

EXHIBIT 5

Letter from Bill Kavanaugh, Army Corps, to Kathleen Leyden, Maine Coastal Program, (Feb. 16, 2011).



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

February 16, 2011

Programs and Project Management Division
Programs and Civil Project Management Branch
Navigation Section

Ms. Kathleen Leyden
Director of the Maine Coastal Program
State Planning Office
State House Station 38
Augusta, Maine 04333

Dear Ms. Leyden:

This concerns our proposal to perform maintenance dredging of two portions (and advance maintenance dredging in one of those two portions) of the Federal Navigation Project (FNP) in the Kennebec River and follows up discussions between myself and Mr. Todd Burrowes, Mr. Ed O'Donnell (USACE), Mr. Ken Levitt (USACE), Mr. Bob Green (MEDEP), Mr. Kevin Rousseau (MEDOT), Mr. John Henshaw (MEDOT) and Mr. Brian Swan (MEDMR) at a recent meeting held at the Maine Department of Environmental Protection Office in Portland.

As discussed at the meeting, the U.S. Army Corps of Engineers, New England District, was contacted by Captain Dean Krestos of the U.S. Navy (USN), Supervisor of Shipbuilding, (SupShip) office, in Bath in late November 2010. Captain Krestos wrote to advise us that due to hazardous shoaling conditions in the river, the departure of the USS JASON DUNHAM (DDG 109) from the Bath Iron Works (BIW) had to be delayed from October 1, 2010 to October 6, 2010. In addition, Captain Krestos indicated that besides delaying the transit of the JASON DUNHAM, other extraordinary measures were needed in order for the destroyer to transit from the BIW to the ocean: most notably, the ship had to be maneuvered outside of the limits of the FNP in an area adjacent to the east channel limit. Furthermore, Captain Krestos indicated that the SPRUANCE (DDG 111) is scheduled to transit the channel to and from the BIW in both February and March 2011 for sea trials and is scheduled for final delivery to the USN in late August 2011. Captain Krestos requested that we initiate immediate action to clear the channel prior to the February transit of the SPRUANCE.

In early January 2011, we deployed a hydrographic survey crew to survey the Doubling Point reach and the Popham Beach reach to determine the extent of shoaling in the channel. We performed a survey of the channel in the Doubling Point reach; however we were unable to perform a survey at the mouth of the river (near Popham Beach) due to the considerable ice flows at that time. We also performed a sweep survey outside the east limit of the FNP in the Doubling Point reach in the area that Captain Krestos identified to us that the BIW's Pilot, Captain Earl Walker had navigated the JASON DUNHAM in October 2010. This was done to determine if a lane of travel with adequate depths existed outside the east limit of the FNP to possibly support the upcoming transits of the SPRUANCE in February and March of 2011. Our survey of the Doubling Point

reach indicates that shoals to a controlling depth of -19.7 feet have formed across almost the entire width of the authorized 27 feet deep, 500 feet wide channel. It also indicates that a lane of travel with deeper depths exists to the east of the shoal area in the FNP.

On January 18, 2011, we met with personnel from the BIW and the USN, SupShip office including Captain Krestos, to discuss the results of our survey and to discuss the upcoming transits of the SPRUANCE mentioned previously. The SPRUANCE is currently being built at the BIW and will be under the control of Captain Earl Walker, of the Portland Pilots, when it transits the channel to and from sea trials in February and March. Captain Walker has the benefit of over 30+ years of experience in navigating the river. Based on our survey, Captain Walker believed that he would be able to transit the SPRUANCE safely in the area outside the FNP for the upcoming transits of the ship in February and March. However, Captain Krestos advised us that in late August, when the ship sails from the BIW to be commissioned, it will be under the full control of the USN, during which time, they will not have the benefit of Captain Walker's 30+ years of experience to navigate the river. Based on this, he expressed concern that the SPRUANCE cannot transit the channel safely on September 1st and attempting to transit the ship with the existing channel conditions would risk a grounding causing significant damage to the hull and sonar dome, potential injuries to Navy personnel and possibly a devastating oil spill. Captain Krestos also indicated that failure of the SPRUANCE to sail will have critical impacts to Navy Fleet Operations and National Defense. Captain Krestos' concerns were outlined in his letter dated January 19, 2011 to Major General Grisoli of the U.S. Army Corps of Engineers, Headquarters office. In that letter (and a subsequent letter which clarifies the actual date of the transit) Captain Krestos requests that dredging be initiated prior to the September 1st transit of the SPRUANCE on its way to being commissioned. Copies of Captain Krestos' letters are enclosed for your reference.

At the request of the Navy, we are proposing to perform maintenance dredging to remove dangerous shoals from the channel in the vicinity of Doubling Point (just below Bath) and at the mouth of the river near Popham Beach in advance of the September 1st transit of the SPRUANCE. We estimate that a total of about 70,000 cubic yards (i.e. 50,000 cubic yards from Doubling Point and 20,000 cubic yards from Popham Beach) of clean sandy material needs to be removed from the channel. The shoals, especially those in the Doubling Point area consist of massive sand-waves oscillating within vertical and horizontal ranges; the elevation at the tips of these sand-waves vary from -19.7' to -26.8'. As part of this proposal, advance maintenance may be performed to remove the sand-waves in the vicinity of Doubling Point to a maximum elevation of -32' in an effort to improve the chance that adequate depths will endure. The proposed work will be performed with a hopper dredge over a three to five week period beginning on or about August 1, 2011. The material dredged from the Doubling Point area will be disposed of at the previously used in-river disposal site located north of Bluff Head in about 95 to 100 feet of water. Material dredged from the Popham Beach area will be disposed at a previously used 500-yard circular near-shore disposal site located about 0.4 nautical miles south of Jackknife Ledge in depths of about 40 to 50 feet. We have made a preliminary determination that the material to be dredged is suitable for disposal as proposed. As in

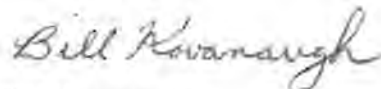
previous years, the material dredged from the channel at the mouth of the river will be transported to the Jackknife ledge disposal area via the commercially traveled route. The work will be conducted to the maximum extent practicable with the approved Coastal Zone Management (CZM) plan for such activities.

As you are aware, the federally-listed endangered Shortnose Sturgeon (SNS) are known to inhabit the Kennebec River. The Gulf of Maine Population of Atlantic Salmon (AS) was recently listed and need to be considered also. As such, Section 7 of the Endangered Species Act of 1973 requires that we consult with the National Marine Fisheries Service (NMFS) for the proposed activity. We have already initiated discussions with NMFS concerning the proposed action and are in the process of preparing a Biological Assessment for their consideration. Maintenance dredging was last performed in 2003, 2002 and before that in 2000 and 1997. During these maintenance-dredging events, all the measures outlined in NMFS' 1997 Biological Opinion (as amended) were implemented. The 2003 maintenance dredging event was an emergency action to clear the channel for the USS CHAFEE, which had to be performed outside the NMFS recommended window of November 1 – April 30. There were several documented takes of SNS during the 2003 operations. Although the proposed action will also be performed outside the preferred dredging window, it remains our goal to continue to protect the endangered SNS and AS; therefore, at a minimum, the plans and specifications for the proposed dredging will incorporate the same measures to protect the SNS that were previously employed including having a NMFS trained observer onboard the dredge. Additional measures that may come as a result of the Section 7 consultation with NMFS for the proposed action will be employed to the maximum extent practicable.

In closing, I have determined that this proposal is consistent with the Maine Coastal Zone Management Program to the maximum extent practicable and request your concurrence with this determination as well as 401 Water Quality Certification (WQC) for this action. In an effort to expedite this request, I have sent a copy of this letter along with an application for WQC directly to Mr. Bob Green. Maintenance dredging is contingent upon the availability of the necessary funding and approvals. In order for dredging to be completed in advance of the September 1, 2011 transit of the SPRUANCE, State approvals would be needed by March 18, 2011.

If you have any questions or need additional information, please feel free to contact me at (978) 318-8328.

Sincerely,



Bill Kavanaugh
Project Manager

Enclosures

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