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EPA Comments on Draft Final Mitigation Plan and Appendices
Submitted on October 5 and 9, 2012

Please provide a completed Compensatory Mitigation Plan Checklist, as described in the Army Corps of Engineers New England District Compensatory Mitigation Guidance (pp. 42-67), including the tidal wetland module.

The Compensatory Mitigation Guidance document can be found at:

http://www.nae.usace.army.mil/Regulatory/Mitigation/CompensatoryMitigationGuidance.pdf

In reference to the Draft Final Mitigation Plan and Appendices, dated October, 2012:

Page 6 – The heading reads "*Subtidal Area Impacts That Are Not Anticipated to Impact Winter Flounder Spawning"* – The document should make the distinction between impacts to winter flounder spawning habitat and impacts to the activity of winter flounder spawning. Dredging outside of the preferred spawning depth of winter flounder can still impact the activity of spawning. That is why we have time of year windows.

Page 7 – Clarify the last sentence of the first paragraph. What document will include the plans for silt curtain/bubble curtain and monitoring as a means to mitigate for temporary dredging impacts? This should be documented somewhere, possibly in this section.

Page 7 -- Under the "*Saltmarsh and Freshwater Wetland Impacts"* heading, there is a statement that the proposed new salt marsh is "assumed" to have the same, and better, functions and values as the existing salt marsh, and freshwater wetland, respectively, that will be filled. Provide a basis for this statement, including references.

Page 8 – EPA should be included, along with NMFS and MassDMF, in the discussions of oyster reef design.

Page 19 - Appendix 2 is referenced and described as containing conceptual plans, cross-sections and details for the Rivers End Park mitigation project. Appendix 2 only contains one plan sheet, which is a modified conceptual plan of the previous mitigation project for the site.

Please provide detailed project plans, including revised grading and detailed planting plans, elevations (cross sections), and a detailed description of construction methods, including plans and elevations of sedimentation and erosion controls.

Plans should not show the previous conceptual plans for the site. Plans should show existing and revised proposed conditions, grading, and other mitigation site features, such as the revised design of the proposed Chapter 91 walkway.

Plans should utilize color shading or other demarcations of various project areas, rather than cross-hatching, which can obscure grading contour lines.

All plans should include an indication the plan scale.

Provide elevations and datum for HTL, MLLW, etc. Clarify location of HTL.

Page 19 – The second sentence in the first paragraph states that the sediment at Rivers End Park is contaminated with heavy metals and PAH. Meanwhile, at the bottom of the same page it is stated that the sediments have been mitigated for soil contaminants including heavy metals and PAHs. Please clarify.

Page 20 – Design elements of the proposed mitigation project are described, including re-grading of the embankment profile and installation of parent material across the bottom of embankment. Please provide a more detailed description of the design elements and measures to assure that the mitigation project will result in no exposure of heavy metals, PAHs or other contaminants.

Please provide more detailed information on the disposal or reuse of excavated sediments from the mitigation site.

Page 21 -- 2nd paragraph – the document states that mitigation will make the winter flounder area -16 feet MLLW or *deeper*. This should read *shallower*.

Page 25 – Section 4.0 describes the proposed Site Protection Instrument (SPI). As discussed in meetings and telephone communications on October 18, 2012 between Chris Morris of Apex and Ann Williams and Mike Marsh of EPA, the SPI section, including discussion of the Legal Arrangement, Legal Instrument and Appendix 9, need to be revised to remove references to the creation of a mitigation bank. This compensatory mitigation project is Permittee-Responsible Mitigation, and should not include reference to the use or development of a mitigation bank or In Lieu Fee program.

Page 36-37 – Clarify the section under the heading "*Temporary Dredging Impacts (Not Anticipated to Impact Winter Flounder Spawning)*" -- Dredging within the winter flounder window will likely impact winter flounder spawning. The proposal to use the silt/bubble curtain may minimize these impacts, but will not eliminate them completely. This may be a good section to describe the proposal to work within the TOY restriction.

Page 37 – "*Although not listed in the USACE guidance manual, the 2.5 ratio of mitigation to impact is a generally accepted ratio for seeding to replace impacted shellfish, typically recommended by MassDMF and accepted by NMFS.*" The phrase "accepted by NMFS" is misleading. NMFS does not have specific mitigation ratio guidance on shellfish.

Page 37-38 - Last sentence of the paragraph below states the design of the oyster reef will be done according to the October 4th letter. Earlier in the document it states that the design will be determined in coordination with Mass DMF, NMFS and EPA. There have not yet been any discussions on the design of the oyster mitigation. The interagency coordination has not taken place yet and this should be clearly reflected in the document.

Page 42 – EPA recommends use of turbidity curtains around the construction areas for the OU-3 and Winter Flounder Mitigation Areas.

Page 43 – Plan states that erosion control mats would "likely" be biodegradable. Erosion control mats, rolls, etc., should consist of fully biodegradable materials unless the Commonwealth demonstrates to EPA that the use of these measures is impracticable.

Page 45 – Note that the Financial Assurance discussion is located in Section 13 (not Section11).

Page 47 – Under Success Criteria/Winter Flounder – The document states that the optimal winter flounder spawning depth is between -16 and -18 feet MLLW. This is not accurate, optimal spawning depth is < 5 meters MLLW.

Page 53 - Note that the Financial Assurance discussion is located in Section 13 (not Section11).

Page 57 - The last bullet should read: "Consult with **EPA and all appropriate** regulatory agencies…."

Invasive Species Monitoring Plan

In general, the approach taken for the pilings and bulkhead is reasonable. EPA divers have used the Mass CMZ identification cards. We have developed our own diver friendly version of those cards that are slightly bigger and printed on hard plastic. The laminated paper version produced by CZM are good for use on the dock, but they degrade when they get wet. We are happy to provide diver friendly cards to the Commonwealth. EPA divers have a fair amount of experience doing this type of underwater identification and would be willing to meet with the survey team and/or be on site (but not in the water) during the initial survey to assist.