United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930-2298

June 27, 2005

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Re: Final Environmental Impact Statement, Weavers Cove Energy L.L.C. and Mill River Pipeline L.L.C., Fall River, Massachusetts - Docket Nos. CP04-36-000 and CP04-41-000

Dear Secretary Salas:

The National Marine Fisheries Service (NMFS) has reviewed the Final Environmental Impact Statement (FEIS) for Weavers Cove Energy L.L.C. and Mill River Pipeline L.L.C. (Docket Nos. CP04-36-000 and CP04-41-000) for the construction of a Liquefied Natural Gas (LNG) import facility along the Taunton River in Fall River, Massachusetts.

The proposed project will conduct dredging within an existing federal navigation channel, install structures, and discharge fill material in wetlands and waterways for the construction of the LNG import terminal and natural gas pipeline facilities. Specifically, the applicant has proposed to dredge approximately 2.6 million cubic yards of material from within a footprint of approximately 200 acres; replace a pier with jetty structure; install sheet pilings to stabilize and straighten approximately 2,650 ft of shoreline; and permanently fill approximately .04 acres of salt marsh habitat, .94 acres of intertidal habitat, and .17 acres of subtidal habitat.

As a cooperating federal agency throughout this review process, NMFS provided comments to FERC on September 17, 2004 regarding the Draft Environmental Impact Statement (DEIS). Concurrent with the issuance of the DEIS, the US Army Corps of Engineers (ACOE) issued a Public Notice (NAE-2004-2355) for this project. As stated in prior comments to FERC and the ACOE, the primary concern to NMFS is the proposed dredging. This activity will remove a minimum of approximately 2.6 million cubic yards of material from the channel and turning basin with upland, on-site placement of material. NMFS believes that the proposed project will result in substantial and unacceptable impacts on aquatic resources of national importance (ARNI). Within the ACOE review process, NMFS has invoked the 404(q) elevation process pursuant to the Clean Water Act and our mutually agreed upon Memorandum of Agreement (MOA).

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Fish and Wildlife Coordination Act require federal agencies to consult with one another on projects such as this. Insofar as a project involves essential fish habitat (EFH), as this project does, this process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the relevant consultation procedure. In

our letter dated September 17, 2004, NMFS provided FERC with EFH conservation recommendations to protect and conserve essential fish habitat. Within the FEIS, FERC appears to have adopted our EFH conservation recommendations for the proposed project. However, NMFS remains concerned with the FERC justification for adopting such recommendations. In addition, FERC has rejected NMFS' recommendations to protect anadromous fishery resources pursuant to the Fish and Wildlife Coordination Act.

Essential Fish Habitat

As stated within our earlier comments on the DEIS, the Taunton River/Mount Hope Bay Complex has been designated as EFH for 14 federally managed species, including the commercially and recreationally important winter flounder (*Pseudopleuronectes americanus*). The New England Fishery Management Council currently manages winter flounder under the Northeast Multispecies (Groundfish) Fishery Management Plan.

The proposed project area serves as an important winter flounder spawning and juvenile development habitat. Within the DEIS, NMFS described a series of habitat parameters which valued the proposed project site as EFH for winter flounder, including location in the estuary, water depth, and water temperature. Throughout our involvement as a cooperating federal agency, NMFS has expressed concern that suspended sediments resulting from the construction of the proposed project will have substantial and unacceptable impacts on winter flounder spawning habitat. We have provided FERC with an EFH Conservation recommendation to avoid all silt producing activity between January 15-May 31 of any year in order to project winter flounder spawning and juvenile development. Within the FEIS, FERC has recommended that this time of year restriction be adopted.

While FERC intends to adopt our EFH conservation recommendations to avoid and minimize adverse effects, we remain concerned with the assertion within the FEIS that NMFS is overly conservative and has overstated the magnitude of adverse effects to EFH. The applicant has utilized the SSFATE modeling program to predict approximately 6.2 acres of adverse impact on winter flounder EFH resulting from dredging-induced suspended sediment. As stated consistently throughout our DEIS comments, NMFS maintains that inputs to the SSFATE model have underestimated the habitat parameters of winter flounder spawning conditions and dredge operational requirements, and, therefore, the impacts on EFH are substantially underestimated. In particular, NMFS maintains that model inputs regarding spawning depth of winter flounder, egg incubation duration, and depth of sediment which will cause adverse impacts on winter flounder have all been underestimated. Furthermore, NMFS questioned operational inputs to the model including percentage of bucket loss during dredging and the inclusion of barge overflow in the model calculations. In our opinion, had our recommended parameters been utilized in the SSFATE model, NMFS maintains that adverse impacts on winter flounder EFH would be significantly greater than the anticipated 6.2 acres.

According to the FEIS, there will be approximately 11 acres of permanent loss of winter flounder spawning and juvenile development habitat resulting from the deepening and widening of the turning basin. In addition, there will be a permanent loss of approximately 1.15 acres of other aquatic habitat, including approximately .04 acres of salt marsh habitat, .94 acres of intertidal habitat, and .17 acres of subtidal habitat. As noted on page 4-121 of the FEIS, FERC has recommended that compensatory mitigation occur to offset the permanent loss of these public resources, yet minimal specific information

is provided. Mitigation for adverse impacts should focus on specific projects that compensate for lost functions and values of impacted resources.

Fish and Wildlife Coordination Act

As stated in our DEIS comments, the Taunton River serves as an important migratory pathway for a number of anadromous fishery resources such as Alewife (*Alosa pseudoharengus*), blueback herring (*Alosa aestivalis*), rainbow Smelt (*Osmerus mordax*), and American shad (*Alosa sapidissima*). These anadromous fishery resources serve as prey for a number of federally managed species, and are considered a component of an EFH assessment pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as well as a concern as non-EFH trust resources that are covered under the Fish and Wildlife Coordination Act. American Shad, blueback herring, alewife, and rainbow smelt have been designated as aquatic resources of national importance pursuant to section 906(e)(1) of the Water Resources Development Act of 1986.

Based in part on the SSFATE modeling results, the FEIS concludes that anadromous fishery resources migrating through the area will not be adversely affected by suspended sediments from dredging operations. NMFS remains concerned that construction activities and associated sediment plumes have the potential to impair migration of anadromous fishes. For example, Chiasson (1993) found an increase in swimming activity of rainbow smelt when suspended sediments were present. In a laboratory study, Wildish and Power (1985) found that rainbow smelt avoided suspended sediment when concentrations were in excess of 20 Mg/L. NMFS maintains that suspended sediment concentrations will temporarily exceed 20 Mg/L during dredging operations, and, therefore, will have adverse impacts on this species. Further, we maintain that adverse impacts on anadromous fish should not be dismissed, due to the fact that the modeling of suspended sediment levels does not represent actual suspended sediment conditions within the project area. Finally, sublethal effects to estuarine fishes can include decreased feeding, impacts from lowered oxygen levels, as well as impacts on gills and associated respiratory impacts (Wilber and Clarke, 2001).

In order to take a risk averse approach for the conservation of anadromous fishery resources within the Taunton River, NMFS maintains that no work should be conducted between March 1-July 31 of any year to avoid adverse impacts on upstream spawning migrations of Alewife, Blueback Herring, Rainbow Smelt, and American Shad. Downstream migrations of anadromous fishery resources in the Taunton River generally occur and need protection between June 15 and October 31 of any year. Therefore, dredging locations should be sequenced to avoid or minimize impacts on downstream migrations of these aquatic resources of national importance from August 1 – October 31 of any year. In our view, FERC's assertion on page 4-102 of the FEIS that "requiring Weaver's Cove Energy to adhere to a timing restriction prohibiting instream work during fish migration periods would have considerable implications on the proposed dredging schedule" is not appropriate within the discussion of adverse impacts on these important resources.

Conclusions

NMFS acknowledges that the FEIS recommends that our EFH conservation recommendations be incorporated in the proposed project. However, we maintain that the FEIS continues to underestimate

the adverse effects to fishery resources and habitats. NMFS believes that compensatory mitigation for permanent impacts on fishery resources and habitats have not been adequately described within the FEIS. Finally, NMFS maintains that anadromous fishery resources will be adversely affected by the proposed project, and seasonal work restrictions are needed to protect these aquatic resources of national importance. Thank you for the opportunity to comment on this important project. Should you have questions regarding these comments, please contact Christopher Boelke at (978) 281-9131.

Sincerely,

Patricia A. Kurkul
Regional Administrator

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Submission Contents