of the Broadwater industrial facility including transiting and berthed LNG tankers, would not protect or restore ecological quality in Long Island Sound as directed by LISCMP Policy 6 and its Subpolicies 6.1 and 6.4.

Policy 9: Provide for public access to, and recreational use of, coastal waters, public lands, and public resources of the Long Island Sound coastal area.

9.1: Promote appropriate and adequate physical public access and recreation throughout the coastal area.

9.3: Preserve the public interest in and use of lands and waters held in public trust by the state, New York City, and towns in Nassau and Suffolk counties.

¹⁵² See letter from John Ferguson, DEC Project Manager, Division of Environmental Permits to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission Re: Broadwater LNG Project - Final Environmental Impact Statement Docket Nos. CP08-54-000, et al. Issued January 11, 2008, dated March 17, 2008 at p. 2 (DEC March 2008 letter).

¹⁵³ See letter from John Ferguson, DEC Project Review Coordinator to Murray Sondergard (Broadwater) Re: Broadwater Energy Project DEC No. 1-4799-0007/00001, Notice of Incomplete Application dated December 26, 2007 at p.11 (DEC December 2007 letter).

¹⁵⁴ LISCMP p. 79.

¹⁵⁵ FEIS p. 3-90.

9.4: Assure public access to public trust lands and navigable waters.

The tidal waters of the State, the bottomlands they overlay, and the natural resources contained within are held in trust by the State for use by the general public. While an array of public and private uses may be allowed in public waters, depending on their impact and level of public benefit, it is the State's responsibility to protect public trust lands against unreasonable and unnecessary obstruction and encroachment to the detriment of the public's rights. This is particularly important for Long Island Sound, a waterbody recognized as an Estuary of National Significance for its outstanding ecological, cultural, commercial, and recreational values.

Long Island Sound has historically and judicially been considered inland waters¹⁵⁶ of the states of New York and Connecticut, which divide jurisdiction of the waters and submerged lands along the center of that waterway.¹⁵⁷ The State of New York holds title to the navigable waters and submerged lands of Long Island Sound within state boundaries, not otherwise conveyed away,¹⁵⁸ in trust for the use and enjoyment of the public.

The LISCMP describes the public trust and the public interest in this location as follows:

Under the public trust doctrine [advanced by Policy 9], the foreshore and underwater lands are held in trust by the sovereign for the benefit of the public. In the colonial era, the English king exercised sovereign authority, both proprietary and governmental, over Long Island Sound. Following the Revolutionary War, New York succeeded to the crown's rights in the waters, soils, and shores of Long Island Sound...New York courts have long upheld the principle stated in Illinois Central Railroad v. Illinois, 146 U.S. 387 (1892)...that the state's title to underwater land: "...is a title different in character from that which the state holds in lands intended for sale...It is a title held in trust for the people of the state that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties."¹⁵⁹

During its expected life, Broadwater's proposed FSRU will occupy, and physically limit public access to and recreation in, a substantial portion of the waters and underwater lands of Long Island Sound that is held in public trust by the State of New York.

¹⁵⁶ United States v. Maine, 471 US 375, 375 (1985). In Natural Resources Defense Council v. Calloway, 524 F.2d 79, 84 (2d Circuit, 1975), the Second Circuit stated, "Long Island Sound has been deemed by the government to be inland waters, both in nautical charts and under a definition found in § 3(b) of the Marine Protection, Research, and Sanctuaries Act of 1972, Pub.L. 92-532, 86 Stat. 1052."

¹⁵⁷ See NY State Law § 2. In 1879, New York and Connecticut agreed to a boundary line running down the center of the Sound. C. 213, New York Laws of 1880; Connecticut Special Acts and Resolutions No. 67, 8 Sp. Acts 1880. p. 377. Congress ratified that boundary line agreement in 21 U.S. Statutes at Large, 351, Feb. 26, 1881, Chapter 81. State Law § 2 codifies the current boundary line, established by C. 352, New York Laws of 1912 and C. 18, New York Laws of 1913.

¹⁵⁸ See NY Public Lands Law § 4 (all State lands owned by or vested in the crown of Great Britain as of July 9, 1776 belong to the State) and NY State Law § 7-a (describing New York's ownership and jurisdiction over submerged lands and the sub-adjacent waters). The Submerged Lands Act of 1953 did not affect the State's ownership interests of the submerged land or waters.

¹⁵⁹ LISCMP Vol. 2, p. 180.

The FSRU would be moored in 90 feet of state navigable waters approximately 9 miles from the nearest shoreline of Long Island in the Town of Riverhead, Suffolk County, New York.¹⁶⁰ As recommended by the U.S. Coast Guard, the safety and security exclusion zone surrounding the FSRU would extend approximately 1,210 yards from the center of the mooring tower, removing 1.5 square miles (950 acres) of waters from the public trust and precluding all other vessels from using or transiting the water column and surface waters around the FSRU.

Additionally, for each LNG carrier, a 2,040 acre moving safety and security zone is currently proposed, extending 2 nautical miles (2.3 miles) in front, 1 nautical mile (1.2 miles) to the rear, and 750 yards (about 0.4 mile) to each side of the vessel during inbound and outbound transits from the FSRU.¹⁶¹ This moving exclusion zone would be slightly larger than Caumsett State Historic Park on the North Shore in Huntington (1,750 acres), almost 3.5 times the size of Wildwood State Park on the North Shore in Wading River (600 acres), and 2.5 times the size of Central Park in Manhattan. Though temporary, this large, recurring exclusion would last up to 40 hours for each LNG delivery.¹⁶² LNG carriers would be somewhere in Long Island Sound or Block Island Sound for 6 out of every 7 days.¹⁶³ During these constant deliveries and departures, other recreational and commercial uses of Long Island Sound waters would be prevented within the moving exclusion zone around each carrier; in addition to their exclusion from the zone surrounding the FSRU, where all other uses would be prohibited at all times. When moving through a narrow waterway, such as The Race, recreational boaters, fishing vessels and commercial traffic would have to clear the area. Furthermore, these moving safety and security zones would effectively exclude the public from State-submerged land, the water column and State navigable waters throughout the entire path to the FSRU.

Broadwater points approvingly to the FEIS's observation that:

Many other commercial and industrial uses of the Sound have been approved by the responsible agencies, including eight power cables, three fiber optic cables, two natural gas pipelines, three active dredge disposal sites, two oil transfer platforms, many ferry services, extensive commercial shipping, and commercial vessel lightering. We believe that implementation of the proposed Project with our recommended measures would meet the energy needs of the region with minimal impacts and would therefore be in the public interest.¹⁶⁴

However, the proposed Broadwater facility is different both in scope and scale from the installation of a subsea pipeline, a fiber optic cable or a power cable, none of which involve exclusion of the public from the use of navigable waters.

Also, despite Broadwater's assertion that analogous safety and security zones already exist in Long Island Sound,¹⁶⁵ the exclusion zones associated with the proposed Project are different in size and nature from others cited. The existing safety and security zones¹⁶⁶ that are

¹⁶⁰ In 1881, town jurisdiction (but not ownership) of lands beneath Long Island Sound was extended northerly to the New York - Connecticut state line by act of the State Legislature. (Laws of 1881, Chapter 695).

¹⁶¹ FEIS p. 3-127.

¹⁶² WSR p. 56. This would include transiting each way, berthing, offloading and deberthing.

¹⁶³ WSR and FEIS.

¹⁶⁴ FEIS p. 3-157

¹⁶⁵ Broadwater fact sheet, "Broadwater: Just the Facts".

¹⁶⁶ The "Broadwater: Just the Facts" fact sheet references WSR, p. 41. The reference is actually at WSR, p. 42.

associated with stationary, permanent facilities are all for facilities that are located onshore (the Groton Naval Submarine Base, General Dynamics Electric Boat Shipyard, Dominion Millstone Nuclear Power Plant, all in Connecticut). Offshore security zones cited by Broadwater are the temporary, 100-yard radius¹⁶⁷ exclusion areas around anchored Coast Guard vessels (an area of 6.5 acres), and the temporary, annual exclusion areas around specified fireworks barges, ranging in size from 600-foot to 1200-foot radii around the barge (from 26 to 104 acres), which are enforced only between 8 p.m. and 11 p.m. for those days the barge is in place.¹⁶⁸

Finally, with respect to offshore platforms, Broadwater has made reference to the 500-yard radius safety zone (163 acres)¹⁶⁹ at the Riverhead (Northville Industries) Offshore Platform.¹⁷⁰ This vessel safety zone is, in fact, temporary, being in effect only when an LNG vessel is moored at the platform. The platform does not currently receive LNG and the safety zone is not consistently enforced.¹⁷¹

Existing recreational activities such as fishing, boating and diving would be significantly disrupted should Broadwater's proposal be realized. The FEIS documents the many recreational uses of the Sound, noting the trend towards increased recreational use over the previous decade.¹⁷² Broadwater's proposal, if approved, would disrupt and discourage these public recreational activities on public trust lands, which have grown in popularity and cultural-economic importance in recent years.

The disruptions to public recreational use are primarily associated with the recommended safety and security zones for the Project, which would exclude current and future users of the public waters of Long Island Sound. As noted in the Executive Summary of the FEIS:

commercial and recreational activity would not be allowed within the fixed safety and security zone around the proposed FSRU throughout the life of the Project....Up to 12 fishermen trawl and up to five lobstermen set pots in the area that the Coast Guard has proposed to establish as the fixed safety and security zone; these fishermen would be excluded from using the area within the fixed safety and security zone for the life of the Project. In addition, commercial fishermen using waters along the proposed LNG carrier routes may experience occasional use conflicts and gear damage.¹⁷³

While Broadwater has offered to compensate the affected commercial fishermen (Commitments #12 and #13 in the April 2, 2008 submission), no agreements have been reached at this time. Moreover, the exclusion of commercial fishing from these waters would prohibit all other fishermen from fishing these areas in the future, negatively impacting a heritage industry supported through generational transfer of knowledge and resources. Also, compensation provided to affected commercial fishermen will not mitigate the disruption of current and future recreational use by the public. The continuous disruption posed by these LNG shipments would deprive the public of the beneficial use of its trust resource, and is an important reason that the Project is not consistent with Policy 9.

¹⁶⁷ 33 CFR §165.154(a)(2)
¹⁶⁸ 33 CFR 165.151
¹⁶⁹ 33 C.F.R. §165.155 - safety zone. A security zone was not established.
¹⁷⁰ Broadwater's Submission to OGS, pp. 40-41.
¹⁷¹ WSR p. 93, footnote 180.
¹⁷² FEIS pp. 3-137 - 3-138.
¹⁷³ FEIS Executive Summary, p. ES-9

The FEIS also notes that “[t]he proposed safety and security zone around each LNG carrier would affect recreational boaters, especially in the Race...[where] recreational vessels...may experience up to a 15-minute delay as an LNG carrier and its proposed safety and security zone pass by.”¹⁷⁴ In addition, “[a]nchored or drifting vessels would need to temporarily move from areas in the path of an approaching LNG carrier and its associated moving safety and security zone, with a potential time of up to 40 to 60 minutes required from the start of relocation to a return to the original location.”¹⁷⁵ It should be noted that the passage of Navy vessels in The Race are also associated with security mandates, and these, combined with LNG carrier transits, could result in the frequent clearing of The Race in its entirety.

Although temporary and possibly limited to nighttime transits, these access restrictions would cause disruptions along the transit route up to 6 out of every 7 days. The USCG notes the “significant recreational fishing and commercial charter fishing presence during the summer months, typically between May and October” in The Race.¹⁷⁶ Charter and party boats operate during the day and night (targeting nocturnal-feeding striped bass).¹⁷⁷ During periods of peak usage, especially the identified peak recreational months, the exclusion zones associated with the Broadwater Project would be a burdensome disruption to existing public recreation and use of public trust lands and waters, and must be considered as part of the project-related loss of public land and waters in Long Island Sound.

Subpolicy 9.1 focuses on protecting and maintaining existing public access and water-related recreation. The direct exclusion of the public from 950 acres of navigable waters and submerged lands that would result from the placement of Broadwater’s private industrial use on State-submerged land in open water, and from the 2,040 acre moving safety and security zone surrounding its associated LNG carriers, as described above, would disrupt and interfere with public access to and recreational use of the Sound’s trust resources, including an array of identified, existing uses such as fishing, boating, sailing and diving. For these reasons, the Broadwater project is inconsistent with Policy 9 and Subpolicy 9.1.

The Public Lands Law authorizes the New York Office of General Services (OGS) to convey easements and grants of underwater land in certain instances where the conveyance furthers public trust purposes or does not interfere with public use of trust resources. Within these parameters, OGS has the authority to grant or deny Broadwater’s request for easements to moor the FSRU, to install and maintain the pipeline on State-owned lands beneath Long Island Sound, or to displace the public from the use of navigable waters. In keeping with the State’s sovereign responsibility, Policy 9 and its Subpolicy 9.3 also require that public interest in public trust lands and waters be protected by limiting grants, easements, permits, or lesser interests in lands underwater to “those instances where they are consistent with the public interest in the use of public trust lands,” making conveyances only under “exceptional circumstances.”¹⁷⁸

Broadwater’s consistency certification states that the public interest would be served by the introduction of a new source of natural gas, reduced price volatility, and enhanced reliability of the natural gas pipeline system and electrical power system into the New York City, Long Island and southern Connecticut regions. In its FEIS, FERC also states that the New York metropolitan region needs and will continue to need additional sources of natural gas to supply

¹⁷⁴ FEIS p. ES-9

¹⁷⁵ FEIS p. ES-9

¹⁷⁶ WSR p. 80

¹⁷⁷ Telephonic communication between Captain Robert Busby, President, North Fork Captain’s Association and Department of State staff, August 13, 2007.

¹⁷⁸ LISCOMP Chapter 4, p. 83

consistency determination using this Policy analysis as a guide. Coast Guard approval is by no means assured.

No strategy has been proposed that would enhance public access within the Long Island Sound region to mitigate loss of public lands and waters. In the absence of mitigation measures that would compensate the public for the loss of physical access to the 1.5 square miles of Long Island Sound around the FSRU, and in the 2,040 acre moving safety and security zone that are part of Broadwater presently under review by DOS, and for the reasons described above, the proposed Project is inconsistent with Policy 9 and its Subpolicy 9.4.

The bed and waters of Long Island Sound in New York are held in trust for and belong to the citizens of New York State, and the placement of Broadwater's private industrial use on these lands is in violation of the public trust doctrine. The safety and security zones associated with the Broadwater Project would significantly limit an array of existing public uses such as fishing, boating, sailing and diving, and other types of physical public access, use and recreation in 950 acres of navigable waters around the FSRU and additional submerged lands, and from the 2,040 acre moving safety and security zone surrounding the Project's LNG tankers. The Broadwater Project would not provide, promote, preserve or assure public access to or public use of submerged lands, the water column and navigable waters, nor would it preserve the public interest in these resources. Therefore, Broadwater is inconsistent with Policy 9 and Subpolicies 9.1, 9.3, and 9.4.

Policy 10: Protect Long Island Sound's water-dependent uses and promote siting of new water-dependent uses in suitable locations.

10.1: Protect existing water-dependent uses.

10.3: Allow for development of new water-dependent uses outside of maritime centers.

10.5: Minimize adverse impacts of new and expanding water-dependent uses, provide for their safe operation, and maintain regionally important uses.

10.6: Provide sufficient infrastructure for water-dependent uses.

10.7: Promote efficient harbor operation.

The Policy 10 analysis addresses Long Island's existing water-dependent uses. The LISCMP states the 200 existing water-dependent uses on Long Island Sound are vital to the economic health of the Region.¹⁸³ Water-dependent uses are businesses or activities which can only be conducted, in, on, over or adjacent to a waterbody because such activity requires direct access to that waterbody, and which involves, as an integral part of such activity, the use of the water.¹⁸⁴ These water-dependent uses include "...tug and barge combinations, bulk carriers, general dry cargo, passenger ships, refrigerated tank ships, tank vessels, towing vessels, naval vessels (including submarines), other government vessels, ferries, commercial fishing vessels, charter fishing and tour boats, and recreational vessels. Commercial vessels transiting both LIS and BIS can be destined for ports in Connecticut and Long Island as well as other ports in New

¹⁸³ LISCMP Vol. 2, p. 187-188.

¹⁸⁴ LISCMP p. 93.

Also, heightened scrutiny is required for any new use that affects the Sound's commercial fishing fleet. The myriad ways Broadwater would irrevocably alter the Long Island Sound fishing fleet, adversely impacting a traditional occupation that is a central component of the character of Long Island Sound and its communities, is outlined separately in the Policy 11 analysis below.

Subpolicy 10.1 requires avoiding actions "which would displace, adversely impact, or interfere" with existing commercial water-dependent uses of the Sound. The movement of freight, bulk materials and fuels on Long Island Sound is a significant and growing commercial activity representing a substantial amount of the overall on-water traffic. Annual commercial navigation and vessel traffic movements increased from 137,850 in 2003 to 196,773 in 2004 to nearly 294,000 in 2005, including vessels within New York's East River.¹⁹¹ The Coast Guard estimates that 2,000 to 4,000 commercial vessels annually through-transit Long Island Sound (passing through but not stopping), mainly mid-Sound.¹⁹²

Another way of analyzing this economic activity is that in the year 2000, 311.5 million tons of freight moved through the Sound region, representing \$797.6 billion worth of goods. Of this, approximately 62 million tons of goods (20% of the volume) were moved by water. Petroleum and coal products, building supplies, consumer goods, food, and chemical and allied products make up 98.9% of all marine tonnage. Petroleum and coal products alone make up 46 million annual tons, or 74%, of the top regional commodities transported by water.¹⁹³

The region is already planning for a managed increase in commercial vessel use of Long Island Sound over the next two decades to meet local and state sustainability goals.¹⁹⁴ There is a particular focus on waterborne transportation for people, to help manage regional traffic congestion. The ability to conduct safe and efficient navigation must be protected to facilitate these existing and anticipated commercial uses.

Broadwater's LNG carriers and their exclusion zones would regularly disrupt and impede commercial navigation in the Sound. About 2,040 acres of open water surrounding each LNG carrier transiting the area between the pilot station and proposed FSRU would be converted to a restricted use area.¹⁹⁵

In particular, "the transit of LNG carriers through The Race would be the most navigationally constrained portion of transit to and from the FSRU."¹⁹⁶ The most constricted portion of the general area referred to as The Race is the 1.4-mile wide (2,465-yard wide) area between Race Rock and Valiant Rock. More than half this distance (1,500 yards, or 750 yards on each side of the carrier) would be occupied by the LNG carrier and its security zone during transit through this constricted area.¹⁹⁷ As acknowledged by the FEIS, this area is the preferred

¹⁹¹ FEIS p. 3-188, Table 3.7.1-2.

¹⁹² WSR p. 21. (Analysis of AIS transponder data estimates 1,607 annual through transits - FEIS p. 3-191).

¹⁹³ Long Island Sound Waterborne Transportation Plan Task 2 – Baseline Data for Transportation Plan Development, September 30, 2003.

¹⁹⁴ See Long Island Sound Waterborne Transportation Plan, Port Inland Distribution Network.

¹⁹⁵ FEIS 3-132.

¹⁹⁶ WSR p. 77.

¹⁹⁷ FEIS 2.4.3.1, p. 2-38.

could be present and affecting existing commercial navigation in either Long Island Sound or BIS up to 312 days each year.²⁰⁸

In addition to conflicts with commercial vessels, marine events including regattas, parades, fireworks and power boat races occurring throughout Long Island Sound would also be affected by the LNG carriers and LNG facility. The Coast Guard identified 92 registered marine events in 2005.²⁰⁹ These included 22 regattas and 26 boat races in The Race and eastern, central and western Long Island Sound. At least 11 major boating events would overlap with a segment of the anticipated LNG carrier route.

There are three major differences between Broadwater's LNG carriers and the existing water-dependent vessel traffic on Long Island Sound. First, the LNG carriers at 1,132 feet in length, would be much larger in size than most vessels presently arriving in and transiting the Sound. Existing coal and oil carriers and barges are among the largest commercial vessels currently operating there and during the 3-year time period between 2003 and 2005 the Coast Guard recorded 1,000 vessels between 500 and 900 feet in length arriving in Long Island Sound.²¹⁰ Of this number, however, only 306 vessels or an average 102 vessels per year were greater than 700 feet in length.²¹¹ Broadwater's operations would result in a 100-150% increase in the size of the largest commercial vessels presently transiting the Sound.²¹² Second, their effects on commercial navigation would be exacerbated by the size of their moving exclusion zones, effectively extending the lengths of the LNG carriers to 2.3 statute miles in front and 1.5 miles behind and extending their widths by 0.4 miles on each side. Third, LNG carriers could arrive and depart up to 6 times a week (3 arrivals and 3 departures) or up to 312 times a year (156 arrivals and 156 departures) at all times of the year. These three factors lead to the inexorable conclusion that existing commercial navigation on the Sound would be displaced, adversely impacted and interfered with by Broadwater's operations and therefore, Broadwater would not be consistent with Policy 10 and Subpolicy 10.1.

Additionally, although Subpolicy 10.3 allows new development outside maritime centers under four criteria, as the Policy 1 analysis indicates, the proposed open water area in the middle of Long Island Sound is not suitable or appropriate even for Broadwater's water-dependent components.

Further, Subpolicy 10.6 provides the following applicable guidance to facilitate an efficient operating system in Long Island Sound for existing water-dependent uses:

- avoid shore and water uses which would impede navigation;
- give priority to existing commercial navigation in determining rights to navigable waters;
- provide for services and facilities to facilitate commercial, industrial and recreational navigation; and
- foster water transport for cargo and people.

²⁰⁸ This calculation is based on 3 LNG deliveries per week and includes the time the LNG carrier would be berthed at the FSRU (about 21 hours).

²⁰⁹ WSR p. 37, Table 2-6.

²¹⁰ WSR p. 25.

²¹¹ WSR p. 26.

²¹² The FSRU - at 1,215 feet in length - would be 25% longer than the largest vessels presently transiting the Sound.

Admiral Thad Allen, Commandant of the U.S. Coast Guard, in response to questions about the Broadwater Energy proposal at a March 5, 2008 Congressional hearing, clearly stated a reluctance to subsidize private enterprises with public resources that are critically needed for harbor management for the benefit of the public:

"...if the requirement that the Coast Guard provide the security resources was a condition of operating LNG facilities, I would recommend we not approve another permit....What I would like to see is a national discussion about security of dangerous cargoes in the entire context of what moves in the marine transportation system. In sectioning out LNG for this discussion and especially looking at potential Coast Guard resources being applied to it, you are in effect providing a subsidy to that sector against their cost of doing business."²²¹

Thus, it is reasonably foreseeable that unfunded Coast Guard responsibilities to police Broadwater in Long Island Sound could adversely affect other water-dependent uses in the Sound and potentially the Port of New York and New Jersey, and would not promote boating or navigational safety from a harbor management perspective as required by Subpolicies 10.6 and 10.7. DOS acknowledges Broadwater's Commitment #3 to fund State and local costs as part of the Emergency Response Plan. Its agreement to fund Coast Guard costs, however, is contingent on the Coast Guard exhausting all other options first and on receipt of a conditional concurrence from DOS.

Broadwater's LNG shipping and offloading components represent new water-dependent uses on the Sound with significant adverse effects on existing commercial navigation that can not be adequately mitigated to make the activity consistent with Policy 10. As noted above, these effects would be exacerbated by the required LNG carrier exclusion zones.

Additionally, with respect to the FSRU's storage components, the Subpolicy 10.5 guidance promotes inland storage of transshipped petroleum product to protect natural coastal resources. The Subpolicy 10.5 guidance does not promote on-water storage of transshipped energy product. As the Policy 1 analysis concluded, the Long Island SoundCMP allows only two existing nearshore sites for unloading petroleum. Given the Project's significant adverse effects on commercial navigation, the open water of Long Island Sound cannot be viewed as an appropriate or suitable location for either transshipment or storage of LNG.

As a result of the FSRU's mid-Sound location and the effects of associated LNG tanker traffic route, the Broadwater Project would significantly and adversely affect existing water-dependent uses in the Sound. Also, the FSRU terminal would be located close to a busy shipping lane and may cause conflicts with commercial navigation. For these reasons, the proposed Project is not consistent with LISCMP Policy 10, and Subpolicies 10.1, 10.3, 10.5, 10.6, and 10.7.

Policy 11: Promote sustainable use of living marine resources in Long Island Sound.

²²¹ Unofficial transcript of the March 5, 2008, House Appropriations Subcommittee on Homeland Security hearing, "Coast Guard Budget – Impact on Maritime Safety, Security, and Environmental Protection" provided by Congressman Timothy Bishop in a letter dated March 19, 2008.

- 11.1: Ensure the long-term maintenance and health of living marine resources.**
- 11.2: Provide for commercial and recreational use of the Sound's finfish, shellfish, crustaceans, and marine plants.**
- 11.3: Maintain and strengthen a stable commercial fishing fleet in Long Island Sound.**
- 11.4: Promote recreational use of marine resources.**

Commercial fishing has been an integral part of the history and economy of Long Island Sound since humans first inhabited the area. The LISCMP strongly promotes measures that will ensure long-term sustainability of this heritage industry. This requires that decision makers both support the commercial and recreational fishing and related uses and activities, and the populations of living resources upon which they depend. The LISCMP explains:

"Continued use of the Sound's living resources depends on maintaining long-term health and abundance of marine fisheries resources and their habitats, and on ensuring that the resources are sustained in usable abundance and diversity for future generations....Allocation and use of the available resources must: (1) be consistent with the restoration and maintenance of healthy stocks and habitats, and (2) maximize the benefits of resource use so as to provide valuable recreational experiences and viable business opportunities for commercial and recreational fisheries."²²²

Reflecting the diverse habitat of Long Island Sound, the LNG carrier route, pipeline route and FSRU site support an array of benthic, finfish, ichthyoplankton, and plankton communities displaying seasonal variations in abundance and distribution.²²³ As described in the Policy 6 analysis above, the FSRU's and LNG carriers' withdrawal of an average 28.2 million gallons per day of seawater for ballasting, power generation and other uses²²⁴ would have detrimental effect on these living marine resources. As this water is drawn in, it would be treated with chlorine as an antifouling agent. Based on this volume of water intake, the FEIS estimates that the FSRU alone will impinge or entrain (or kill as a result of application of biocide) from 49.8 to 101.9 million eggs (the most valid estimate is stated to be 53.1 million), and also from 67.4 to 173.1 million larvae (the most valid estimate is stated to be 78.4 million).²²⁵ Collectively, this represents the mortality of an estimated 131.5 million organisms annually. The FEIS notes that, with respect to impacts caused by LNG carriers, "[e]ntrainment of fish eggs and larvae would be possible during transit from withdrawal of water for vessel engine cooling."²²⁶ However, no numerical estimates have been provided. The LNG carriers will cause even higher mortality of eggs, larvae and juvenile fish than will the FSRU, because of their substantially higher water needs.

DEC also highlighted the potential effects of entrainment/impingement on the State's fisheries resources. Focusing on the potential higher range estimates observing that over 270

²²² LISCMP Vol. 1, p. 86.

²²³ FEIS pp. 3-64 to 3-101.

²²⁴ FEIS p. 3-90.

²²⁵ FEIS p. 3-90.

²²⁶ FEIS p. 3-93.

million eggs and larvae, and an unknown number of YOY (Young of Year) and small adult fish, could be potentially entrained by the FSRU and LNG carrier operations, DEC has stated:

"The Department restates its opinion that the loss of 274 million eggs, larvae and juveniles from impingement and entrainment into the intake systems of the Floating Storage and Regasification Unit (FSRU) and the LNG carriers, is a significant adverse impact to the aquatic ecology of Long Island Sound. The FEIS incorrectly concludes that these impacts are of minimal importance to the Sound."²²⁷

DEC has made several recommendations regarding the intake structures to reduce impingement and entrainment and prevent fish mortality from exposure to chlorine. Broadwater proposed design changes²²⁸, however, DEC has concluded that the project will result in the death of approximately 210 million eggs and larvae and an unknown number of YOY and small adult fish, through entrainment in the LNG carriers' intake systems. This would be a significant adverse effect on the LIS aquatic environment and fishery, caused as a direct result of the Project's operations.²²⁹

Additionally, NOAA NMFS designated EFH occurs in the area of the LNG facility and pipeline for various lifestages of 19 species, with nine species (ocean pout, red hake, winter flounder, windowpane flounder, scup, Atlantic mackerel, king mackerel, Spanish mackerel, and cobia) requiring habitat in these areas for every lifestage. Designated EFH also occurs within the LNG carrier transit route for various lifestages of 30 species, and eight species (bluefish, summer flounder, silver hake (whiting), Atlantic cod, yellowtail flounder, Atlantic sea scallop, monkfish, and Atlantic butterfish) have designated EFH in these waters for every lifestage.²³⁰ NMFS states: "[e]ntrainment of fish or invertebrate eggs and larvae as well as small prey items is likely to be lethal and have consequences for both aquatic resources on both the Connecticut and New York sides of LIS."²³¹ According to the FEIS, "annual losses of EFH-managed species during operations of the proposed Project would total approximately 3.5 million eggs and 5.3 million larvae. The loss of EFH-managed species would compose approximately 3 percent of the ichthyoplankton losses for the overall finfish community (both eggs and larvae)."²³² Subpolicy 11.1 directs decision makers to "[p]rotect, manage, and restore sustainable populations of indigenous fish, wildlife species, and other living marine resources."²³³ The Broadwater Project will not advance the protection or restoration of sustainable populations of these resources, and therefore is not consistent with Policy 11 and Subpolicy 11.1.

²²⁷ See letter from John Ferguson, DEC Project Manager, Division of Environmental Permits to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission Re: Broadwater LNG Project - Final Environmental Impact Statement Docket Nos. CP06-54-000, et al. Issued January 11, 2008, dated March 17, 2008 at p. 2 (DEC March 2008 letter).

²²⁸ Response to Comments on Broadwater's Petitions and Application for Easements Over New York State Lands, January 2008. See also, Broadwater's recent submission to DEC dated April 8, 2008.

²²⁹ See letter from John Ferguson, DEC Project Review Coordinator to Murray Sondergard (Broadwater) Re: Broadwater Energy Project DEC No. 1-4799-0007/00001, Notice of Incomplete Application dated December 26, 2007 at p.11 (DEC December 2007 letter).

²³⁰ FEIS, App. E, EFH Report, p. E-21.

²³¹ U.S. Dept of Commerce, NOAA, National Marine Fisheries Service (NMFS). Re: OEP/DG2E/Gas Branch 3; Broadwater LNG Project, Docket No. CP06-54-000, CP06-55-000. Received by FERC on January 30, 2007. FERC generated pdf of 20070207-0013.

²³² FEIS p. 3-99.

²³³ LISCMP Vol. 1, p. 86.

Block Island Sound.²⁴⁰ The Coast Guard also recognizes that "[t]he transit of LNG carriers through The Race will be the most navigationally constrained portion of the vessel transit to and from the FSRU."²⁴¹

Despite admitting the "potential for marine conflict," Broadwater mischaracterizes the availability of alternatives for commercial and fishing vessels when their LNG carriers monopolize The Race:

"Page 129 of the Coast Guard's Waterways Suitability Report on Broadwater...states that 'there would be approximately 425 yards on each side of the safety zone where small craft could operate while LNG carriers were transiting through The Race.' Further, pages 78 and 79 describe two additional passageways on either side of the Race that boat traffic uses. These two passageways cannot be used by commercial ship traffic (such as Broadwater and cargo ships) because the depths are too shallow."²⁴²

While some "small craft" may remain unaffected, the cascading effects of LNG carrier transit on other vessels remain problematic. Broadwater appears to be suggesting that conflicts will be mitigated if the existing population of charter and fishing vessels move either into the area between Race Rock and Fishers Island, or into Plum Gut - the two alternatives discussed in the WSR that are unsuitable for commercial traffic. This conclusion is not supported by the WSR analysis. The Coast Guard notes: "The area between Race Rock and Fishers Island is only suitable for recreational craft,"²⁴³ and, more importantly, "Plum Gut, located between Orient Point and Plum Island, is also an alternate passage for smaller vessels and recreational boaters to Gardiner's Bay and Block Island Sound from Long Island Sound, but caution is recommended when using this passage."²⁴⁴ (emphasis added).

In suggesting that 425 yards on each side of the safety zone will remain available, Broadwater fails to adequately consider the difficult navigational conditions created by this unique area. The Coast Guard states: "The area in the immediate vicinity of Valiant Rock experiences heavy swirls and rips, and is recommended to be avoided by deep-draft vessels and preferably by all vessels. The recommended transit areas for passing north of Valiant Rock is approximately 0.7 miles northeastward of Valiant Rock Lighted Whistle Buoy..."²⁴⁵

The Coast Guard also describes the heavy existing usage of the alternate, commercial vessel passage between Valiant Rock and Little Gull Island:

"While the area between Race Rock Light and Valiant Rock is the preferred route for deep draft vessel traffic, the route between Valiant Rock and Little Gull, an area approximately 2.4 miles wide, is frequently used for smaller tankers and tug-barge combinations as an alternate to The Race. This route relieves much of the traffic from the deeper passage between Race Rock Light and Valiant Rock. The passage between Race Rock Light and Valiant Rock is the route that would be utilized by LNG carriers. The least depth of this route is 48 feet, a rock area located just to the eastern side of the COLREGS demarcation line. The recommended transit area between Valiant Rock and Little Gull Island is

²⁴⁰ Broadwater Cons. Cert. App. E, p. 24.

²⁴¹ WSR p. 77.

²⁴² Broadwater fact sheet: "Broadwater: Just the Facts."

²⁴³ WSR p. 78.

²⁴⁴ WSR p. 79.

²⁴⁵ WSR p. 78.

issued in 1998; in 2002, fewer than 900 lobstermen remained licensed. Commercial harvests of LIS lobsters totaled about 1.6 million lbs. in 2004, worth slightly less than \$7 million.²⁵⁵

More than \$10.8 million have been invested by partners including the NOAA NMFS, EPA, Connecticut Sea Grant, New York Sea Grant, and the states of Connecticut and New York to advance research, resource monitoring, and outreach related to the impact of the lobster mortality event on the Long Island Sound commercial fishing industry.²⁵⁶ While surveys subsequent to the die-off documented a decreased abundance of legal size lobsters for harvest in Long Island Sound, "an abundance of small lobsters indicate that the industry is likely to rebound."²⁵⁷ However, because two-thirds of all lobster larvae captured for genetic study across all Long Island Sound originate from resident adults, "over the long term, stock rebuilding and stock stability will depend principally on an increase in the production and/or survival of local adult lobsters."²⁵⁸ Protecting the existing Long Island Sound adult lobster population, including the availability of appropriate habitat, is critical to this endeavor.

The size of the commercial lobster industry, and welfare of commercial harvesters, are inextricably linked to the lobster population. Jim King, a Mattituck lobsterman, notes the decrease in the number of lobstermen operating out of Mattituck from 25 harvesters 10 years ago, to 5 harvesters today. Mr. King emphasizes that the number of lobstermen is a function of lobster availability, and believes that a recovery of this industry in Long Island Sound is possible if the lobster population rebounds - and if the obstacles faced by the industry can be overcome.²⁵⁹

Lobstermen enter the Sound from various locations on Long Island, including Greenport, Mattituck Inlet, Mt. Sinai and Port Jefferson and move their boats as they set or haul in pots. Although lobstermen presently working in the commercial navigation channels are sometimes disrupted by passing commercial vessels, this disruption is viewed by harvesters as manageable, in contrast to the anticipated disruptions that will result from the much larger LNG carriers and their 2,040 acre exclusion zones.²⁶⁰

The disruption is exacerbated in The Race, where commercial lobstermen work only during periods of slack water.²⁶¹ Total slack-water time from the two daily tidal cycles in The Race is less than 4 hours per day. Lobstermen tending their lines and placing or pulling up pots in The Race would be forced to abandon them, possibly mid-line, to move outside the exclusion zone, if an LNG carrier were to enter The Race during this process. These lobstermen would need time to leave the area and return, resulting in a 40-60 minute disruption in their work just to weigh anchor, move out of the exclusion zone, wait for carrier passage, move back to their fishing spot, and reset anchor.²⁶² Lobstermen working their lines would probably need to return

²⁵⁵ Responding to a Resource Disaster: American Lobsters in Long Island Sound, 1999 - 2004, N. Balcom and P. Howell, CTSG-06-02, p. 1.

²⁵⁶ Balcom and Howell, CTSG-06-02, Table 1, p. 1.

²⁵⁷ The Economic Contribution of the Sport Fishing, Commercial Fishing, and Seafood Industries to New York State, Prepared by TECHLAW for New York Sea Grant, NYSGI-T-01-001, April 2001, p. 29.

²⁵⁸ Balcom and Howell, CTSG-06-02, p. 11.

²⁵⁹ Telephone communication between DOS staff and lobsterman Jim King, March 21, 2008.

²⁶⁰ Telephone communication between DOS staff and lobsterman Jim King, March 21, 2008.

²⁶¹ Lobsterman John Whittaker's comments on the DEIS dated January 22, 2007.

²⁶² FEIS p. 3-140.

Broadwater would also adversely impact the Long Island Sound commercial fishing industry as a result of the potential displacement of up to 30% of a trawling lane located directly north of the FSRU site. There are two trawling lanes for commercial fishing in Long Island Sound next to the stationary exclusion zone. In the early 1980s lobstermen and trawlers established these areas specifically for commercial trawling, and fixed gear such as lobster and conch traps are not set in these designated trawl lanes. The southernmost trawl lane located just north of the proposed project is approximately 0.5 miles wide and 15 miles long, or 4,800 acres.²⁶⁹ The second trawl lane is located north of the affected lane. The exclusion zone would preclude use of 413.42 acres,²⁷⁰ and would partition the southern trawling lane. The newly-created shorter trawl distances east and west of the exclusion zone could force trawlers to discontinue use of the bisected lane. Or, it could result in a lane shift or overuse of the second lane further north.

Commercial fishermen who currently trawl this area note the effects on the economic viability of their businesses resulting from the disruption in the existing, stable cooperative use management system:

If the FSRU is position[ed] as proposed, I will lose 40% of the west end line completely. When the freighters are in transit to the FSRU, I will lose the whole area with the safety zone and fixed gear issues. It is not a valid statement that we can move over and work another area. I use a mid water trawl which never touches the bottom, and need a straight line in order to work. Trying to work between the lobsters pot trawls is not an option for the lobstermen or me. The following is what will happen:

1. Displaced lobstermen setting in other pot areas, user group conflict
2. Fixed gear being destroyed by the vessel traffic, replacement costs
3. Loss of income to the commercial fishermen and lobstermen ²⁷¹

The North Fork Captains Association also highlights the adverse effects resulting from this use conflict:

[L]obstermen to the east of the proposed Broadwater facility have for the last three decades left a lane where they do not place gear to allow the passage of large commercial vessels without the destruction of gear. The compliance of barges and large commercial vessels with the safety zone will cause them to travel south of the mutually beneficial gear free passage and result in the destruction of a large amount of lobster gear. The destruction of thousands of dollars of gear per lobstermen added to the serious and continuing impact the lobster die off in the 1990's will certainly destroy or in the least greatly harm the businesses of the remaining lobstermen.²⁷²

The FEIS characterizes this as a minor effect, stating that a limited number of trawlers (between 2 and 12) would be affected, and that Broadwater has agreed to compensate the affected fishermen. The actual number of trawlers using these lanes is unclear, however, and the FEIS fails to provide detailed information on the productivity of the site relative to the overall

²⁶⁹ FEIS p. 3-194.

²⁷⁰ Broadwater Cons. Cert. App. E, p. 16, Table E-18.

²⁷¹ Letter from Greenport Seafood Dock, Inc. (Mark S. Phillips) (OC-18), FEIS Appendix N RTC Part 18.

²⁷² Letter from Ken Holmes, North Fork Captains Association, to Secretary of State Cortés-Vásquez, January 23, 2008.

trawling areas. Sound-wide estimates are based on average landings, and on Connecticut DEP trawling data which lacks input from those trawlers currently fishing in the area.

Also, even if the current generation of commercial fishermen were adequately compensated, there remains the unmitigated impact on the next generation of fishermen, who are excluded from today's decision making and buyouts proposed by Broadwater. Buyouts of affected fishermen may provide some monetary compensation in the present day, but precludes the next generation from participating in what is a traditional, place-based industry, ultimately resulting in a permanent loss that will not be replaced. Nevertheless, Broadwater has not yet entered into a compensation agreement with any affected fishermen.

Finally, conflicts between transiting LNG carriers and existing, stable commercial fishing operations will not be limited to The Race. Commercial trawlers and lobstermen based out of East Hampton ports would be directly affected by the LNG carriers and their exclusion zones and also by the commercial traffic diverted to avoid them. East of The Race, the LNG carriers using the proposed southern route through the Montauk Channel would conflict with a number of trawling lanes, displacing commercial fishing and lobstering there.²⁷³

East Hampton Town Commercial Fisheries Advisory Committee provides data on the impact of the movement of LNG carriers on commercial hand line fishing and trawl fishing in Montauk Channel:

"Commercial hand line fishing is very diverse in the range and varieties of species caught. The transit area of the LNG carriers overlaps the areas where commercial hand lining occurs. It is safe to estimate that up to 30% of fishing time would be lost. This is a significant loss to individual fishermen and to the economy of East Hampton."²⁷⁴

With regard to impacts on trawling in Montauk Channel:

"Trawl fishing is confined to a narrow area that is almost identical to the course earmarked for the LNG carriers. This is a crucial fishing area, used consistently from April through December on average of 15 days per month, by the trawling industry. The closure of this area for a portion of the day is likely to eliminate the profitability of trawling for the entire day....Ten vessels from East Hampton trawl these grounds. Depending on the size of the vessel, the gross income per day, per vessel, is between \$500 and \$1,000, for an average of \$7,500 per day of combined gross income. Multiplied by a conservative 15 day monthly average of work days, the monthly gross is \$112,500. Multiplied by the 9 month season, the gross is \$1,012,500."²⁷⁵

Broadwater has committed to using the northern route, subject to Coast Guard approval, which is by no means assured. Use of the northern route by the LNG carriers has associated impacts which must be considered. Other vessels are likely to alter their existing, preferred routes of entry and exit from The Race in order to avoid the primary LNG carrier route, and use

²⁷³ Comments submitted by the Town of East Hampton Fisheries Advisory Council, January, 2007 and map submitted by Attorney Maureen Liccione of Jaspan Schlessinger Hoffman on behalf of the Council dated March 25, 2007 and received on June 4, 2007.

²⁷⁴ Letter from East Hampton Town Commercial Fisheries Advisory Committee (LA-10), FEIS Appendix N RTC Part 7.

²⁷⁵ Letter from East Hampton Town Commercial Fisheries Advisory Committee (LA-10), FEIS Appendix N RTC Part 7.

of Montauk Channel by other vessels would therefore increase, and result in an increase in user conflicts.

Additionally, lobstermen and commercial fishermen operating out of Mattituck would be adversely affected by the transiting LNG carriers and their exclusion zones.²⁷⁶ At least 17 commercial fishermen set lobster pots and trawl in the area west of Orient Point, heading west for 35 to 40 miles up to the eastern edge of the FSRU exclusion zone and north to the New York/Connecticut border in Long Island Sound. The lobstermen and fishermen operating in this area would be exposed not just to the transiting LNG carriers, but to increased commercial traffic diverted to avoid the exclusion zone at the Project site.

DEC remarks on these indirect effects on fishing resulting from "movement of the LNG carriers through the Race and Long Island Sound [that] will cause existing commercial and recreational vessels to alter their routes. This may be especially true for commercial traffic traveling to the Conoco-Phillips terminal in Northville. Many of these vessels will take a more southerly route, directly into prime fishing grounds. Thus a much wider area will be affected beyond the safety zone of the facility, possibly a mile or more."²⁷⁷ Although the FEIS notes these comments from DEC, the discussion focuses on the affected tankers. Broadwater, however, does acknowledge the identified impact on fishing grounds, including lost gear and income by commercial fishermen:

Tankers destined for the ConocoPhillips platform that encounter an LNG carrier and its proposed moving safety and security zone could be delayed up to 15 minutes while the carrier and the safety and security zone pass by. In most cases, however, we anticipate that the tankers would slightly alter course to avoid conflict with the moving safety and security zone surrounding the LNG carrier. We anticipate that an occasional minor route adjustment would result in only an occasional minor impact on fishing grounds. In addition, as described in Section 3.6.8, Broadwater would compensate fishermen for lost gear and for lost income related to construction and operation of the Project.²⁷⁸

As described in the applications Broadwater has pending before federal agencies, the Project would impair and adversely affect marine resources, habitats, commercial and recreational fishing uses, and the commercial and recreational fishing industries and associated economies that depend on the fishing harvest. Because of these adverse coastal effects and impairments, Broadwater would not promote, but instead would impair sustainable use of living marine resources in Long Island Sound. The Broadwater Project is, therefore, not consistent with Policy 11 and its Subpolicies 11.1, 11.2, 11.3, and 11.4.

ALTERNATIVES

The CZMA regulations give a State the option, at the time it objects to the consistency certification for a proposed project, to describe any alternatives that would permit the project to be conducted in a manner consistent with its management program. NOAA's regulations state:

²⁷⁶ Comments submitted by Tony Demaula of Mattituck and Mary Best Phillips of Greenport.

²⁷⁷ DEC comments on the DEIS dated January 23, 2007.

²⁷⁸ FEIS p. 3-194

"The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program." (emphasis added)²⁷⁹

In describing alternatives, NOAA's regulations provide further guidance:

"If a State agency proposes an alternative(s) in its decision letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives."²⁸⁰

An alternative may involve changes—sometimes major changes—in the location or design of a proposed project to make it consistent with the State's coastal management program.

Broadwater's stated objective "is to deliver a large supply of natural gas into a regional market including Long Island, New York City, southern Connecticut and upstate New York."²⁸¹ This important objective can be achieved by Broadwater outside of Long Island Sound or by other energy projects proposed to serve the same market. In addition, there are energy projects which are proposed or approved to serve the Northeastern markets.²⁸²

²⁷⁹ 15 CFR 930.63(b)

²⁸⁰ 15 CFR 930.64 (d)

²⁸¹ Letter dated December 18, 2007 from Murray Sondergard, Broadwater Project Director to Susan L. Watson, General Counsel, NYS Department of State.

²⁸² The following energy projects are proposed or approved to serve Northeastern markets:

November 2008 is the in-service date for the NE 07 Project, which will provide up to 525,400 dekatherms per day of new natural gas supply for markets in New York, New Jersey and New England. The NE 07 Project is a consortium comprised of Algonquin Gas Transmission, LLC, Empire State Pipeline, Iroquois Gas Transmission System, L.P., and Millennium Pipeline Company, L.L.C. Importantly, 325,000 dekatherms per day of gas is expected to flow through the IGTS and be available to the same markets proposed to be served by Broadwater, including 100,000 dekatherms per day of gas for Keyspan and Con Edison.

Transco's "Leidy to Long Island Expansion Project" recently moved into service and provides an additional 100,000 Dth/d of incremental firm transportation capacity to serve market demand on KeySpan Gas East Corporation's gas distribution system. Moreover, Transco is upgrading this segment of its pipeline system from a maximum allowable operating pressure (maop) of 800 pounds per square inch (psig) to 960 psig, which will increase the maximum throughput of the Transco line from 600 to 700 million cubic feet of gas per day.

Kinder Morgan Energy Partners, Sempra Energy, and ConocoPhillips have undertaken a \$4 billion, 1,678-mile long pipeline from the Rockies to Ohio to deliver 1.8 billion cubic feet of gas per day of gas to markets in the east. The pipeline is projected to be in full service by June 2009.

Somerset Pipeline proposes to build a connector from its facilities in Ohio to an interconnection with the Millennium Pipeline. KeySpan has expressed interest in this proposal in the longer term, subsequent to the Millennium, Islander East, and Transco proposals.

As part of this consistency review, DOS describes alternatives that, if adopted by Broadwater, would permit the proposed project to be conducted in a manner consistent with the enforceable policies of the NYSCMP. During the consistency review, DOS held extensive discussions with Broadwater about various alternatives that would eliminate the project's adverse effects on coastal uses and resources in Long Island Sound while still supplying new natural gas supplies to New York.²⁸³ Based on these discussions, and DOS' review of all submitted materials, DOS concludes that there are at least two reasonable, feasible and available alternative locations in the Atlantic Ocean south of Long Island for an LNG import facility that would meet regional needs for natural gas. These alternatives would be consistent with the NYSCMP and would not require further coastal consistency review by DOS.

Broadwater rejected DOS's suggestion of an Atlantic Ocean alternative as not providing access to these markets "without substantial, disruptive, and environmentally damaging pipeline infrastructure enhancements across Long Island."²⁸⁴ However, the DOS alternatives listed

The Islander East pipeline would bring gas from the Algonquin pipeline in Connecticut to address the load pocket in eastern Long Island. FERC certification, NYS Coastal Consistency concurrence and Section 401 Water Quality Certification to build this pipeline were received.

Tennessee Gas Pipeline has proposed the Northeast Passage Project which would bring Rocky Mountain gas and/or Gulf Coast gas to locations in the New York, Pennsylvania, and New Jersey area. Initial capacity is anticipated to be 1.1 billion cubic feet of gas per day, but additional capacity is possible in the future with increases in compression. Fall 2011 is the projected in-service date.

Algonquin pipeline announced plans to modify portions of its existing pipeline system in order to provide increased natural gas supplies and enhanced system reliability to natural gas distributors throughout the New England region. With the proposed modifications, the pipeline would be able to supply an additional 740 million cubic feet of gas per day. The project is currently in FERC's NEPA Pre-Filing Process.

Safe Harbor Energy (Atlantic Sea Island Group, LLC) has submitted a complete application to the Coast Guard to locate an LNG island facility 13.5 miles in the Atlantic Ocean south of Long Beach Island. This project proposes to supply between 1.15 billion cubic feet of gas per day and 2 billion cubic feet of gas per day of gas, nearly twice the capacity of Broadwater.

Exxon-Mobil recently announced their proposed BlueOcean Energy project which would locate a FSRU in the New York Bight area, approximately 20 miles east of New Jersey and 30 miles south of Long Beach, New York. The project is proposed to supply 1.2 billion cubic feet of natural gas capacity supply per day to the NY/NJ region. It is projected to be online by approximately 2015.

The Northeast Gateway LNG (400 million cubic feet of gas per day average, 800 million cubic feet of gas per day maximum) and Neptune LNG (500 million cubic feet of gas per day average, 750 million cubic feet of gas per day maximum) SRV facilities in the Atlantic Ocean, off the coast of Massachusetts, will contribute imported gas to the Algonquin pipeline, which runs through New York and Connecticut.

²⁸³ Broadwater and DOS met seven times between April and August, 2007. Materials from these meetings were submitted by Broadwater and appear on the FERC docket CP06-54, under Accession number 20070815-5024.

²⁸⁴ Letter dated December 18, 2007 from Murray Sondergard, Broadwater Project Director to Susan L. Watson, General Counsel, NYS Department of State.

Meter Station, the Transco Pipeline has design capability to deliver additional volumes eastward from Safe Harbor Energy to the Long Beach Meter Station.²⁸⁷

Keyspan indicates that this area of their service territory, including the Boroughs of Queens and Brooklyn and Nassau County on Long Island, is a load pocket capable of absorbing significantly greater levels of natural gas.²⁸⁸ Further, natural gas from an offshore location south of Long Beach, NY would provide a source of fuel for the 350 MW Barrett Generating Station, which is being examined for repowering. A fully repowered Barrett Generating Station could generate as much as 525 MW of supply,²⁸⁹ absorbing a significant quantity of natural gas.²⁹⁰ Incremental fuel into the Transco-Long Beach Pipeline could be directly utilized at this location.

Some of the natural gas entering the Transco Pipeline could displace fuel currently entering into Long Beach, or it could flow bidirectionally into New Jersey. This would allow natural gas to remain in New Jersey and move into New York via other Transco interconnects with ConEd and Keyspan. Further, the entire Transco Pipeline System would be reinforced by having an additional fuel source at its eastern end, reducing reliance on Gulf Coast supplies and temporary underground winter storage.

Additionally, New York is moving towards increased interconnection with the New Jersey electrical grid and associated natural gas infrastructure. The recent completion of the Neptune electric cable system from Sayreville, New Jersey to Long Island noted above will provide up to 660 MW to LIPA.²⁹¹ Several power plants in northern New Jersey serve the New York metropolitan region.²⁹² Therefore, increased natural gas supply into northern New Jersey would have beneficial effects on the New York natural gas and electricity markets because New Jersey power plants support a regional electrical system that serves both New Jersey and New York.

²⁸⁷ Safe Harbor LNG Deep Water Port Act Application, Environmental Report, 2007. Letter from Energy Market Decisions, Inc. March 31, 2007.

²⁸⁸ Telephone conversation between Thomas Amerige of Keyspan Energy Delivery, Kevin Law of Long Island Power Authority and DOS staff on November 9, 2007.

²⁸⁹ See "The Environmental Benefits of Re-Powering KeySpan Electric Generating Plants in Meeting Future Demand," Cordaro, M., January 2005, Long Island University, Center for Management Analysis.

²⁹⁰ Assuming a heat rate of approximately 7,500 BTU/kWh, a repowered Barrett plant generating 525 MW of electricity would consume approximately 95 million cubic feet of gas per day of natural gas.

²⁹¹ http://www.lipower.org/newscenter/pr/2007/062807_neptune.html In addition, there are two transmission projects pending for cross Hudson electrical cables from New Jersey into New York City. Hudson Transmission Partners, LLC has won approval from the New York Power Authority to provide up to 660 MW from Ridgewood, NJ into Manhattan. Cross Hudson Corporation has obtained all necessary state permits to provide up to 550 MW into 49th Street in Manhattan.

²⁹² The Linden Cogen Plant, in Linden NJ provides up to 750 MW of supply into the New York City grid and is considered "in-city" capacity by the NY-ISO. In addition, the recently announced Bayonne Energy Center Project would generate 512 MW on the New Jersey side of the Hudson and be connected into the New York City grid in Brooklyn, NY via a cross Hudson cable.

Reliability and Ocean Conditions

Broadwater analyzed the reliability of an Atlantic Ocean alternative using a 2-meter wave height as a threshold for operations.²⁹³ The wave conditions data set that Broadwater relied upon for determining suitability of an Atlantic Ocean location is based on NOAA buoys 44025 and 44017. These buoys are located well offshore of Long Island and in the case of 44025, 33 miles south of Islip, Long Island. The ocean conditions recorded at these buoys are highlighted in Broadwater's analysis, indicating that wave heights can exceed 2 meters as often as 20% of the time in the winter, thus potentially affecting project reliability.

This proposed Alternative 1 would be located closer to shore (13 miles south of Long Beach) in an area that experiences lower wave height conditions than those recorded at the NOAA buoys. DOS used the data set – the United States Army Corps of Engineers Wave Information System (WIS) hindcasting model – that more accurately describes the conditions at the Alternative 1 location.

Battelle Consultants (Battelle) analyzed various WIS locations in the Atlantic Ocean offshore Long Island and found:

"The high quality of WIS wave hindcast data is generally accepted by the oceanographic community. The Corps has performed extensive comparisons between hindcasted and measured wave parameters at locations where WIS stations are in close proximity to NOAA's National Data Buoy Center (NDBC) buoys, with excellent results. In previous studies performed by Battelle using WIS data, comparisons have been made between NDBC buoy measurements of waves and nearby WIS stations. Typically, wave climatology statistics derived from the WIS data differ only by a small percentage from those derived from the NDBC buoys."²⁹⁴

WIS 124 is located two kilometers from the proposed Alternative 1 and represents anticipated wave conditions at that location.²⁹⁵ Battelle concluded, based on this climatology analysis, and Broadwater's operational threshold of 2-meter waves, that LNG carriers would be unable to berth or de berth from the FSRU between December and February on average only 8% of the time (2.4 days out of 30).²⁹⁶

Battelle also considered the duration of significant wave height periods, and found that at WIS 124 between December and February, a one-day average wave height greater than 2 meters occurs 7.4% of the time; a two-day average above 2 meters occurs 5.6% of the time; a four-day average, 2.2%; and an eight-day average, only 0.3% of the time. DOS concludes that given these conditions, LNG stored onboard the FSRU could be vaporized and discharged

²⁹³ Broadwater letter dated September 14, 2007, received by DOS on September 17, 2007.

²⁹⁴ Battelle Consultants (Battelle), "Review of Ocean Conditions Data and their Impact on Project Feasibility." May 2007, NYSERDA Contract 9562, Task 6, p. 3.

²⁹⁵ Battelle, 2007 p. 3.

²⁹⁶ Battelle, 2007 p. 6; Battelle found that significant wave heights greater than 2 meters could be expected 11.6% of the time in January, the worst weather month based on hindcasting models dating from 1980 to 1999. Waves exceeding 2 meters could be expected 8.6% of the time in November; 7.5% in December; 4.9% of the time in February; 8.0% in March. Summer months would be considerably lower. Averaged from December to February, the wave conditions would exceed 2 meters only 8% of the time. In summer months the wave heights would be lower.

Long Beach Alternative 1 would be situated west of the Bank to avoid conflicts with fishing and with commercial navigation traveling in assigned lanes.

Broadwater's September, 2007 filing concludes that a Shuttle Regasification Vessel (SRV) LNG facility located at the proposed Alternative 1 site location would impair navigational safety and interfere with commercial navigation. Broadwater's focus on potential use conflicts at the site with an SRV design does not acknowledge the relative lack of effects on coastal uses from an FSRU, mooring system and tower.³⁰¹ The spatial requirements for an SRV, including the exclusion zone and Area to be Avoided (ATBA), would be greater than those for an FSRU. Based on discussions with the Coast Guard, an exclusion zone for an FSRU in the Atlantic Ocean would be smaller than required for the Broadwater Project in Long Island Sound, and an exclusion zone may not be required for the LNG carriers.³⁰²

In addition, both Broadwater's submissions and FERC's FEIS mischaracterize the amount of vessel traffic at the proposed offshore Long Beach Alternative 1 location. Broadwater cites a Port Authority of New York and New Jersey (PANYNJ) statistic that the Vessel Traffic Service monitors 1,400 daily commercial vessel movements. Similarly, the FEIS mischaracterizes ship traffic south of Long Beach when it states:

"An SRV or FSRU constructed south of Long Beach could result in increased likelihood of vessel conflicts and a greater probability of vessel collisions or allisions. According to the Safe Harbor Energy Project Deepwater Port License Application, the area south of Long Beach experiences more than 1,400 commercial vessel transits per day (as compared to 2,300 vessel transits per year to ports in Long Island Sound) and experienced two collisions and two allisions between 2001 and 2005."³⁰³ (emphasis added)

The PANYNJ's Vessel Traffic Service (implemented by the Coast Guard) does monitor 1,400 daily commercial vessel movements, however, these vessel movements occur throughout an extremely wide geographic area that includes all of New York Harbor, and do not exclusively take place in the approach to New York Harbor where the Alternative 1 would be situated. In fact, citing data from the Lloyds Marine Intelligence Unit, the Safe Harbor Energy Project Deepwater Port License Application demonstrates that actual ship traffic movements in these adjacent lanes are considerably lower, by two orders of magnitude, than the level of traffic cited by Broadwater and included in the FEIS.³⁰⁴

The distance between the two traffic lanes near Cholera Bank is approximately 2.5 miles. In these two traffic lanes, situated on either side of the proposed Alternative 1, these data reveal there were 1,754 annual ship movements in the outbound lane (15% of total movements) and 378 annual ship movements in the inbound lane (3% of total movements). This results in a total of 2,132 annual (not daily) vessel movements in the combined lanes. Using FERC's estimate of 2,300 port arrivals in the Long Island Sound, there are 168 fewer vessel movements in the vicinity of Alternative 1.

³⁰¹ Responses A-2 and A-7 of Broadwater's September, 2007 filing regarding reliability, berthing/deberthing of vessels and the technical feasibility of an Atlantic mooring tower, indicate Broadwater understood that DOS had identified an FSRU for the location west of Cholera Bank and not an SRV since an SRV does not engage in side-side berthing/deberthing and does not require a mooring tower.

³⁰² Meeting between the Coast Guard and DOS staff on August 17, 2007.

³⁰³ FEIS p. 4-36.

³⁰⁴ Safe Harbor Energy Project Deepwater Port License Application, Exhibit N, Marine Vessel Traffic Patterns.

in Long Island Sound would be eliminated, and there would be no effects on Long Beach or surrounding South Shore communities.

Technology Options

Broadwater asserts that a mooring system and tower could not be designed and constructed to withstand the potentially greater wave heights associated with Atlantic Ocean conditions, but has not submitted a technical evaluation in support of this assertion. Instead, Broadwater highlights the modifications that would be required to accommodate the structure it has proposed for Long Island Sound to the Atlantic Ocean conditions. These include: a larger air gap for the lower deck of the mooring tower; a larger and taller mooring support structure; an enlarged ballast tank; additional reinforcements of the bow of the FSRU; a larger footprint; and deeper and more numerous piles to affix the tower to the sea bed. There is no evidence in the record or the FEIS indicating that an FSRU, mooring system and tower could not be designed, constructed and safely operated at the proposed Alternative 1 location.

Broadwater has also raised the issue of potential FSRU and carrier storage tank damage from excessive sloshing of the LNG cargo in Atlantic Ocean conditions. Broadwater, however, has not provided any information on the degree to which sloshing in the Atlantic Ocean would differ from sloshing in Long Island Sound, nor has Broadwater conducted a detailed statistical characterization of metocean conditions and the extent to which these conditions might affect facility tank design.

At a May 2, 2007, meeting with DOS, Broadwater suggested that wave period, as well as height, could have an impact on sloshing. In particular, they identified wave periods of 20 seconds or more as potentially problematic. DOS finds that data from NOAA buoy 44025 demonstrates that between April 1991 to December 2001, dominant wave periods of 20 seconds were recorded only four times, during summer months. Wave heights during summer months are typically at their lowest. Out of 85,516 distinct time records, a wave period of 25 seconds occurred only once in the ten year period in January. Throughout the year, the great majority of wave periods were between five to ten seconds.³⁰⁷ Thus, the probability of long period waves coinciding with waves greater than 2 meters is virtually nonexistent.

Broadwater's concerns regarding the effects of sloshing pertain primarily to membrane type tanks. Alternative tank designs, including Ishikawajima Heavy Industries Self-supporting Prismatic, Type B (ISI-SPB) tanks form an internal baffle that, given proper reinforcement at the bulkhead, minimizes sloshing. BlueOcean Energy is using this tank design for its proposed project. Additionally, in advance of severe weather conditions, LNG could be transferred from one tank to another, or vaporized and discharged, to minimize sloshing.

Energy Benefits of the Alternative

In addition to the benefits noted above, Alternative 1 has the following benefits associated with a new gas supply connecting to the Keyspan system at Long Beach through the Transco Pipeline:

- As the KeySpan gas delivery system (New York City and Long Island facilities are operated as an integrated system) is a "telescoping" arrangement with 30 inch diameter primary mains in New York City phasing down to 20 inch primary mains in eastern Long Island, the western portion of the system is better situated to accept incremental deliveries of new gas supplies (LNG). The east end of Long

³⁰⁷

See NOAA website <http://www.ndbc.noaa.gov/data/climatic/44025.pdf>

Island is currently at capacity therefore any new supply source in Suffolk County would simply displace existing capacity.

- Deliveries of new supply (LNG) to Long Beach via Transco could support the repowering of the E.F. Barrett generating station.
- Deliveries of new supplies (LNG) to Long Beach via Transco could support the repowering of the Northport generating station through displacement, i.e., gas that would otherwise enter the KeySpan system at South Commack, could serve the repowered Northport facility while new supply (LNG) deliveries at Long Beach could replace the gas diverted to Northport.
- With the addition of a new delivery point in Brooklyn, a southern delivery point would free up capacity on the Transco system which would serve to mitigate the Manhattan load pocket and help support more competitive pricing in the region.
- Deliveries of new supplies (LNG) to a new Brooklyn delivery point could support the availability of lower cost gas to the generators in the Astoria area through displacement, i.e., by providing LNG at Brooklyn, displaced gas from Leidy could be delivered to Con Edison (for redelivery to the Astoria generators) by Transco at its Manhattan gate stations.
- With the exception of the infrastructure improvements associated with a new gate station in Brooklyn, no other infrastructure improvements are necessary for a southern delivery. In contrast, a new supply source on the north shore of Long Island would require over \$100 million in additional infrastructure improvements.
- With the exception of support for Northport repowering, none of the foregoing benefits would apply to a FSRU located in Long Island Sound and connecting to the KeySpan system at South Commack.³⁰⁸

Alternative 2 – Fire Island Inlet

Location and Pipeline Route

DOS' Alternative 2 would be a turret-moored FSRU located in the Atlantic Ocean 22 miles south of Fire Island Inlet (approximate coordinates W 73° 10' 5" N 40° 20' 00") in approximately 130 feet of water at low tide. The FSRU would connect via new subsea and buried land pipelines to the IGTS pipeline at South Commack.

Pipeline Interconnections

A minimum width 24 inch submerged pipeline could run approximately 22 miles from the Alternative 2 site to offshore Fire Island. The subsea pipeline component for Alternative 2 would then be trenched or horizontally directionally drilled underneath the scour zone at least 1,000 feet from the shore, and then horizontally directionally drilled underneath Fire Island in the direction of the Robert Moses Causeway, or trenched in through the Fire Island Inlet. Upon reaching the north side of Fire Island, the pipeline would cross the 2,000 foot wide inlet, landing on the eastern end of Jones Island. Crossing on the western side of the causeway, the pipeline would continue across the island, bypassing the cloverleaf highway.

Upon crossing Jones Island, the pipeline would continue underneath the State Boat Channel to the north for approximately 250 feet. Upon reaching Captree Island to the north, the pipeline could be trenched along the highway for a distance approximately 2,750 feet. There is one traffic circle/cloverleaf that would need to be bypassed. Much of Captree Island is comprised of wetlands; however, the right-of-way along the highway is a disturbed, sandy

³⁰⁸ E-mail communication from Kevin Law, LIPA, to George Stafford, DOS, November 16, 2007.

duration of two days is 1.5%; a duration of four days is 0.5%; and the probability of 3-meter waves lasting for eight days is less than 0.1%. The likelihood of a 2-meter or greater wave event (Broadwater LIS standard) between December and February, with a duration of one day is 16.8%; a duration of two days is 15.3%; a duration of four days is 8.7%; and the probability of 2-meter waves lasting for eight days is 4.0%.³¹⁰ DOS concludes that given either of these conditions, LNG stored onboard the FSRU could be vaporized and discharged during those brief periods when the LNG carriers may not be able to berth due to weather or ocean conditions and, therefore, the FSRU could serve as a reliable source.

Effects on Coastal Uses and Resources

The Alternative 2 pipeline would come ashore in the vicinity of Fire Island Inlet, where there is substantial recreational use, particularly beach going. However, requiring construction during non-summer months would avoid effects on recreational uses.

The south shore of Long Island is heavily used for clam and squid fisheries. The surfclam fishery is a significant contributor to New York's commercial fishing industry. In 2006, it generated approximately \$4 million in wholesale landings.³¹¹ DEC's 2006 Atlantic Ocean SurfClam Survey distribution map indicates the heaviest population concentrations and catch densities occur east and west of the proposed pipeline.³¹² The FSRU would be sited 22 miles off southern Long Island, beyond the primary nearshore squid fishery area and would not be visible from shore.

In its September 2007 filing, Broadwater rejects alternatives off southern Long Island, in part, because of increased impacts from pipeline construction associated with the crossing of land-based features including beaches, wetlands, highways, neighborhoods or parks.

As previously noted, the Great South Bay is a State-designated Significant Coastal Fish and Wildlife Habitat. The habitat narrative, developed to provide guidance for development or use of the area, highlights the importance of protecting the Bay's water quality. It notes that dredging should be scheduled in late summer and fall to minimize potential impacts on aquatic organisms and that elimination of salt marsh and intertidal areas, through excavation or filling, would result in a direct loss of valuable habitat area. Restricting pipeline construction to this period also eliminates direct impacts to shorebirds, who are primarily vulnerable to disturbance in this habitat only during the summer breeding season (April - July).

Therefore, to protect habitat value, the pipeline route and installation techniques would be selected to avoid damage to salt marsh and intertidal areas, and avoid eelgrass beds and areas of high hard clam concentration. Directional drilling, careful routing of trenches around sensitive sites, and conduct of work during specific time periods have all been used in the past to avoid impacts to Significant Coastal Fish and Wildlife Habitats and sensitive nearshore habitats along the South Shore. Recent projects which have received DOS consistency concurrences using such methods include the Neptune electrical cable, the Verizon cable across Moriches Bay, and the Verizon cable from East Islip to Saltaire. Trenching or excavation could occur only in fall to avoid effects on aquatic organisms, as well as impacts on recreational users. In the Great South Bay, the pipeline would have to be horizontally directionally drilled for approximately 800 feet to avoid eelgrass beds directly north of Captree Island. The pipeline could be trenched across the

³¹⁰ Battelle, p. 6, Table 5.

³¹¹ NMFS, 2006

³¹² DEC 2006 Atlantic Ocean Surfclam Distribution Map, compiled from data collected during the 2006 Atlantic Ocean Surfclam Survey.

remaining width of the Bay within the disturbed corridor of the Causeway, avoiding any Causeway footings or interference with future work there. Hard clam concentrations within 2,000 feet of the mainland would need to be avoided.

Proper routing of pipelines, however, along existing utility and road corridors, coupled with advanced pipeline construction techniques, such as horizontal directional drilling and boring, would minimize construction-related impacts.

Technology Options

The FSRU would connect to a turret mooring system. This LNG facility would be able to store, vaporize and discharge natural gas similar to Broadwater's proposed FSRU and yoke mooring system. Exxon Mobil's proposed BlueOcean LNG project would use a similar turret and mooring design 30 miles south of Long Beach, NY, in rougher waters. As stated above, in the discussion of Alternative 1, there are alternative FSRU storage tank designs and LNG carrier designs that can reduce and manage the effects of sloshing, if necessary.

Energy Benefits of Alternative

This alternative meets Broadwater's stated market objective of delivering a new supply of natural gas to the region through the Iroquois Gas Transmission System.

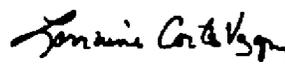
Conclusion:

Based on the foregoing, the proposed project is not consistent with the enforceable policies 1, 3, 6, 9, 10, and 11 of the federally approved Long Island Sound Coastal Management Program.

Pursuant to 15 CFR Part 930, Subpart H, and within 30 days from receipt of this letter, you may request that the U.S. Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the New York Department of State, which administers the New York Coastal Management Program, and to the federal permitting or licensing agency. The U.S. Secretary of Commerce may collect fees from you for administering and processing your request.

The U.S. Department of Commerce, FERC and the New York District of the U.S. Army Corps of Engineers are being notified of this decision by copy of this letter.

Sincerely,



Lorraine Cortés-Vázquez
Secretary of State

cc: Robert J. Alessi, Esq. Dewey & LeBoeuf
John King, U.S. Department of Commerce
James Martin, FERC Office of Energy Projects
Colonel Aniello L. Tortora, , New York District of the U.S. Army Corps of Engineers