



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

Ms. Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, DC 20426

FEB 15 2002 DEPARTMENT OF STATE
COASTAL PROGRAMS

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In Reply To:
OEP/DEER/Gas 2, PJ-11.2
Millennium Pipeline Company, L.P.
Docket Nos. CP98-150 et al.

Dear Secretary Salas:

In a letter dated January 23, 2002, Frederic G. Berner, Jr., of Sidley Austin Brown & Wood, counsel for Millennium Pipeline Company, L.P. (MPC), states that MPC's construction plans for the Hudson River crossing have changed. Rock outcrops underlying unconsolidated sediments on the eastern side of Haverstraw Bay would apparently encumber project installation under the methods described by the Federal Energy Regulatory Commission (FERC) and subsequently evaluated by FERC, the involved state and federal resource agencies, and other stakeholders. MPC now proposes to fracture the rock with blasting techniques and to remove consolidated material by mechanical means to obtain the necessary cover depths in this pipeline reach.

Mr. Berner states that the issue of blasting was raised as a possible excavation technique in previous correspondence, specifically to FERC in April, 1998. However, we note that for the Haverstraw Bay Hudson River crossing the technique was not mentioned or discussed in the FERC final environmental impact statement (FEIS), the biological assessment used in the Endangered Species Act (ESA) Section 7 consultation, and the essential fish habitat (EFH) assessment. Nor are assessments for blasting and related activities analyzed and evaluated. In that this new construction requirement modifies the project description, it needs to be given sufficient consideration in these documents.

We agree with FERC's determination referenced in Mr. Berner's letter that this revision to the construction plan merits additional evaluation. Shock waves and pressure effects associated with blasting would introduce ecological impacts that were not anticipated or addressed in the coordination undertaken to date by our respective staffs as well as by other agencies. As such, the project impacts may affect species of concern in a manner or to an extent not previously considered. Therefore, we wish to notify FERC that it is necessary to reinstate project review as described below to address blasting and other unevaluated techniques to be used for a Hudson River crossing. In order to allow the National Environmental Policy Act (NEPA) process to serve as a decision making tool, we request that the analysis of all known blasting impacts be integrated into the analysis of



alternative crossing sites available in the Hudson River presented in the NEPA document. The alternatives analysis should provide a realistic comparison of all possible environmental impacts.

Federally Endangered Species: On September 14, 2001, the National Marine Fisheries Service (NMFS) issued a biological opinion on the impacts of FERC's issuance of a permit for the proposed dredging and pipelaying project during the construction of the Millennium Pipeline Project on endangered shortnose sturgeon. Information indicating that blasting may be necessary during pipeline construction was not included in the initiation package (i.e., the Biological Assessment, Supplemental Draft Environmental Impact Statement). Therefore, the effect of blasting activity on endangered shortnose sturgeon was not evaluated in NMFS' biological opinion. Pursuant to section 7 of the Endangered Species Act (ESA) of 1973, as amended, reinitiation of formal consultation is required if project activities are subsequently modified in a manner that causes an effect to the listed species not previously considered in the preparation of the biological opinion.

Endangered shortnose sturgeon inhabit the Hudson River. Both adults and juveniles have been found to use Haverstraw Bay for summer foraging and/or overwintering. Although adults and juveniles are most likely to occur from late spring through winter, they have the potential to be present in the Bay at any time of the year. The presence of adults and/or juveniles in the vicinity of the proposed blasting area could result in direct injury and/or mortality. Results from previous blasting studies conducted on 13 species of fish, other than shortnose sturgeon, revealed that swimbladder rupture and hemorrhaging in the pericardial and coelomic cavities were common injuries. While a study on shortnose sturgeon revealed that they also suffer from swimbladder ruptures, more common blast-induced injuries were distended intestines with gas bubbles and hemorrhage to the body wall lining (Moser, 1999). Blasting may also result in indirect effects to shortnose sturgeon by destroying benthic habitat and producing underwater noise, thus altering and/or limiting distribution and foraging patterns. Endangered shortnose sturgeon have the potential to be in the vicinity of the proposed blasting and may be adversely affected by activities and results associated with the blasting.

NMFS has reviewed the cursory and preliminary blasting information provided by the applicant and has determined that additional information is necessary before NMFS can reinitiate formal consultation.

Please supplement the information submitted by the applicant with the following:

- Provide a detailed description of the proposed blasting activity (i.e., anticipated average and maximum peak blasting pressures, description of blast hole stemming, number of blasts, plan for blast pressure monitoring, description of the area proposed for blasting, etc.).
- Provide a detailed assessment of potential impacts, both direct and indirect, to shortnose sturgeon that may occur as a result of

blasting.

Provide detailed mitigation measures that will be taken to avoid any negative impacts that blasting may have on shortnose sturgeon (i.e., the use of sinking gillnets to restrict shortnose sturgeon from entering the blasting area, strategy for the surveillance of schools of fish, the use of scare charges, pre and post-blast monitoring, etc.).

Once this additional information is submitted, NMFS will determine if all of the information required to reinitiate a formal consultation has been received. If so, formal consultation will proceed. The ESA and section 7 regulations require that formal consultation be concluded within 90 calendar days of reinitiation, and the biological opinion be delivered to the action agency within 45 days after conclusion of formal consultation. In the meantime, FERC must not make any irreversible or irretrievable commitment of resources that would prevent NMFS from proposing or implementing any reasonable and prudent alternatives to avoid jeopardizing shortnose sturgeon.

Essential Fish Habitat: We have determined that the inclusion of blasting and related rock fracturing and extraction techniques not included in FERC's EFH assessment affects the basis for conservation recommendations we made in response to the original construction plan. Pursuant to 50 CFR § 600.920(k) we request that FERC submit a revised EFH assessment and reinitiate consultation related to essential fish habitat impacts. Upon receipt of a complete assessment, we will provide revised conservation recommendations as necessary to protect EFH.

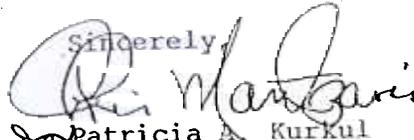
Fish and Wildlife Coordination Act: The Haverstraw Bay reach of the Hudson River provides important habitat values and functions to a variety of aquatic resources that are not protected under the ESA or MSFCMA. In particular, we note that Haverstraw Bay is used by striped bass (*Morone saxatilis*), American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), alewife (*Alosa pseudoharengus*), white perch (*Morone americana*), Atlantic tomcod (*Microgadus tomcod*), and Atlantic sturgeon (*Acipenser oxyrinchus*). All of these species potentially would be vulnerable to blasting impacts. Among them, several species have been identified by state or federal resource agencies as requiring special management attention.

In particular, we note that American shad are severely depleted and the Atlantic sturgeon is a candidate species for listing under the ESA. Given the importance of these and other species to the continued ecological integrity and biological diversity of Haverstraw Bay and Atlantic fisheries from Canada to Florida, it is vital that appropriate measures be incorporated to protect these species and the habitat they rely upon. This coordination would be addressed most logically through an addendum or a revision to the NEPA process already undertaken.

In conclusion, the revised project proposal raises significant issues that must be addressed pursuant to the above authorities and their implementing regulations. The Northeast Region's Protected Resource

and Habitat Conservation Divisions will be available to coordinate with your staff on the scope and content of the documents necessary for us to complete the coordination described above. We suggest that the Army Corps of Engineers also participate as a cooperating agency since this would facilitate interagency coordination on the individual permit application presently under review and expedite the overall process.

We look forward to bringing these pending items to resolution. Questions about the ESA consultation should be directed to Jessica Anthony at the Northeast Regional Office in Gloucester. Essential Fish Habitat and NEPA issues should be coordinated with Diane Rusanowsky at the Habitat Conservation Division's field office in Milford, Connecticut.

Sincerely,

Patricia A. Kurkul
Regional Administrator

Moser, M. 1999. Cape Fear River Blast Mitigation Tests: Results of Caged Fish Necropsies. Final Report to CZR Inc., 4709 College Acres Drive, Wilmington, NC 28403.

cc: NMFS - HCD - Sandy Hook, Milford
USACE - Buffalo, New York, Troy
NYSDOS
NYSDEC
USFWS
USEPA