



# *The Commonwealth of Massachusetts*

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August 28, 2003

## DRAFT RECORD OF DECISION

PROJECT NAME : Acushnet River Fish Passage  
Restoration  
PROJECT MUNICIPALITY : Acushnet  
PROJECT WATERSHED : Buzzards Bay  
EOEA NUMBER : 13074  
PROJECT PROPONENT : Division of Marine Fisheries  
DATE NOTICED IN MONITOR : July 22, 2003

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.06 of the MEPA regulations (301 CMR 11.00), I have reviewed the project and **propose to grant a Phase I Waiver** to allow Phase I of the project (as described in the Environmental Notification Form (ENF)) to proceed to the state permitting agencies prior to completion of the Single Environmental Impact Report (EIR). By a separate certificate, I will issue the scope for the Single EIR.

### Project Description

As described in the ENF, the entire project consists of restoring anadromous fish passage along a 4 mile stretch of the Acushnet River as part of the River Restore Program of the Executive Office of Environmental Affairs. This program promotes dam removal to restore the habitat of fish and other species that rely on flowing water for survival and to improve sediment transport and water quality throughout the river. The project proponent is the Massachusetts Division of Marine Fisheries (DMF). The project is being funded by the New

Bedford Harbor Trustees Council to address natural resources injured by the PCB contamination of New Bedford Harbor.

The Hamlin Street Dam is a 15 foot high, 300 foot long dam with a 3 foot hydraulic head that also serves as a roadway. It was constructed in 1920 and is adjacent to an historic factory building. The dam is owned by the Town of Acushnet and is in need of long term structural work to address settling and deterioration of the stone masonry abutments and retaining walls. Three deteriorating concrete and stone masonry weirs are located upstream of the three bridge openings. The impoundment created by the dam is approximately 6.5 acres and includes open water as well as wetlands. Weir structures, fitted with stop logs, control the water level in the impoundment. The dam is a barrier to fish passage although the eastern culvert can support fish runs during certain flows.

The Sawmill dam is a privately owned, unused industrial dam located on the Acushnet River. The dam was re-constructed in 1900. It is an earthen dam with a 108 foot long concrete spillway. A functioning headrace bypasses a portion of the river's flow around the main spillway and conveys all flow during low flow periods. Immediately downstream of the dam, the river has been channelized between stone walls for approximately 400 feet before it returns to a natural reach. A 9.5 acre impoundment has been created by the dam. It includes areas of open water as well as wetlands. The dam is bordered to the northeast by an operating cranberry bog that relies, in part, on water from the Acushnet River for supplemental irrigation and flooding.

#### Permits and Jurisdiction

The project is undergoing MEPA review pursuant to Section 11.03 (3)(a)(4) because it requires a state permit and involves a structural alternation of an existing dam that causes a decrease in impoundment capacity. The project requires a Chapter 91 license, a 401 Water Quality Certificate and a Beneficial Use Determination (BUD) permit from the Department of Environmental Protection (DEP). It requires a a Chapter 253 Dam Safety Permit from the Department of Conservation and Recreation (DCR), Section 106 Review by the Massachusetts Historical Commission, and an Order of Conditions from the Acushnet River Conservation Commission (and hence a Superseding Order from DEP if the local Order were appealed). The project requires a 404 General Program Category II Permit from the U.S.

Army Corps of Engineers (ACOE). It may require federal consistency review from Coastal Zone Management (CZM). Because the proponent is a state agency, MEPA jurisdiction extends to all aspects of the project that may cause Damage to the Environment, including wetlands, water quality, dredge materials management, historic and wildlife habitat/rare species.

### Waiver Request

With submission of the Expanded ENF, the proponent requested that I grant a waiver to allow Phase I of the project to proceed in advance of the completion of the EIR. The waiver request was discussed at the consultation/scoping session that was held on August 6, 2003. As proposed, Phase I consists of removing the weir located upstream of the eastern culvert. It requires the excavation of approximately 8 cubic yards (cy) of concrete and backfill material and upstream and downstream extension of the channel. In-stream armoring and/or bioengineering will be included in the design to mitigate the potential for riverbank erosion along the downstream eastern river's edge. The alternatives analysis conducted for the Hamlin Street Dam identified full bridge reconstruction as the preferred alternative for maximizing fish passage; however, funds are not available and no timeline has been identified for its replacement by the Massachusetts Highway Department. Phase I is proposed as an interim solution until bridge replacement.

### Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and b) not serve to avoid or minimize Damage to the Environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to phase one of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of phase one, taken alone, are insignificant; 2) ample and unconstrained infrastructure

facilities and services exist to support phase one; 3) the Project is severable, such that phase one does not require the implementation of any other future phase of the Project or restrict the means by which potential environmental impacts from any other phase of the Project may be avoided, minimized or mitigated; and 4) the Agency Action on phase one will contain terms such as a condition or restriction in a Permit, contract or other relevant document approving or allowing the Agency Action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to Commencement of any other phase of the Project.

### Findings

Based upon the record before me, including the information submitted by the proponent, and after consultation with the relevant state agencies, I find that:

- 1) Delay in implementing Phase I would not serve to avoid or minimize Damage to the Environment. The proponent considered eight alternatives as part of its alternatives analysis and determined that this alternative can provide immediate benefits to fish passage with minimal environmental impacts.
- 2) Sawmill Dam allows partial passage of fish and New Bedford Reservoir allows full passage. Alterations to Hamlin Street Dam will support an earlier and stronger return of anadromous fish in the system as soon as construction is complete.
- 3) The analysis of potential impacts for Phase I is adequate and demonstrate that the environmental impacts of phase one, taken alone, are insignificant. The proponent has demonstrated that any impacts will be addressed through design modifications and proper mitigation. Impacts to water levels of the upstream impoundment are minimal. Work will be completed during low flow conditions to limit the suspension of sediment and best management practices for soil erosion and sediment control will be installed prior to and properly maintained throughout construction.

- 4) The proposed project is part of the River Restore Program initiated to restore river habitat for fish and other species, while improving water quality and sediment transport. The project is being funded by the New Bedford Harbor Trustees Council as an environmental restoration project to address PCB contamination. The comments received have been largely supportive of the project as a whole. CZM and the Buzzards Bay Coalition specifically indicated their support of the Phase I waiver request.
- 5) Ample and unconstrained infrastructure, facilities and services exist to support Phase I. An adjacent parking area will be used for construction staging and the central and western weir can be used to maintain and redirect river flow during construction.
- 6) Phase I is severable from the rest of the project. Phase I activities do not require, presume, or unduly restrict any action relative to the remainder of the project; however, it is the proponent's intent to complete Phase II to realize the full benefits of fish passage restoration along the Acushnet from the New Bedford reservoir to Buzzards Bay.
- 7) Agency action on Phase I will ensure compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project. The proposed work will require an Order of Conditions from the Acushnet Conservation Commission, a Chapter 91 license and a Water Quality Certification under Section 401 of the federal Clean Water Act from the Department of Environmental Protection, and Section 106 review by MHC.
- 8) Funds have been identified to support the archaeological survey requested by MHC. The proponent shall address the concern identified by CZM regarding the structural integrity of the central weir to serve as a flood control structure before or during permitting.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. This Draft Record of Decision will be published in the September 9, 2003 issue of the *Environmental Monitor* for a fourteen-day comment period.

August 28, 2002

Date

Ellen Roy Herzfelder

Comments received:

08/21/03 Department of Environmental Protection SERO  
08/14/03 Division of Fisheries and Wildlife  
08/14/03 Coastal Zone Management  
07/24/03 Department of Conservation and Recreation/Division of  
State Parks and Recreation  
08/20/03 Department of Conservation and Recreation/Water  
Resources Commission  
08/08/03 Massachusetts Historical Commission  
08/21/03 Coalition for Buzzards Bay

ERH/CDB/cdb