



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
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GOVERNOR

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September 12, 2024

Todd Jorgensen, Maine Division Administrator
Edmund S. Muskie Federal Building
40 Western Avenue
Augusta, ME 04330

**Re: Dike Bridge, Route 1, Machias, Maine – Environmental Assessment
MaineDOT WIN # 16714.00**

Dear Todd:

I am writing to request action from the Federal Highway Administration (FHWA) regarding the June 14, 2024, letter from the National Marine Fisheries Service (NMFS) in response to the Essential Fish Habitat Review under the Magnuson-Stevens Fishery Conservation and Management Act of the above-referenced project. FHWA has always been a partner in production with the Maine Department of Transportation (MaineDOT) of critically needed transportation infrastructure, and we need your help on this project.

The Dike Bridge carries U.S. Route 1 over the Middle River in the Town of Machias, Maine, and is an essential part of our highway network. As you know, MaineDOT has spent more than a decade reviewing alternatives for the current structure. The bridge is now closed due to serious deterioration, and a temporary bridge is in place. This is obviously a fragile situation, and the inhabitants of the Town of Machias, and the other travelers of U.S. Route 1 in Downeast Maine deserve a reliable, practical, and permanent solution as soon as possible.

We understand that the use of the term “significant” adverse effects in the June 14 advisory letter from NMFS letter is causing FHWA to pause in moving forward with the Environmental Assessment. As you probably know, NMFS’s use of the term “significant” adverse effects is not consistent with the Essential Fish Habitat (EFH) regulation; the proper term in said regulation is “substantial”. It appears that the use of “significant” may be designed to cause FHWA to require an Environmental Impact Statement (EIS) in hopes of eventually requiring a bridge alternative. The bridge alternative would restore tidal exchange and coastal wetlands NMFS considers important; it would also result in daily tidal inundation (flooding) of existing property.

Our concerns are based in both policy and process. On a policy level, the bridge alternative would result in flooding an estimated 400 acres including private property. An estimated five to seven homes will no longer have functioning wells or septic systems, thus causing them to be uninhabitable. In total, more than 20 landowners could lose 50% or more of their upland property to flooding. To our knowledge, causing flooding to restore wetlands that have the effect of forced removal of people from their homes may be a new policy precedent at a national level. It is one MaineDOT - and we hope FHWA - does not support.

Further, on a process level, interpreting the advisory NMFS letter to require an EIS will cause unnecessary process delays that the people served by the bridge cannot afford. Such a delay is especially unwarranted in this case given that (a) there is a critical transportation need to advance this project, (b) the project has been underway for nearly a decade, (c) EFH interpretations and recommendations from NMFS are advisory only, and (d) the Commissioner of the Maine Department of Marine Resources has stated on several occasions that restoration of these wetlands at issue is not a high priority for DMR.

Accordingly, we respectfully request that FHWA take one or both of the following actions.

First, FHWA should elevate and conclude its efforts to have NMFS revise its letter in a timely manner to be consistent with the EFH regulations and use the term "substantial". We completely understand why you have been seeking to correct the terminology and entirely avoid the EIS issue. But we cannot allow NMFS's improper use of terminology and its refusal to correct it to itself become a significant delay. Accordingly, we request that if NMFS refuses to reissue its letter using the proper term "substantial" by the end of this month, FHWA moves on to the next requested action.

Second, in any event, MaineDOT requests that FHWA conclude the EFH consultation by responding to the NMFS in accordance with 50 CFR 600.920 (k)(1) and publish the draft Environmental Assessment for public comment. We think after more than a decade of planning, it is time to give the public a formal opportunity to give their thoughts. We expect the bulk of the public is unlikely to support the loss of private property and homes and will want to move the project forward as soon as practical. Of course, we know advocates for wetland restoration will likely have a different view. That is to be expected and means the process is working. If after this input FHWA determines that further analysis is necessary, it can proceed with an EIS. In the meantime, the public is heard, and the process moves forward.

To summarize, MaineDOT respectfully requests that FHWA elevate and conclude its efforts to have NMFS revise its letter to use the term "substantial" instead of "significant" in accordance with the EFH regulation. If NMFS does not do so by October 1 – or such other reasonable date in the near future as determined by FHWA - we request that FHWA publish the EA and schedule a public meeting so FHWA and MaineDOT can receive public comments before FHWA makes a final determination on the EA. After so many years, it is time to allow all the interested parties to be heard and move forward.

As always, thank you for critical assistance in delivering safe and reliable transportation for the people of Maine.

Respectfully,



Bruce A. Van Note, Commissioner