UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

December 2, 2008

H. Dale Hall, Director
U.S. Fish & Wildlife Service
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Hall:

On behalf of the Secretary of Commerce, I am writing to request the U.S. Fish & Wildlife Service's comments on an administrative appeal pending before the Secretary of Commerce pursuant to the Coastal Zone Management Act (CZMA).[1]

The appeal at issue is brought by Broadwater Energy LLC and Broadwater Pipeline LLC (collectively, Broadwater). Broadwater appeals the State of New York's objection to its proposal to construct and operate a floating liquefied natural gas (LNG) terminal in Long Island Sound along with an associated pipeline that would transport natural gas from the terminal to an interstate pipeline grid serving the Northeastern United States. This project would affect the natural resources or land and water uses of New York's coastal zone. New York's objection to the project precludes Federal agencies from issuing licenses or permits required for the project, unless the objection is overridden by the Secretary. *See* 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.64.

In this appeal, Broadwater has requested that the Secretary override New York's consistency objection on the grounds that the proposed activity is "consistent with the objectives" of the CZMA, and necessary in the interest of national security. 16 U.S.C. § 1456(c)(3)(A). In considering whether the proposed activity is consistent with the objectives of the CZMA, the Secretary must find that: (1) the proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the New York's coastal zone management program. *See* 15 C.F.R. § 930.121.

The Fish & Wildlife Service has previously been involved in the review of this proposed project. The Department of Commerce welcomes any additional comments the Fish & Wildlife Service may have regarding the project and the issues pending before the Secretary in this administrative appeal, particularly relating to the disputed issues that

[1] *See* section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 *et seq*. The Department of Commerce's implementing regulations for CZMA appeals are found at 15 C.F.R. Part 930, Subpart H.

have been identified by the parties. Specifically, the parties disagree on the potential adverse coastal effects of the project in four areas: (1) impacts on commercial and recreational fishing and navigation, (2) impacts on fisheries and essential fish habitat from impingement and entrainment of aquatic organisms, (3) impacts on benthic habitat from installation of a pipeline, and (4) impacts on the visual and aesthetic character and scenic resources of Long Island Sound.

To assist your review, the record associated with this appeal is available via the Internet at *http://www.ogc.doc.gov/czma.htm.* These documents also may be reviewed at NOAA's Office of General Counsel for Ocean Services, located at the above address.

In order for this appeal to be decided in a timely fashion, I request that the Fish & Wildlife Service's views be submitted no later than **January 2, 2009**. Please forward any comments to: Jamon Bollock, Attorney-Advisor, Office of General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, SSMC IV, Suite 6111, Silver Spring, Maryland 20910.

Should your staff have questions concerning this letter, please contact Mr. Bollock at (301) 713-7392 or by e-mail at jamon.bollock@noaa.gov.

Sincerely,

Joel La Bissonniere
Assistant General Counsel
for Ocean Services