

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region I – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

March 2, 2022

P-2572

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

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SECRETARY OF THE
COMMISSION
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FEDERAL ENERGY
REGULATORY COMMISSION

RE: Tribal Concerns Regarding Dam Operations and Relicensing in Maine

Dear Secretary Bose:

At an EPA Region 1 Tribal Leaders Summit held in October 2021, two Tribal Nations in Maine, the Penobscot Indian Nation and the Houlton Band of Maliseet Indians, raised concerns related to relicensing and fish passage operations of certain dams in Maine.

The Tribal Nations shared these concerns with EPA in the context of our statutory authority under the Clean Water Act, which establishes the national goal that water quality should provide for the protection and propagation of fish, shellfish, wildlife, and recreation in and on the waters of the United States. EPA coordinates closely with states and tribes to establish water quality standards for waters that protect these goals, including designated uses and water quality criteria to protect those uses.

The Penobscot Nation voiced concerns regarding the adequacy of fish passage on dams that impact waters where tribal members fish for sustenance in the west branch of the Penobscot River, including the Penobscot Mills Project dams, Ripogenus Dam and Stone Dam. In particular, the Penobscot Nation is troubled with the lack of flow over Stone Dam and the resultant dewatering of the west branch of the Penobscot River below Stone Dam. As a result of the Penobscot River Restoration Project, anadromous fish that have long been absent in the Penobscot River are now returning for the first time in over 100 years. It is for this reason that the Penobscot Nation is keenly interested in current relicensing efforts of a number of these dams to ensure adequate passage of key tribal cultural fish species, so that Penobscot tribal members can practice their cultural lifeways and reserved rights associated with sustenance fishing in waters within the west branch of the Penobscot River.

The Houlton Band of Maliseet Indians (the Band) expressed concern regarding adequacy of fish passage at dams on all rivers that flow into the Gulf of Maine. These dams impact fisheries in their watershed (St. John River) and the Band's related habitat restoration efforts. The Band identified

the Lockwood and Shawmut dams on the Kennebec River and dams in the Mousam River and Union River as particular areas of concern.

Consistent with the federal government's trust responsibility and EPA's authority under the Clean Water Act, in June 2020, EPA approved the State of Maine's submission of water quality standards that protect tribal sustenance fishing as a designated use for certain waters in Maine where tribal members fish for sustenance. To the extent that current dam relicensing efforts and issues associated with fish passage operations at existing dams impact the respective river watersheds that support sustenance fishing, EPA remains interested and supportive of protecting these interests.

While appreciating the need for developing and maintaining renewable energy resources, EPA strongly advocates for unfettered fish passage where possible, and for adequate fish passage where warranted. This is of particular importance for waters upstream of dams where tribal members fish for sustenance and where adequate fish habitat and presence is required to meet Maine's federally-approved water quality standards for waters classified as Class A and AA and accompanied by a standard that "aquatic life shall be as naturally occurs." ¹ These include a number of tributaries in the west branch of the Penobscot River upstream of the dams listed above.

In past correspondence, EPA has commented on issues surrounding river restoration and the fate of legacy river flow impediments such as dams. By virtue of this letter, EPA is not commenting on any specific FERC-related dam relicensing efforts. However, EPA believes that restoration of aquatic habitat and unfettered, natural, self-sustaining runs of anadromous fish will greatly benefit the ecological function and health of these rivers and their respective watersheds in Maine, as well as protecting the health and cultural values of the tribal communities and others that depend upon these important natural resources.

As you know, EPA has various roles in the FERC relicensing process, including review of National Environmental Policy Act (NEPA) documents, oversight of the State of Maine's CWA 401 certification program, and requisite consultation under FERC's regulations at 18 C.F.R. § 5.1. EPA looks forward to ensuring the concerns raised in this letter are addressed through these various mechanisms.

Please contact CAPT Michael Stover, EPA Region 1 Indian Program Manager, at (617) 918-1123 or stover.michael@epa.gov should you have any questions.

Sincerely,



David W. Cash
Regional Administrator
EPA Region 1

cc: Elizabeth Molloy, FERC Tribal Liaison
Keith Masill, FERC Office of External Affairs
Amanda Gill, FERC Office of Energy Projects

¹ 38 M.R.S. §§ 465(1)(B), (2)(B) <http://www.mainelegislature.org/legis/statutes/38/title38sec464.html>

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