STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION

July 29, 2003

Mr. Gene H. Muhlherr, Jr.
Islander East Pipeline Company, LLC
454 East Main Street, Route 1
Branford, CT 06405

RECEIVED
July 31, 2003

RE: Islander East Pipeline Company, LLC, Federal Consistency Remand
FERC Docket No. CP01-384-000, et al.
ACOE Application No. 200103091

Dear Mr. Muhlherr:

I am writing in response to the June 2, 2003 letter from James R. Walpole of the National Oceanic and Atmospheric Administration ("NOAA") Office of the General Counsel. By means of Mr. Walpole's letter and pursuant to 15 CFR §930.129(d), the United States Department of Commerce ("Commerce") remanded the above-referenced proceeding to the State of Connecticut Department of Environmental Protection ("Department") for reevaluation of the project's consistency with the enforceable policies of Connecticut's federally-approved Coastal Zone Management Program ("CZMP"). The Department has considered the project revisions formally proposed by Islander East Pipeline Company, LLC ("Islander East") in two letters dated March 13, 2003 from Gene Muhlherr to Charles Evans and March 27, 2003 from Joseph Reinneman to Susan Jacobson.

A. HISTORY

In 2001, Islander East Pipeline Company, LLC ("Islander East") submitted applications to the Federal Energy Regulatory Commission ("FERC") and the U.S. Army Corps of Engineers ("ACOE") to authorize construction of a natural gas transmission pipeline system through the Connecticut municipalities of Cheshire, North Haven, East Haven, North Branford and Branford and across Long Island Sound from Branford, CT to Long Island, NY.

Islander East submitted a request to FERC for a Certificate of Public Convenience and Necessity (Docket No. CP01-384-000, et al.) under section 7(c) of the Natural Gas Act and submitted a permit application to the ACOE pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act (Application No. 200103091). In response to these applications and pursuant to Section 307 of the Coastal Zone Management Act of 1972, as amended, Subpart D of 15 CFR §930, the Department in 2002 conducted a review of the proposed activities which require federal licenses or permits to be reviewed for consistency with the enforceable policies of the State's federally-approved CZMP. On October 15, 2002, the Department issued an objection to Islander East's consistency certification statement regarding both the FERC certificate and the ACOE permits pursuant to 15 CFR §930.63.

On November 14, 2002, Islander East appealed to the Secretary of Commerce ("Secretary") pursuant to 15 CFR §930, subpart H, to override this objection. While the appeal was pending with the Secretary, the Department met on numerous occasions[1] with Islander East along with federal and state resource agencies. The goal of these meetings was to discuss alternatives which could reduce the environmental impacts of the proposed work. While Islander East mainly focused on construction methodology modifications, the Department continued to express a desire for Islander East to evaluate alternative pipeline locations. To allow these discussions to continue, the Department and Islander East agreed to a

[1] Meeting dates: January 7, 2003, February 3, 2003, February 27, 2003, March 4, 2003, and April 15, 2003.

stay of the appeal with the Secretary until July 31, 2003, pursuant to 15 CFR §930.129(c). By letters dated March 13, 2003 and March 27, 2003, Islander East submitted a revised proposal which is discussed below. As indicated above in the Secretary's June 2, 2003 letter, the matter was remanded to the Department for reconsideration of its federal consistency determination in light of these proposed project modifications.

B. FEDERAL CONSISTENCY DETERMINATION

Islander East modified the proposed scope of work by making the following changes to the work proposal: (1) reducing the total number of passes of the lay barge; (2) changing the manner in which the sediment excavated from the dredged section would be disposed of – from sidecasting to offshore disposal; (3) changing the material which would be used in backfilling the dredged trench – from native material to stone. See Appendix A for a list of the most recent application modifications. Since Commerce has characterized these changes as "significant new information" introduced by Islander East[2], the Department has agreed to formally review these modifications. The new information, as referenced by Commerce, includes information that was developed and submitted subsequent to the Department's federal consistency objection dated October 15, 2002. The June 2, 2003 letter also indicated that Commerce had denied Islander East's request to include within the purview of the remand, information not yet received by the Department at the time of Islander East's May 15, 2003 letter requesting the remand. While the modifications which constitute the "significant new information" were provided to the Department in letters dated March 13, 2003 and March 27, 2003, the Department has received additional correspondence from Islander East in support of its application. Despite the short time frames imposed, the Department has chosen to review all pertinent information and modifications received to date[3], including the information received on May 28, 2003 in response to a Department request to Islander East for additional information regarding the pending 401 Water Quality Certificate and state permit applications.

The Islander East federal consistency file including all supporting information submitted to the Department was evaluated in light of the enforceable policies of the State of Connecticut's federally-approved coastal zone management program. **Based on this review, the Department has determined that the activities as proposed by Islander East in the proposed location would cause significant adverse impacts to coastal resources and water-dependent uses and would, therefore, be inconsistent with the enforceable policies of the Connecticut CZMP. Accordingly, the Department hereby objects to Islander East's consistency certification in accordance with 15 CFR §930.63(b).**

The following discussion provides the basis for the Department's finding that the proposed activity is inconsistent with the specific enforceable policies despite the project revisions and additional supporting information. While Islander East has made some effort to reduce adverse environmental impacts subsequent to the October 15, 2002 determination by the Department, the incorporation of the revised construction methodologies in an alternative location which has less significant resource and use conflicts would substantially increase the feasibility of developing an acceptable proposal for a pipeline crossing of Long Island Sound. To this end, as allowed under 15 CFR §930.63(b), the Department has provided guidance which would enable Islander East to develop a feasible and prudent alternative which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the state's enforceable policies. These are discussed in the "Alternatives" section, below.

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[2] James R. Walpole letter dated June 2, 2003.

[3] See Appendix B for dates of modifications to the Islander East proposal and additional supporting information submitted by Islander East since Connecticut's Federal Consistency objection of October 15, 2002.

C. NATURAL FEATURES

In order to understand the potential adverse impacts of this project as currently designed and proposed to be sited, it is imperative to consider the diversity of geological and biological features in close proximity to the proposed work corridor. The Thimble Islands are situated within the nearshore waters of the Town of Branford. Many of the larger islands are east of the work corridor but several exposed rock outcroppings are located to the west, so this work corridor extends through the center of the Thimble Islands complex. The Thimble Islands consist of a total of 141 islands and exposed rock outcroppings creating a total of 15 miles of coastline[4] within 6.2 linear miles. This hummocky topography formed of bedrock is found nowhere else in Long Island Sound.

The geological uniqueness of this island and rocky outcrop complex is only rivaled by the natural diversity it provides. The Thimble Islands typically emerge from relatively shallow waters, approximately 30' deep. In addition to this significant area of shallow water-land interface where biological diversity is the most rich and productive, this area hosts unique subtidal conditions including submerged rock reefs and a diversity of benthic habitats which range from soft mud to compacted sand and gravel. Each of these habitat types supports a complex community of sessile organisms, epifauna and infauna, each in their own way critical to the overall health and rich diversity of the surrounding marine ecosystem. These benthic features also include varying types of substrates, each of which creates robust shellfishing grounds suitable for hard clams, soft clams and oysters. This area is generally recognized as important colonial waterbird nesting habitat[5], a waterfowl wintering area[6], and one of only four primary seal haul-out areas in the State[7]. This productive region currently supports 3 full-time commercial lobstermen and 14 licensed shellfishermen as well as numerous recreational fishermen[8]. Historically, the area supported as many as 5 commercial lobstermen with 15 other part-time lobstermen also fishing the area at one time or another.

The Thimble Islands region has been recognized by the U.S. Fish and Wildlife Service as a significant habitat complex in need of protection and has been incorporated into a larger New Haven Harbor Complex in the Northeast Coastal Areas Study: Significant Coastal Habitats of Southern New England and Portions of Long Island, New York. This 1991 report, the relevant portion of which is submitted in Appendix C, was prepared for the U.S. House of Representatives and U.S. Senate Committees on Appropriations to identify those areas in southern New England and Long Island in need of protection for fish and wildlife habitat and the preservation of natural diversity.

D. DISCUSSION OF ENFORCEABLE POLICIES AND ADVERSE IMPACTS

Due to the extensive and geographically wide-ranging scope of the proposed work, a number of the enforceable policies of the State's CZMP are applicable. The coastal resources which are in close proximity to the proposed work include: coastal waters, nearshore waters, offshore waters, islands, rocky shorefront, shellfish concentration areas, tidal wetlands, and general resources, as defined in Connecticut General Statutes (CGS) section 22a-93(7). Each of these resources is associated with a set of corresponding resource policies that are enforceable policies of Connecticut's CZMP, CGS section 22a-92. In addition, specific coastal resource use policies (CGS section 22a-92) and adverse impacts (CGS section 22a-93(15)) are identified in the Connecticut CZMP and must be used in conjunction with the

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[4] Total coastline was measured through use of Geographic Information System by measuring total perimeter of all island features within the town boundary.
[5] Information provided by CTDEP Colonial Waterbird Database.
[6] Information provided by Min Huang, CTDEP Wildlife Division and Jack Barclay, University of Connecticut.
[7] Information provided by Amy Ferlund, The Maritime Aquarium at Norwalk.
[8] Information provided by Mark Johnson, CTDEP Fisheries and David Carey, CT Dept. of Ag, Bureau of Aquaculture.

applicable resource policies. Appendix D provides a summary of the major policies applicable to the proposal and is appended hereto.

Based on a review of the application for consistency with the enforceable policies of Connecticut's CZMP, the Department has determined that the proposed work would cause significant adverse environmental impacts on coastal resources and would be inconsistent with the enforceable policies of the Connecticut CZMP. The proposed project will degrade water quality through the significant introduction of suspended solids; and degrade, irrevocably alter and permanently destroy essential shellfish habitat through alteration of the benthic environment. The siting of the non-water dependent pipeline through prime shellfish habitat would cause a permanent adverse impact to a water-dependent use by displacing a water-dependent use, shellfishing, with a non-water dependent use, natural gas transmission. Also, the proposed project will adversely impact tidal wetlands. In addition, the siting of this energy facility, while a national interest facility and resource as defined in the Connecticut CZMP, is inconsistent with the Connecticut CZMP because of the environmental impacts associated with the installation of the pipeline in this location. These significant adverse impacts and inconsistencies with the Connecticut CZMP are further expanded upon below.

1. PROTECTION OF WATER QUALITY

As discussed above, the Thimble Islands are located in Long Island Sound's Central Basin. In general, this area meets the Long Island Sound Study[9] interim management goal for bottom water dissolved oxygen, usually with dissolved oxygen concentrations that are excellent and fully supportive of marine life. The water quality supports "Shellfish Growing Areas" as designated by the Department of Agriculture in accordance with the National Shellfish Sanitation Program to meet the requirements of the U.S. Food and Drug Administration. The majority of the area around the Thimbles[10] is classified as "Approved" for direct harvest. This designation, which is the most difficult to achieve, recognizes that the water is of sufficiently high quality to allow for direct consumption of shellfish from these beds without the requirement for relocation and depuration of shellfish harvest prior to human consumption.

Suspended Sediment

As a result of the most recent proposed construction methodology modifications, Islander East has made substantial improvements in reducing a significant source of potential sedimentation associated with pipeline installation. Sedimentation associated with the mounding of sediments in shallow water would be particularly devastating to the Thimble Islands region. Yet, despite the reduction of sediment mounding in a one mile section of the installation route, there will still be significant adverse impacts on water quality through sediment suspension and on benthic organisms and their habitat as a result of plowing for approximately 8.9 miles with the subsequent mounding of backfill material and the dredging of approximately 24,000 to 30,000 cubic yards of sediment and placement of backfill. As previously discussed in our October 15, 2002 objection, a severe storm on March 23, 1991 partially filled an open trench and dispersed sediment up to 3280' during the installation of the Iroquois Gas Transmission System ("Iroquois") pipeline off the Milford shoreline. Suspended sediment in the water column remained elevated during the four days including and just after the storm event with a mass approximately 65% higher than that suspended during normal dredging operations[11]. The longer-term impacts of a similar event in the Thimbles Islands region would be particularly devastating to its overall natural

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[9] Initiated in 1985, the Long Island Sound Study (LISS) is a partnership of federal, state, and local governments agencies, private organizations and citizens formed to develop and implement a comprehensive conservation and management plan for Long Island Sound. Funding support for the LISS is provided by the Environmental Protection Agency through the National Estuary Program and by the states of Connecticut and New York.

[10] See Appendix E for a Shellfish Area Classification map of the Thimbles region.

[11] An Investigation of Sedimentation Induced by Gas Pipeline Laying Operations in the Vicinity of the Oyster Bed Lease Areas, Milford, Connecticut. Final Report. March 17, 1992. Frank Bohlen, D. Cohen, K.H. Strobel.

diversity discussed above and degrade the overall health and productivity of the shellfish beds in this high quality area.

Bentonite Releases

The DEP's experience with the horizontal directional drilling (HDD) methodology for marine and coastal projects undertaken in Connecticut is that bentonite (drilling fluid) releases occur in at least 50 percent of the projects. It should be noted that this statistic is based on *reported* releases. These releases typically occur as "frac-outs", the industry's term to describe an incident when the drilling fluid is released from the drill path under high pressure causing the drilling fluid to be discharged from the drill path. Frac-outs are most common when the drilling operation moves from one geological substrate type and enters another (e.g. from rock to sand). When bentonite is released into the water column, it forms a thick gel-like layer on the benthic surface smothering non-motile benthic organisms such as shellfish. Approximately one half, or 2000 linear feet, of the proposed HDD corridor will occur under locally-managed shellfish lease beds, making them directly susceptible to damage from frac-outs and associated benthic mortality.

Of particular concern regarding the use of HDD in the Thimble Islands region is the occurrence of bedrock outcroppings and unique geological features which further increase the potential for frac-outs. As mentioned above, the Thimble Islands are composed of 141 islands and rock outcroppings and it is anticipated that the subsurface area is composed of the same variable geological features. Though the applicant has yet to provide the Department with a detailed subsurface data analysis of the HDD corridor, we can anticipate numerous construction-related problems utilizing the HDD methodology which could result in significant adverse impacts on water quality, marine organisms, and shellfish resources in this generally high-quality marine environment.

In light of the significant coastal resources in the vicinity of the proposed work, the anticipated levels of suspended sediments are unacceptable and the likely possibility for a bentonite release would be catastrophic to those beds potentially affected. As such, the Department finds that this activity would likely create a significant adverse impact to water quality inconsistent with the enforceable policies of the CZMP under the following definition:

> *"Degrading water quality through the significant introduction into either coastal waters or groundwater supplies of suspended solids, nutrients, toxics, heavy metals or pathogens, or through the significant alteration of temperature, pH, dissolved oxygen or salinity"* CGS §22a-93(15)(A).

Policy References: CGS section 22a-1 as referenced by CGS section 22a-92(a)(2); CGS section 22a(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-92(a)(1); CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(2); CGS section 22a-93(15)(A); and CGS section 22a-93(15)(G).

2. IMPACTS TO SHELLFISH AND SHELLFISH HABITAT

The diverse bottom habitats of the Thimble Islands support eastern oyster (*Crassostrea virginica*), hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), blue mussels (*Mytilus edulis*), and channel whelk (*Busycon canaliculatum*). Oysters prefer oyster shell cultch/hash or a similar hard substrate; clams, a sand and/or silt soft bottom; mussels, hard substrate such as rocks; and whelks, sand. Pipeline installation would permanently alter the substrate. Once the habitat has been replaced, the naturally-occurring shellfish communities will be eliminated and will not likely reestablish in these areas. For

example, Connecticut experienced the loss of oyster habitat due to the installation of the Iroquois pipeline in 1991. This disturbed habitat has not recovered to date[12].

In the section of pipeline to be installed through trenching, existing clam habitat will be eliminated. The applicant's modified construction methodology includes a 130' x 310' HDD exit-pit and a 37' x 5520' trench which is proposed to be backfilled, at least in part, with bank-run gravel. It is anticipated that due to exposure, tidal action, and current velocity, any fine particles proposed to be placed in concert with the gravel will be scoured out of these areas leaving the larger 2" cobble. According to Islander East's own evaluation, it will not be possible to restore the original fine-grained cohesive sediments. Clams will no longer be able to move through the substrate. While the cobble may theoretically support oysters in this location, there will be a limited source of spat (oyster larvae) from the adjacent clam habitat, likely resulting in this area being of little actual value for oysters.

Pipeline installation, in both the trench and plow sections, would result in the direct disturbance of approximately 161,172,000 square feet (approximately 3,700 acres) of bottom habitat in Connecticut waters. This number includes the pipeline installation area as well as the corridor of anchor strike and cable sweep disturbance. This area of direct impact ranges from 2,400' to 4,000' wide from approximately Milepost 12 to the New York state border. The most recently proposed installation modifications for the one-mile section do not require the wide anchor corridor. However, in its currently proposed location, the actual pipeline installation would temporarily and in some locations, permanently and irreparably disturb reefs, rocky subtidal habitat of bedrock or glacial till composed of coarse sands, gravel and/or cobbles and a variety of substrate including soft mud of silt/clay and sandy/silt, hard sand, and deposits of shell hash[13]. A June 4, 2003 memo from William Hogarth to Brandon Blum[14] cites a recently conducted benthic profiling study for 1974 water line installation in the Hudson River which has yet to recover to its preconstruction condition. With such an anticipated long-term disturbance, shellfish resources which rely on the existing substrate would be severely degraded for an unknown period of time or completely destroyed.

In addition to direct disturbance of the bottom substrate, shellfish and shellfish habitat will also be impacted by elevated levels of suspended sediments resulting from benthic disturbance. Also, a potential frac-out in the drilling route directly under the shellfish resources could be catastrophic. As such, the Department finds that this activity would likely create a significant adverse impact to shellfish habitat inconsistent with the enforceable policies of the CZMP under the following definition:

> *"Degrading or destroying essential wildlife, finfish, or shellfish habitat through significant alteration of the composition, migration patterns, distribution, breeding or other population characteristics of the natural species or significant alterations of the natural components of the habitat"* CGS § 22a-93(15)(A).

Policy References: CGS section 22a-92(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-33 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(1); CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-383 as referenced by CGS section 22a-92(a)(2); CGS section 22a-1, as referenced by CGS section 22a-92(a)(2); CGS section 22a-93(17); CGS section 22a-93(15)(A); and CGS section 22a-93(15)(G).

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[12] Information provided by David Carey, CT Dept. of Ag, Bureau of Aquaculture
[13] Bottom Characterization Surveys of Selected Subtidal and Nearshore Environments Off Juniper Point. Final Report. January 2002. Peter Pellegrino, Ph.D.
[14] Appendix F. Memo is on file with the Secretary or Commerce

3. IMPACTS TO WATER-DEPENDENT USE

The pipeline, as proposed, is sited within and adjacent to extensive shellfish grants, leased shellfish grounds and public shellfish lands. Much of the submerged lands through the proposed route that are not currently leased are productive shellfish habitat and constitute a significant area for potential future expansion of the shellfish industry, an economically significant water-dependent use in Connecticut that is nationally recognized. Connecticut's shellfish industry produces the highest quality oysters in the United States. Despite a devastating blow to oyster production from MSX[15] in 1997, Connecticut was still ranked #2 on the East Coast for oyster market harvest in 2001. Also, in 2001, Connecticut was ranked #1 for hard clam production on the East Coast.

The most recent installation modifications using bank-run gravel as backfill would result in 5½ acres of nearshore bottom habitat being permanently altered and rendered unsuitable for commercial shellfishing because the cobble would interfere with harvesting techniques. Approximately 5 of these acres are in Town of Branford commercial lease beds. The area of impact to shellfish harvesting would extend, however, well beyond the 5 acres of direct disturbance. While the cobble-filled trench would be 37' wide, the area that the commercial harvesting equipment would need to avoid would be much wider because of the required turning radius.

Additionally, the resulting topographic irregularities over the entire 3,700-acre Islander East corridor caused by backfill with gravel, plow utilization, anchor strikes and cable sweeps may adversely affect the efficiency and safety of the operation and handling of harvesting equipment. The application materials indicate that it is the goal of the applicant to achieve a finished substrate equivalent to the adjacent benthic surface with a proposed acceptable tolerance of +2' to –1'. While the Department finds encouraging Islander East's desire to achieve a minimal post-construction impact, the agency remains skeptical that this minimal impact can, in fact, be achieved. Such a range in tolerance level would be insignificant in an area where shellfish resources were scarce or where traditional harvest shellfishing techniques were not employed. However, this area fits neither of those categories. Even in the unlikely event that the bottom could eventually reestablish its former grade and habitat value, shellfishermen would most likely avoid the area for fear of damaging or losing gear thereby exacerbating the adverse impacts on use of this area for water-dependent shellfishing activities resulting from Islander East's proposed alignment at this location.

The existing and future use of this area for recreational and commercial shellfish aquaculture, transplant, and harvest operations is, by definition, a water-dependent use. A water-dependent use is defined by statute as *"those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland"*, CGS §22a-93(16). This Office is required to *"give high priority and preference to uses and facilities which are dependent upon proximity to the water or on the shorelands immediately adjacent to marine and tidal waters."* CGS §22a-92(a)(3). Natural gas transmission via pipeline is not a water dependant use because it can be located inland and does not require direct access to, or location in, marine or tidal waters. Therefore, the displacement or loss of shellfishing grounds and the opportunities that such grounds provide would constitute an adverse impact to water-dependent uses.

In light of the demonstrated use of the shellfishing areas within the zones of direct impact, indirect impact, and potential impact, the adverse impacts are unacceptable. As such, the Department finds that this activity would likely create a significant adverse impact inconsistent with the enforceable policies of the CZMP under the following definition:

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[15] MSX (multinucleated sphere unknown) is a single-cell parasite that invades the oyster's soft body, grows and divides within the tissue, and eventually overwhelms the normal metabolic processes in the shellfish resulting in death.

> *"'Adverse impacts on future water-dependent development opportunities' and 'adverse impacts on future water-dependent development activities' include but are not limited to (A) locating a non-water dependent use at a site that (i) is physically suited for a water-dependent use for which there is a reasonable demand or (ii) has been identified for a water-dependent use in the plan of development in the municipality or the zoning regulations; (B) replacement of a water-dependent use with a non-water-dependent use; and (C) siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters"* CGS §22a-93(17).

Policy References: CGS section 22a-359(a) as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(c)(2)(A); CGS section 22a-92(c)(1)(I); CGS section 22a-92(a)(1); CGS section 22a-383 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(3); CGS section 22a-92(b)(1)(A); CGS section 22a-93(17), and CGS section 22a-93(15)(G).

4. TIDAL WETLANDS

Pipeline installation will cause an impact to two tidal wetland areas. These areas are more specifically identified by the applicant as wetland CT-A37 and pond CT-A21. The wetland is approximately 0.68 acres and the pond, 0.25 acres. The applicant has submitted additional information[16] indicating that mitigation is possible for wetland CT-A37 by maintaining an existing, deteriorated pipe which will reintroduce tidal flow into the area.

The proposed draining of the pond and subsequent installation of the pipeline may, however, permanently degrade this wetland habitat and minimize its value as wildlife habitat. As such, the Department finds that this activity would likely create a significant adverse impact to tidal wetlands inconsistent with the enforceable policies of the CZMP under the following definition:

> "Degrading tidal wetlands, beaches and dunes, rocky shorefronts, and bluffs and escarpments through significant alteration of their natural characteristics or function" CGS §22a-93(15)(H).

Policy References: CGS section 22a-93(15)(H); CGS section 22a-92(b)(2)(E); CGS section 22a-33 as referenced by CGS section 22a-92(a)(2); CGS section 22a-92(a)(1); CGS section 22a-1, as referenced by CGS section 22a-92(a)(2); and CGS section 22a-93(15)(G).

5. NATIONAL INTEREST FACILITIES AND RESOURCES

Energy facilities are, by definition in CGS section 22a-93(14), facilities and resources which are in the national interest. However, each energy facility must still conform to all appropriate statutory standards. Given the significant adverse impacts to coastal resources discussed above, the proposed pipeline in this location has not been properly planned and controlled and, if installed, will adversely affect the quality of the environment in a manner inconsistent with the provisions of CGS section 16-50g. *Further, the Connecticut CZMP also defines facilities and resources which are in the national interest to include the protection of tidal wetlands and the restoration or enhancement of Connecticut's shellfish industry on an equal footing with energy facilities.* This particular pipeline proposal by Islander East is inconsistent with the Connecticut CZMP because it does not meet applicable state environmental standards as discussed above. (See CGS section 16-50g, and CGS section 22a-92(a)(10).)

In addition, we have also been advised that the "need" for natural gas on Long Island is questionable.[17] Although project need is not an issue before the Department in the current proceeding, this issue is

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[16] Appendix G. Additional information was submitted with cover letter dated May 27, 2003.
[17] Appendix H. Letter dated July 9, 2003 from Attorney General Richard Blumenthal to Charles Evans.

relevant and germane to any determination made by the Secretary of Commerce regarding a request to override a state's Federal Consistency Certification.

E. ALTERNATIVES

In light of the significant adverse impacts of the proposed route and the inconsistencies with the enforceable policies of the CZMP, the Department has considered project alternatives and siting criteria which may avoid or minimize such adverse impacts. The proposal to install the pipeline in this location is unacceptable due to the adverse impacts to coastal resources as discussed above. The applicant should seek alternative designs and sites which could qualitatively and quantitatively reduce such impacts.

One such alternative, the ELI System Alternative, was previously noted in the Department's October 15, 2002 letter to Islander East. Staff have reviewed FERC's Final Environmental Impact Statement (FEIS), FERC/EIS-0143F dated August 2002. While the FEIS is problematic for a number of reasons, some of which are enumerated in the U.S. Environmental Protection Agency letter dated September 30, 2002 from Robert Varney to Magalie Salas, it does provide an alternative analysis. The FEIS describes in section 4.2.1 an option entitled "ELI System Alternative" which appears feasible, as it would meet essentially the same energy needs while eliminating some of the anticipated adverse impacts altogether and reducing others.

Specifically, the ELI System Alternative consists of an extension stemming from the Iroquois pipeline which is currently in place from Milford, CT to Northport, NY. By tapping into an existing pipeline at an offshore location, all nearshore impacts are eliminated. The FEIS indicates that this alternative, while providing a similar level of gas availability to Long Island, would minimize installation impacts by reducing the overall length of new pipe by 5.5 miles, and cross approximately 5205 fewer feet of shellfish leases. In short, concurring with our finding, the FEIS reads:

> "Based on our environmental analysis, the ELI System Alternative is environmentally preferable to the proposed route because it reduces onshore and offshore impacts, except for emissions."

Islander East has repeatedly chosen to dismiss this option by saying, most recently, that the proposal was withdrawn by the applicant. At first glance, this withdrawal would appear to render this alternative infeasible, yet, closer scrutiny reveals just the opposite. Since the original applicant has withdrawn their proposal to construct a pipeline in this manner, it becomes an *available* option for Islander East, and a more favorable one with respect to consistency with Connecticut's federally approved CZMP.

Even if, as Islander East now argues, the above-referenced ELI option does not meet the project purpose for an additional separate gas line to Long Island, there are a host of viable alternative locations, that, if fully explored, would likely reveal a site that both meets the project purpose and is acceptable with respect to Connecticut CZMP consistency. The proposed pipeline's siting through one of the most unique, productive and diverse habitat complexes along the Connecticut shore would have significant adverse impacts that are inconsistent with the enforceable policies of the CZMP. While pipeline construction is not inherently inconsistent with the CZMP, the siting of it in this location is. In sum, the Department is charged with ensuring that only that alternative with the least environmental impact is utilized. In the interest of protecting sensitive coastal resources and finding any project consistent with the CZMP, the only acceptable alternative must combine *both* the least invasive construction techniques with the most appropriate siting of the facility.

The Department has asked the applicant for alternatives analysis information on numerous occasions, most recently in a letter dated May 5, 2003[18]. One of the most significant informational gaps which

[18] Appendix I

remain outstanding is an analysis of such project location alternatives. Islander East, however, has declined to provide this information to the Department beyond the more limited analysis developed for the FERC Environmental Impact Statement. Please see Islander East's response letter dated May 27, 2003 submitted as Appendix G.

While the applicant has developed and proposed alternative construction methodologies for the proposed alignment which would somewhat reduce the potential adverse environmental impacts at any chosen location, Islander East contends that FERC has certified the proposed route and it is not the Department's responsibility to conduct an alternatives analysis to determine which route has the least environmental impact or is most consistent with Connecticut's CZMP. The Department recognizes that the proposed route is the one for which FERC has, in our opinion provided its Certificate inappropriately and contrary to Federal law[19]. An alternative route with less impact may also be found acceptable by FERC if so reapplied for by Islander East Pipeline Company, LLC. It is the responsibility of the applicant to fully evaluate alternatives as a part of the Federal Consistency Review process and demonstrate that there are no feasible alternate alignments that could further minimize adverse impacts on Connecticut's coastal resources and water-dependent uses. The Department can only find the alternative with the least impact consistent with the CZMP.

The Department advises that the applicant consider alternative alignments across Long Island Sound that would take maximum advantage of existing subtidal conditions. These include corridor locations and alignments:

- which are in or adjacent to existing gas, electric or telecommunication lines in areas which have been previously disturbed;
- which make use of dredged or maintained channels in the nearshore area;
- which are devoid of concentrated shellfish habitat, populations or harvesting operations;
- in which benthic diversity is low such as the commonly occurring open expanses of homogenous fine/sandy substrate that is low in species abundance and diversity and which, if conducted in a dynamic area, could quickly reestablish itself; and
- which pass through areas of degraded water-quality where impacts of temporary suspended sediments may be less of a deviation from the ambient water-quality conditions.

Areas which meet such characteristics and criteria do exist across and along Long Island Sound.

F. OUTSTANDING APPLICATION MATERIAL

The Department has made a good faith effort to work with Islander East to complete the application package. However, due in part to the wide scope of work, the frequent revisions to the proposal, and the unwillingness of Islander East to allow the various state regulatory processes applicable to this project to be conducted concurrently as one process, the following necessary information has yet to be provided to the Department or, to our knowledge, the federal licensing agencies. This missing information together with the insufficient alternative analysis necessarily render the various pending applications including this request for Federal Consistency Certification incomplete.

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[19] State of Connecticut ex rel. Blumenthal v. FERC, No. 03-1066; Arthur J. Rocque v. FERC, No. 03-1075 (United States Court of Appeals for the District of Columbia Circuit).

HDD monitoring and operations plan – In Islander East's May 28, 2003 submission[20], it was indicated that the Department would receive a draft plan entitled *Directional Drilling Monitoring and Operations Program* by May 30, 2003. No such plan has been received by the Department to date. Such a plan would provide protocols for response and mitigation in the event that a frac-out occurred during drilling operations.

HDD failure contingency plan – The Department has yet to receive a contingency plan or alternate methodology in the event that the use of the HDD methodology became impractical due to site conditions. The Department must presume that Islander East has considered this prospect and has developed a contingency plan to connect the offshore portion of the work with the upland pipeline in the event that HDD is not employed. Being a newer technology, the Department is aware that unusual or unanticipated subsurface circumstances could very possibly reduce the length of, or altogether preclude, HDD use in the nearshore area. Any alternative methodology being contemplated as a back-up approach would need to be fully evaluated as a part of the Federal Consistency Review of this project.

The most probable contingency plan for this event would likely entail an excavated or dredged channel between shore and the 4000' mark offshore. Employment of this methodology would be catastrophic to the nearshore shellfishery since these are existing, worked shellfish beds, through which the trench would have to be cut. This work would go directly through four beds under the jurisdiction of the Town of Branford Shellfish Commission. Trenching through this area would be particularly devastating since additional dredging in the shallow waters would have to occur just to allow shallow water access for the deeper-draft work barges.

Additionally, a pipeline installed in this location through trenching would temporarily impede navigation into a commercial quarry operation (Tilcon) and permanently become a safety concern. Obviously, no discussions have occurred regarding the burial depth or type of pipeline cover for this alternative. A shallow burial depth would expose the pipeline to damage from anchors belonging to heavy rock-laden barges which regularly access the Tilcon site and other catastrophes such as the January 2003 overturned barge described in Appendix J.

ACOE application modifications pursuant to the Ocean Dumping Act - The most recent modifications call for dredging and the open water disposal of 24,000 to 30,000 cubic yards of sediment. The Marine Protection, Research and Sanctuaries Act (MPRSA 33U.S.C. Sec. 1401 et seq.), as amended, specifically requires that all projects disposing of 25,000 cubic yards or greater must be evaluated to determine the potential environmental impact of such activities and must be authorized by the ACOE, an action also subject to prior Federal Consistency Review under this proceeding. This authorization is subject to U.S. Environmental Protection Agency review and concurrence. Environmental evaluations must be conducted in accordance with the requirements and criteria promulgated in Title 40, Code of Federal Regulations, Parts 220-228 (40 CFR 220-228). The Department is not aware of any detailed revisions to the pending ACOE application for such authorization. Further, no consideration of dredging or disposal has been made in regard to the potential contingency plan in the event that HDD fails.

G. NOTIFICATION

In accordance with 15 CFR §930.63(e), the Department's objection includes the following statement:

> Pursuant to 15 CFR §930, subpart H, and within 30 days from receipt of this letter, you may request that the 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

[20] Appendix G.

national security. A copy of the request and supporting information must be sent to the Connecticut management program and the federal permitting or licensing agencies. The Secretary may collect fees from you for administering and processing your request.

Should the applicant wish to discuss other less environmentally damaging alternatives to the proposed pipeline alignment, I will make appropriate staff available for such discussions at the earliest mutually agreeable opportunity. If you have any questions regarding the information provided herein, please contact Mr. Charles Evans, Director of the Office of Long Island Sound Programs, at (860) 424-3034.

Sincerely,

Arthur J. Rocque, Jr.
Commissioner

AJR/PBF/slj/che

cc: Colonel Thomas L. Koning, US Army Corps of Engineers
Magalie Salas, Federal Energy Regulatory Commission
Douglas Brown, NOAA/Office of Ocean and Coastal Resource Management
David Kaiser, NOAA/Office of Ocean and Coastal Resource Management
Bill O'Beirne, NOAA/Office of Ocean and Coastal Resource Management
Richard Blumenthal, Connecticut Attorney General
Joseph C. Reinemann, Islander East, LLC
Robert Varney, EPA Regional Administrator, Region 1