UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

September 29, 2026

Stephan Ryba, Chief
Regulatory Branch
New York District
U.S. Army Corps of Engineers
26 Federal Plaza
New York, NY 10278-0900

RE: SCDPW Mill Dam Maintenance and Fish Ladder Installation Project (NAN-2026-00470)

Dear Mr. Ryba:

We have reviewed the Pre-construction Notification dated August 19, 2026, for Suffolk County Department of Public Works' (SCDPW) application for a Nationwide Permit (NWP) 27 dam maintenance and fish ladder installation at the New Mill Pond Dam on the Nissequogue River and New Mill Pond in Suffolk County, New York. We have a number of significant concerns about this project and its effects on NOAA trust resources including essential fish habitat (EFH), federally-managed species, their prey, and migratory fish species such as alewife and blueback herring. From the information provided, it appears that scope of work at the dam is beyond what could be considered maintenance and is more appropriately considered to be dam reconstruction. It is also not clear if the reconstruction of the dam is necessary and that full removal of the structure and restoration of the Nissequogue River and unimpeded fish passage is not practicable. Further, we are concerned that the nationwide permitting process may not be appropriate for the proposed activities and that the Standard Permitting Process may be more suitable to allow for public comment and a more thorough review of the project's impacts.

Authorities

The Magnuson Stevens Fishery Conservation and Management Act (MSA) requires federal agencies such as the USACE to consult with us on projects that may adversely affect essential fish habitat (EFH). This process is guided by the requirements of our EFH regulation at 50 CFR 600.905, which mandates the preparation of EFH assessments and generally outlines each agency's obligations in the consultation process. In addition, the Fish and Wildlife Coordination Act (FWCA) requires all federal agencies to consult with us when proposed actions might result in modifications to a natural stream or body of water. It also requires that federal agencies consider the effects that these projects would have on fish and wildlife and provide for the improvement of these resources. Under this authority we seek to protect and conserve a wide variety of aquatic resources, but especially those that are not federally managed and do not have designated EFH, such as alewife and blueback herring, collectively known as river herring, and American eel. Because the activities authorized by the SCDPW New Mill Pond Dam and Fish Ladder Installation Project may impact EFH and other NOAA trust resources, consultation with us under these two authorities is required.

Comments

The reconstruction of a partially failed dam does not appear to be consistent with some of the criteria outlined in the NWP 27, including that the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. From the information provided, it is unclear what ecological reference has been used to design this project. The most appropriate ecological reference for restoration of habitat and aquatic resource functions is a fully restored river without the dam and with unimpeded fish passage. In addition, the conditions for NWP27 state that, *"no activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species."* We recognize that the proposed project involves reconstructing a dam which impounds water, and that the applicant is proposing to install fish passage, however, the purpose of the dam remains unclear and as stated above, dam removal appears practicable as a means of allowing aquatic life movements as required under the NWP. As a result, we recommend that you consider reviewing this project under the Standard Permitting Process to allow for public comment and a full review of effects of the project on aquatic resources and surrounding communities.

While we support the installation of fish ladders in dams to facilitate fish passage, the removal of dams and the restoration of natural flows and river habitat is preferred when possible. The information provided to us has not demonstrated that dam removal is not practicable. According to the project history, the Mill Dam was breached and washed away in 2024, and the Nissequogue and its floodplain in Stump Pond are returning to a more natural state which is ideal and the most beneficial option for our trust species including river herring and American eel. The bulk of the project justification provided by the applicant includes substantial documentation supporting removal of the remaining dam remnants and benefits the removal will have to the entire ecosystem. The removal of any remaining dam remnants would also prevent remaining obstructions to fish passage, allow our trust species to have unimpeded access to the upstream and downstream habitat and prevent some of the challenges that often come with technical fishways such as passage delay and predation. The reconnected watershed will also support the restoration of other ecological functions (e.g., flood protection, habitat enhancement, natural sediment regimes, less impacted temperatures and oxygen, etc.) to the river and estuary over time. As a result, unless additional information is provided to demonstrate that dam reconstruction is necessary and its removal is not practicable, we recommend its reconstruction not be authorized and that the waterway be left connected naturally, in its current state, and that any remaining dam structural components be removed to further improve the waterway and fish passage.

Should the applicant continue to pursue dam reconstruction, we request that they provide us with the modeling study referenced in the consultation performed by Suffolk County to support the reconstruction of the failed dam and construction of a fish ladder to better understand the scientific justification and need for dam reconstruction. If it is determined that dam reconstruction is necessary, we have a number of questions and concerns about the proposed fishway, including but not limited to, fishway design, downstream passage, water flows and

elevation, and other design details. We welcome the opportunity to discuss these questions and concerns if dam removal is not practicable. In that instance, we also recommend the consideration of another potential design option that maintains fish habitat connectivity, a nature-like fishway (NLF), at the pond's outlet that ideally matches the geology of the landscape. Instead of the pool and weir fishway, the river channel at the pond's outlet could be modified to maintain the pond while transitioning into the natural river channel. At least two NLFs have been constructed on Long Island on the Peconic River and the Swan River. We can provide further recommendations if the applicant wants to pursue a NLF design as opposed to the current dam reconstruction and fish ladder design configuration. We also recommend the development of a Fishway Operation and Maintenance Plan (FOMP), which should be provided to us for review and approval if the dam is rebuilt and a fishway installed. This plan should clarify the target fishway conditions during in/out migration periods and will define what adaptive management actions will be taken to ensure suitable passage conditions are present. Most importantly, it will define who is responsible for making sure the fishway operates effectively in perpetuity.

Should you have any questions or to discuss this matter further, please contact Veronica Runge at (978) 281-9347 (veronica.runge@noaa.gov).

Sincerely,

Louis A. Chiarella
Assistant Regional Administrator
for Habitat and Ecosystem Services

cc. USACE – M. Look
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