



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

ELECTRONICALLY FILED

NOV 23 2010

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Project No. 12704-004, Half-Moon Cove Tidal Power Project, Tidewalker Associates

Dear Ms. Bose:

The NOAA's National Marine Fisheries Service (NMFS) has reviewed the Federal Energy Regulatory Commission's (Commission) May 17, 2010 notice of application (Notice) by Tidewalker Associates for a preliminary permit for the Half-Moon Cove Tidal Power Project to be located in Cobscook and Passamaquoddy Bay, Washington County, Maine. Although the scope of the Notice is limited to preliminary planning and feasibility of power generation, the ultimate project has the potential to significantly impact trust resources of NMFS. The Commission issued a preliminary permit to the applicant at this site for the Half-Moon Cove Tidal Power Project on April 10, 2007 and terminated the permit on November 10, 2009 due to inadequate progress towards the Integrated Licensing Process (ILP). This successive preliminary permit would provide the applicant additional time to make progress in the ILP. The NMFS filed comments to the Commission on the previous preliminary permit application on August 28, 2006 and October 14, 2008. In addition, the NMFS submitted information to Tidewalker Associates regarding relevant information on NMFS trust resources in the vicinity of the proposed project. The NMFS provided significant comments on the pre-application document and study requests on July 21, 2009. The NMFS requests the Commission and the applicant consider our previous comments in the planning process for this proposed project.

According to the Commission's Notice, the proposed project would consist of: a new 1,200-foot-long rock-filled barrage with a crest elevation of approximately 27 feet above mean sea level (msl); a new 30-foot-wide, 15-foot-high filling and emptying gated section; the 850-acre Half-Moon Cove with a surface elevation of 13.0 feet above msl; a new powerhouse with four turbine generating units with a total capacity of 9.0 megawatts; and a new 34.5 kilovolt, 7.1-mile-long transmission line. The project would produce an estimated average annual generation of about 45,000 megawatt-hours.

The proposed project has the potential to significantly and unacceptably impact trust resources of NMFS. Historically, the construction of dams has resulted in fragmentation of watersheds and alteration of species' habitats and community structure. The NMFS has statutory responsibilities for protection, mitigation, and enhancement of marine and diadromous fish resources and marine mammals that may be directly affect by this project. Those authorities include: protection of federally managed marine fish and shellfish and their habitat under the Magnuson-Stevens Fishery Conservation and Management Act (16 USC §1801, et seq.), and Atlantic Coastal Fisheries Cooperative Management Act (16 USC §5101, et seq.); living marine resources under



Fisheries Cooperative Management Act (16 USC §5101, et seq.); living marine resources under the Fish and Wildlife Coordination Act (16 USC §661, et seq.); marine mammals pursuant to the Marine Mammal Protection Act (16 USC §1361, et seq.); threatened and endangered species under the Endangered Species Act (16 USC §460, et seq.) and, the protection of anadromous fish resources affected by the licensing, operation and maintenance of hydroelectric projects pursuant to the Federal Power Act (16 USC §803(j) and 811). These same statutory authorities also obligate any Federal agency to consult with NMFS before taking any action that might adversely affect NMFS trust resources. Accordingly, NMFS anticipates that the Commission and/or any other Federal permitting agency, such as the Army Corps of Engineers, will need to perform an analysis of environmental impacts under the National Environmental Policy Act should the project's scope progress.

Thank you for the opportunity to comment on this application. The NMFS confirms our previous request to be added to the service list for this project. Related correspondence on EFH and FWCA should be addressed to the attention of Michael Johnson at the letterhead address above, or by phone at (978)281-9130. More information concerning species listed under the ESA and section 7 consultations can be directed to Jeff Murphy at the letterhead address above, or by phone at (207)866-7379. Questions related to MMPA authorizations should be directed to NMFS' Office of Protected Resources Permits, Conservation and Education Division at (301)713-2332.

Sincerely,



Louis A. Chiarella
New England Field Office Supervisor
for Habitat Conservation

cc: PRD (M. Colligan)
USEC/DGC1 (C. Lynch)
USFWS (F. Seavy)
MEDMR (G. Lapointe)
MEDEP (D. Littell)