

# Monthly Highlights

March / April, 2009



## NOAA FISHERIES SERVICE

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## NORTHEAST REGION, HABITAT CONSERVATION DIVISION

GLOUCESTER FIELD OFFICE, GLOUCESTER, MA

### GREEN ISLAND FISHERIES MEETING

NOAA Fisheries Service Habitat Conservation Division (HCD) staff attended a meeting in March with Green Island Power Authority (GIPA), U.S. Fish and Wildlife Service (USFWS), and the New York State Department of Environmental Conservation (NYSDEC) to discuss fisheries issues for the Green Island Hydroelectric Project. The Green Island Project is located at the first dam on the Hudson River in Green Island, New York. GIPA is proposing to expand the generating capacity at the site from 6 MW to 48 MW with the installation of eight new turbines. During the meeting, the agencies discussed results of GIPA's initial studies as well as concerns with incomplete studies including effectiveness testing of the proposed downstream passage fish exclusion system. NOAA Fisheries Service indicated that the incomplete studies presented a gap in the available information, and thus the license application filed by the applicant on March 2 is not yet ready for environmental analysis under the Federal Energy Regulatory Commission's (FERC) integrated licensing process (ILP). In addition, the agencies expressed the need for both upstream and downstream passage at the project for target species including blueback herring, American shad, and American eel. All parties agreed to take part in settlement discussions for fish passage protection at the Green Island facility. ([Susan.Tuxbury@noaa.gov](mailto:Susan.Tuxbury@noaa.gov), 978/ 281-9176; [Sean.McDermott@noaa.gov](mailto:Sean.McDermott@noaa.gov), 978/ 281-9113)

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## **RHODE ISLAND CONFERENCE ON POTENTIAL IMPACTS OF OFF-SHORE ALTERNATIVE ENERGY DEVELOPMENT**

HCD staff attended a conference entitled “Rhode Island’s Off-Shore Marine Ecosystem and the Potential Impacts of Alternative Energy Development” held in April at Quonset Point in North Kingstown, RI. The State of Rhode Island is developing the Ocean Special Area Management Plan (SAMP) to facilitate offshore energy development in an effort to achieve the Governor’s goal to obtain 15% of the state’s energy from renewable sources. This plan includes a two-year project to map offshore waters in an effort to identify suitable sites for renewable energy development. The conference brought together experts in the field of renewable energy and ocean spatial planning. The speakers included invited guests from the United Kingdom and Denmark who provided information on acoustic impacts and bird studies related to off-shore wind farms currently existing in Europe. Speakers also touched on experiences with off-shore wind energy proposals on Cape Cod, MA and in Delaware. A developer selected by the state is currently proposing a small wind farm in state waters off Block Island as well as a larger wind farm further offshore upon completion of the Ocean SAMP. ([Susan.Tuxbury@noaa.gov](mailto:Susan.Tuxbury@noaa.gov), 978/281-9176)

## **JUST THE FACTS IN US FOREST SERVICE TRIAL TYPE HEARING**

Under the Federal Power Act, US Department of Agriculture’s Forest Service (USFS) can prescribe

mandatory conditions for the protection of habitat and wildlife as part of the operating license for hydropower facilities on lands managed by the Forest Service. The Public Service Company of Colorado (PSCo) applied for a new license to continue operations at the Tacoma Hydroelectric Project on Cascade Creek. In their preliminary prescription, the Forest Service imposed a number of conditions, including year round minimum flows to support wintering habitat for resident fish (several species of trout) and the construction of a device to maintain the minimum flows. PSCo filed a request for a trial-type hearing under the Energy Policy Act of 2005, identifying eight issues of material fact in dispute related to the two conditions identified above. The judges ruling supported the USFS in seven of the eight disputed facts. The judge indicated that the decision regarding the economic impact of the minimum flow structure was not supported by evidence in the record. NOAA Fisheries Service staff from three regions and headquarters attended the trial type hearing to learn from the USFS’ experience. ([Sean.McDermott@noaa.gov](mailto:Sean.McDermott@noaa.gov), 978/281-9113)

## **PHASE I OF THE FOUR YEAR BRIDGE INVESTMENT PLAN BY MEDOT**

Maine Department of Transportation (MEDOT) has developed a four year bridge plan which will include a wide range of activities at over 300 bridges in Maine. MEDOT has split all bridges requiring federal or state permits into two phases in order to expedite review. The Public Notice for Phase I of this plan was published in March. NOAA Fisheries Service determined that only 42 of the 59 projects requiring state or federal permits were in Essential Fish Habitat (EFH). The majority of these projects are located in areas identified as EFH for Atlantic salmon only; however, some coastal projects could also impact EFH for several other species including winter flounder, whiting, and windowpane flounder. NOAA Fisheries Service was concerned that some of the activities described may adversely impact EFH by preventing fish passage, disturbing migratory behaviors, and increasing turbidity. However, no permanent impacts on water quality are expected as a result of the proposed projects.

The ambitious nature of this project required extensive pre-application coordination with the state and federal regulatory and natural resource agencies. This coordination has included addressing Section 7 consultations under the Endangered Species Act (ESA), especially in regard to the proposed expansion of the Atlantic Salmon Distinct Population Segment (DPS). In addition, agreements regarding the use of best management practices for erosion control

and fish passage were established in previous policy documents. Pre-application coordination was also used to determine which projects may require restrictive in-water work windows. NOAA Fisheries Service provides extensive comments through both EFH consultations and informal Section 7 consultations. These comments included specifying certain types of actions or work that may be performed outside of the specified work window, and requiring fish passage monitoring at specific types of projects. ([Marcy.Scott@noaa.gov](mailto:Marcy.Scott@noaa.gov), 978/ 281-9108)

### **SEARS ISLAND AS A MITIGATION BANK**

The Maine Department of Transportation (MEDOT) recently proposed to make Sears Island, ME the foundation for a Federal Umbrella Mitigation Bank for Transportation (UMBT) through the preservation of 601 acres on the island via a conservation easement. The purpose of this Sears Island Mitigation Bank (SI Bank), and the UMBT as a whole, would be to provide an alternative to permittee-responsible compensatory mitigation for unavoidable impacts authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. As a member of the Interagency Review Team, NOAA Fisheries Service provided comments on the prospectus for this proposed mitigation bank including: the merit of the bank objectives, the proposed service area, the need for the mitigation bank, and the structure of the bank. NOAA Fisheries Service indicated that additional information

and analysis were needed before MEDOT should proceed to the next step of developing a draft Banking Instrument. Specifically, analysis using the watershed approach should be performed to determine if the SI Bank represents the best alternative for the UMBT, and would provide appropriate compensatory mitigation for wetland impacts occurring in the service area. In addition, NOAA Fisheries Service suggested that the preservation credits obtained through this proposed bank should only be used in combination with other compensatory mitigation alternatives, and only as compensatory mitigation for indirect or cumulative impacts. ([Marcy.Scott@noaa.gov](mailto:Marcy.Scott@noaa.gov), 978/ 281-9108)

### **MILFORD FIELD OFFICE, MILFORD, CT**

#### **CZMA APPEAL COMPLETED FOR BROADWATER**

The Secretary of Commerce completed his review of an appeal brought by the proponents for a liquefied natural gas (LNG) project proposed for installation in New York waters of Long Island Sound (LIS). The Broadwater project entailed construction and permanent mooring of a vessel to store and process LNG, a subaqueous pipeline to connect to the Iroquois Gas Transmission System, and other appurtenances. New York had objected to the certification of consistency for this project under the state's Coastal Zone Management (CZMA) program. Upon review of the matter, the Secretary declined to override New York's objection. ([Diane.Rusanowsky@noaa.gov](mailto:Diane.Rusanowsky@noaa.gov), 203/ 882-6504)

#### **SUFFOLK COUNTY DREDGING PROJECTS**

Milford Field Office HCD staff has been reviewing on a number of proposals by Suffolk County Department of Public Works to dredge with beach or upland placement at a number of locations throughout the county. Many of these projects are potentially eligible for funding through the Stimulus Bill. These projects include: Genet Creek, Strongs Creek, Grand Canal, Babylon Cut, Brick Kiln Creek, Bayview Canal, Howell's Creek, Swan River, Three Mile Harbor, Town Creek, Halls Creek, Gull Pond, New Point Canal, East Fox Channel, and Baywood Cove. These projects are typically undertaken using a hydraulic dredge plant, using either county-owned equipment or through contractors. Staff has been coordinating closely on these matters with the appropriate state and federal agencies to streamline their review. Review materials provided for the EFH component of project analysis has been most helpful.

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## **BEACH NOURISHMENT PROJECTS FOR LI'S SOUTH SHORE**

The first two quarters of fiscal year 2009 have been busy ones on Long Island's South Shore. A large number of beach nourishment projects, many subsidized at least partially by FEMA funding, have been underway since December. These projects typically used offshore borrow areas as sand sources. It is our expectation that the projects will be completed prior to the 2009 hurricane season.

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## **BROOKLYN BRIDGE PARK**

The Brooklyn Bridge Park Development Corporation has requested Army Corps of Engineers authorization to replace existing decks and relieving platforms in the East River with ferry landings, floating docks for a marina, wave attenuation structures, and related activities in Brooklyn, Kings County, New York. Milford Field Office HCD staff is coordinating on these matters with the New York District, Army Corps of Engineers and other state and federal agencies.

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## **TIDAL ENERGY PROJECT UPDATES**

Verdant Power has suspended activities associated with their six turbine demonstration project off the northeast shore of Roosevelt Island, New York, and is analyzing the data they collected during several seasons of deployment under their state and federal permits.

Staff continues to coordinate with the project proponents on these matters in anticipation of a pilot license application for an approximately 1MW pilot project. Competing proposals at nearby Wards Island and the greater Astoria, NY waterfront continue to progress. Natural Currents is in receipt of a substantial DOE grant to demonstrate several types of renewable electric generation, including a small wind turbine, solar array, and hydrokinetic equipment. Staff recently participated in some webinars sponsored on behalf of the NY Tidal Energy pilot project, and anticipates that a pilot license application will be filed with FERC in the coming months. Several projects proposed elsewhere in New York waters under preliminary applications have been suspended or withdrawn. Others are nearing some critical reporting milestones in the coming months. We continue to observe their collective progress with great interest.

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## **HUDSON RIVER DREDGING PROJECT SLATED TO BEGIN**

The long-awaited dredging of PCB hotspots in the upper Hudson River is slated to begin in May 2009. General Electric is expected to spend approximately \$750M on the project. Phase I entails dredging approximately 265,000 CY of sediment from the River at Fort Edward, a small town about 200 miles north of Manhattan. Between 1947 and 1977, GE discharged 1.3 million pounds of PCBs from two factories. While the present cleanup is focused on dealing with some of the hot spots of PCB concentration, these contaminants are known to have been dispersed into the lower Hudson as well. Under the agreement, sediments extracted during the first phase will be shipped to Texas by train. A substantially larger amount of material, about 1.5M CY, is scheduled to start after ice out in the spring of 2010. The project is associated with a voluntary cooperative agreement between the USEPA and GE to rectify a portion of the area contaminated with PCBs. While GE is scheduled to begin this project soon, they are challenging the overall Superfund law in court, claiming that the EPA's authority to compel cleanups violates a company's Fifth Amendment rights against the abuse of government authority. Under CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act), the EPA can issue unilateral administrative orders without judicial review. While this challenge may not directly affect the current agreement between the EPA and GE, members of the environmental community are concerned what results of the suit could portend for cleaning up the Hudson River and other sites across the country, should the challenge be successful.

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### SANDY HOOK FIELD OFFICE, HIGHLANDS, NJ

#### DELAWARE RIVER DEEPENING

HCD has reviewed the EFH assessment prepared by the Philadelphia District U.S. Army Corps of Engineers (ACOE) for the proposal to deepen the Delaware River. After a hiatus of several years, the project was reactivated in late 2008. The project involves the deepening of the Delaware River Federal Navigation Channel from 40 feet to 45 feet 102 miles from Philadelphia Harbor, PA and Beckett Street Terminal, Camden, NJ to the mouth of the Delaware Bay. Dredged material disposal is proposed at several existing disposal sites in New Jersey as beach nourishment material in Delaware and at Kelly Island, a beneficial use site also in Delaware. EFH conservation recommendations have been provided to the ACOE as well as recommendations under the Fish and Wildlife Coordination Act. The Philadelphia District ACOE has initiated consultation pursuant to the requirements of Section 7 of the Endangered Species Act.

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#### ATLANTIC SEA ISLAND ENERGY GROUP, LLC

The U.S. Coast Guard (USGC) and the Maritime Administration (MARAD) are in the process of preparing an Environmental Impact Statement (EIS) for the Atlantic Sea Island Group LLC, Safe Harbor Liquefied Natural Gas (LNG) Facility as part of a deepwater

port license application review process. The proposed project would establish a deepwater port, named Safe Harbor Energy, approximately 13.5 miles south of Long Beach, Long Island, New York and 19 miles east of Gateway National Recreation Area's Sandy Hook Unit, Monmouth County, New Jersey in an area known as "Cholera Bank" between the Ambrose-to-Nantucket and the Hudson Canyon-to-Ambrose shipping lanes. The project consists of three components: an island to be constructed in federal waters on the Outer Continental Shelf (OCS); an LNG receiving, storage, and regasification facility; and two parallel, 36-inch diameter, 12.8-mile long subsea pipelines from the island to an offshore interconnection to Transcontinental (Transco) Gas Pipeline Corporation's pipeline system. Construction of the deepwater port is expected to take approximately five years and would have an expected operating life of approximately 25 years.

HCD has provided the USCG and MARAD with comments on the EIS scoping. Topics discussed in the comments included project purpose and need, the alternatives analysis, the affected environment, environmental consequences, compensatory mitigation, and cumulative effects. Consultations under both the Magnuson-Stevens Act and the Endangered Species Act are also needed.

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#### NEW JERSEY MEADOWLANDS

The Meadowlands Interagency Mitigation Advisory Committee (MIMAC) is working on the review of two wetlands mitigation banks proposed within the Hackensack Meadowlands as well as a few potential stand-alone mitigation projects. Because there are several very large public transportation and airport safety projects that will be required to go to construction within the next 6 to 12 months, compensatory mitigation has become a critical issue in the Meadowlands. Both Evergreen Environmental and Earthmark have proposed mitigation banks. The Earthmark bank will be located on the Kane Natural Area owned by the Meadowlands Conservation Trust. As part of the agreement transferring the property (formerly the Empire Tract) to the Trust, a portion of the site was reserved for use as compensatory mitigation for public transportation entities. Earthmark and the Trust have a lease agreement that allows Earthmark to develop the bank on the Trust's land. Only the New Jersey Department of Transportation, New Jersey Transit, the New Jersey Turnpike Authority, and the Port Authority of New York and

New Jersey are eligible to use this bank. Evergreen is a private mitigation bank company that will not be restricted in this manner. The MIMAC is reviewing the draft prospectus for each bank. The New York District ACOE will issue public notices in the near future for both. The next step is the review of the craft mitigation banking instruments.

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### **SUMINOE OYSTERS IN CHESAPEAKE BAY**

The Northeast Region's HCD, along with the Chesapeake Bay Office and the Restoration Center, have reviewed the final programmatic environmental impact statement on oyster production in Chesapeake Bay, issued by the Norfolk District, ACOE. It appears that the District followed the recommendation NOAA provided on the draft PEIS, and there were no comments to provide.

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### **CHESAPEAKE BAY FIELD OFFICE, ANNAPOLIS, MD**

#### **INTERSTATE-95 CORRIDOR STUDY, NORTHERN MARYLAND**

Interagency coordination continues on the I-95 Corridor Study for Section 200 in northern Baltimore County and Harford County, Maryland, with selection of the Preferred Alternative (Express Toll Lanes Alternative) and development of the compensatory mitigation package. The Preferred Alternative will impact a small acreage of wetlands (1.3 acres), but will affect

more than 2.5 miles of non-tidal stream habitat, much of which supports spawning runs of anadromous fish. Consequently, the compensatory mitigation package will focus on enhancement and preservation of non-tidal instream and riparian buffer habitat, chiefly in southern/eastern Harford County, where the majority of impacts will occur. One of the mitigation sites currently being considered, the Pouska Property, will involve stabilizing of eroding stream bank, enhancement of instream spawning/nursery habitat, and expansion of forested riparian buffer along Bynum Run, a coastal plain stream which currently supports migratory runs of alewife, blueback herring, hickory shad, and white perch. HCD staff will be participating in an interagency field review in mid-May for reviewing preferred mitigation sites. ([John.Nichols@NOAA.GOV](mailto:John.Nichols@NOAA.GOV), 410/ 267-5675)

#### **GOVERNOR NICE BRIDGE IMPROVEMENT STUDY**

Interagency coordination continues on the Governor Harry W. Nice Memorial Bridge Improvement Study with initial development of conceptual mitigation options. The Nice Bridge carries U.S. 301 across the Potomac River, connecting Charles County, Maryland with King George County, Virginia. The Maryland Transportation Authority has retained six alternatives for detailed study, which include lane additions to the existing span and/or construction of new spans along the existing alignment. Impacts on wetlands and open waters of the Potomac River are anticipated to be small. HCD staff participated in an interagency field review on April 28, 2009, visiting several potential mitigation opportunities. Stabilization of severely eroding bluffs along the tidal Potomac River at two sites near the bridge are favored as mitigation options.

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### **GLOUCESTER POINT FIELD OFFICE, GLOUCESTER POINT, VA**

#### **CRANEY ISLAND, SHORELINE PROTECTION PROJECT, PORTSMOUTH, VA**

The Craney Island Dredge Material Management Area (CIDMMA) is operated by the Norfolk District, ACOE. The 2,500 acre confined disposal facility accepts spoil material from dredging projects conducted to maintain commercial and recreational navigation in area waterways. Located at the confluence of the James, Nansemond, and Elizabeth Rivers in an area known as Hampton Roads at the mouth of the Chesapeake Bay, the CIDMMA shorelines have experienced erosion due to the large fetch and wave energy. The ACOE has proposed the construction of nineteen (19) breakwaters, each 300 feet by 35 feet, and a riprap revetment approximately 5,000 feet long by

85 feet wide along the northern and western sides of the facility to help protect the facility. Impacts associated with the proposed shoreline protection project include approximately 20 acres of subtidal bottom, 16.1 acres of nonvegetated intertidal wetlands, and 11.5 acres of tidal vegetated wetlands. HCD staff recently reviewed and commented on the project's draft environmental assessment, and is coordinating closely with ACOE's environmental and operations branch personnel to help protect fishery resources and to develop a compensation plan to help mitigate for unavoidable habitat loss.

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### **NOAA FISHERIES SYMPOSIUM, LAUREL, MD**

The NOAA Chesapeake Bay Office hosted the 2009 NOAA Fisheries Science Symposium at the U.S. Fish and Wildlife Service's Patuxent National Wildlife Refuge on April 21-22, 2009. The two day symposium highlighted NOAA-funded research being conducted across the Chesapeake Bay. The first day scientists presented research including environmental stressors on striped bass (*Marone saxatilis*), the enhancement of native oyster (*Crassostrea virginica*), blue crab (*Callinectis sapidus*) and Atlantic sturgeon (*Acipenser oxyrinchus*) habitats, the population genetics of Horseshoe crabs (*Limulus polyphemus*), and the trophic ecology of the cownose ray (*Rhinoptera bonasus*). Day two of the symposium focused on the Atlantic menhaden (*Brevoortia tyrannus*) fishery in Chesapeake Bay with presentation topics ranging from larval ingress, growth rates, recruitment, population structure, abundance, and productivity to interrelationships with striped bass ([David.L.O'Brien@noaa.gov](mailto:David.L.O'Brien@noaa.gov), 804/ 684-7828)