

## **CHAPTER 6: RELATIONSHIP TO OTHER LAWS AND PROGRAMS**

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## **CHAPTER 6: RELATIONSHIP TO OTHER LAWS, PROGRAMS, AND POLICIES**

As discussed in Chapter 2, the two major federal laws guiding the restoration of New Bedford Harbor are CERCLA NEPA. CERCLA provides the basic framework for natural resource damage assessment and restoration, while NEPA sets forth a specific process of impact analysis and public review. However, in developing and implementing the RP/EIS for New Bedford Harbor, the Trustees must comply with other applicable laws, regulations, and policies at the federal, state and local levels. Section 6.1 below lists these potentially relevant laws and policies and discusses their applicability with respect to the restoration of New Bedford Harbor.

In addition to laws and regulations, the Trustees must consider relevant environmental or economic programs or plans in developing and implementing the RP/EIS. As described in Chapters 2 and 5, the most important of these is the Superfund Site clean up, but other efforts are ongoing or planned in or near the affected environment. By coordinating restoration with all relevant programs and plans, the Trustees can insure that the restoration does not duplicate other efforts, but enhances the overall effort to improve the environment of New Bedford Harbor and Buzzards Bay. Section 6.2, below, lists potentially relevant programs and plans and discusses their applicability with respect to the restoration. Section 6.3, below, summarizes the first two sections in tabular form and proposes mechanisms whereby the restoration of New Bedford Harbor can comply with relevant laws and programs.

### **6.1 Laws**

#### **6.1.1 Federal Laws**

##### **Anadromous Fish Conservation Act (AFCA), 16 USC §757a et seq.**

AFCA authorizes the Secretaries of Commerce and/or Interior to enter into cooperative agreements with the states for the conservation, development, and enhancement of the Nation's anadromous fishery resources. Pursuant to such agreements the federal government may undertake studies and activities to restore, enhance, or manage anadromous fish, fish habitat, and passages. The Act authorizes federal grants to the states or other non-Federal entities to improve spawning areas, install fishways, construct fish protection devices and hatcheries, conduct research to improve management, and otherwise increase anadromous fish resources. The Trustees may be able to take advantage of the provisions and funding of AFCA in order to leverage anadromous fish restoration plans and projects in the New Bedford Harbor Environment and Buzzards Bay.

##### **Clean Water Act (CWA) (Federal Water Pollution Control Act), 33 USC §1251 et seq.**

CWA is the principle law governing pollution control and water quality of the Nation's waterways. Section 404 of the law authorizes a permit program for the disposal of dredged or fill material in the Nation's waters, administered by the ACOE.

In general, restoration projects which move significant amounts of material into or out of waters or wetlands--for example, hydrologic restoration of salt marshes or the placement of artificial reefs--require 404 permits. It is probable that some of the New Bedford Harbor restoration projects will require such permits. In such cases the Trustee Council might be the permit applicant; alternately, the project proponent--for example, a municipality or local natural resources trust--might apply for the permit.

In granting permits to applicants for dredge and fill, applicants may be required to undertake mitigation measures such as habitat restoration to compensate for losses resulting from the project. Through coordination with the ACOE, the Trustee Council may be able to leverage restoration projects by "piggy-backing" 404 mitigation projects on selected alternatives. For example, once the restoration planning process has identified priority sites for wetland restoration, a permit applicant might be asked to restore part or all of such a site as a condition for granting a 404 permit. See also Rivers and Harbors Act, below.

Under Section 401 of the Clean Water Act, restoration projects that entail discharge or fill to wetlands or waters within federal jurisdiction must obtain certification of compliance with state water quality standards. The Massachusetts Department of Environmental Protection implements the 401 Water Quality Certification Program through 314 CMR 9.00. In general, restoration projects with minor wetlands impacts (i.e., a project covered by an ACOE Programmatic General Permit) are not required to obtain 401 Certification, while projects with potentially large or cumulative impacts to critical areas require certification.

#### **Coastal Zone Management Act (CZMA), 16 USC §1451 et seq.**

CZMA establishes a policy to preserve, protect, develop and, where possible, restore and enhance the Nation's coastal resources. The federal government provides matching grants to states for the realization of these goals through the development and implementation of state coastal zone management programs. Section 1456 of the Act requires federal actions in the coastal zone to be consistent, to the maximum extent practicable, with approved state programs. It stipulates that no federal licenses or permits be granted without giving the state the opportunity to concur that the project is consistent with the state's coastal policies. Other provisions of CZMA provide for the development of special area management plans (SAMPs) for areas of the coastal zone of particular importance (16 U.S.C. §1456b(6)). In addition, Section 6217 of P.L. 101-508, codified at 16 U.S.C. §1455b, requires states with federally-approved coastal zone management programs to develop programs for the control of coastal non-point pollution control.

In order to comply with CZMA, the Trustee Council sought the concurrence of the Commonwealth that the RP/EIS is consistent with the 27 program policies of the Massachusetts Coastal Program. Moreover, individual restoration projects which may be selected in future restoration rounds must be consistent with the state program. The Trustees anticipate that continued close cooperation between the Massachusetts Coastal Zone Management Program (MCZM) and the Trustee Council will ensure consistency of future actions. Moreover, cooperation with MCZM offers considerable opportunity for leveraging the restoration process--see Massachusetts Coastal Zone Management Program, below. MCZM determined that the proposed RP/EIS was consistent with the MCZM's enforceable program policies. (MCZM, 1997)

Should the proposed activities be modified or be found to have effects on the coastal zone or its uses that are substantially different from originally proposed, an explanation of the change must be submitted to MCZM per 301 CMR 21.17 and 15 CFR 930.66.

**Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC §9601 et seq.**

CERCLA provides the basic legal framework for clean-up and restoration of the nation's hazardous waste sites, addressing liability, compensation, clean-up, emergency response, and natural resource restoration. Under CERCLA, natural resource trustees assess damages to natural resources resulting from a discharge of oil or hazardous substance and seek to recover such damages. Compensation so received must be used to restore, replace, or acquire the equivalent of lost natural resources and services.

Parties responsible for the contamination of sites are liable for all costs of clean-up and restoration; however, CERCLA also created a revolving fund for use at "orphan" sites or before settlement. CERCLA establishes a hazard ranking system for assessing the Nation's contaminated sites, the most contaminated of which are placed on the National Priorities List.

CERCLA is the principal law guiding the planning and implementation of the New Bedford Harbor restoration; Chapter 2 provides a more complete discussion of the proposed restoration process in the context of CERCLA's requirements.

**Endangered Species Act (ESA), 16 USC §1531 et seq.**

ESA establishes a policy that all Federal departments and agencies seek to conserve endangered and threatened species and their habitats, and encourages such agency to utilize their authorities to further these purposes. Under the Act, the Departments of Commerce and/or Interior publish lists of endangered and threatened species. Section 7 of the Act requires that federal agencies and departments consult with the Departments of Commerce and/or Interior to minimize the effects of federal actions on endangered and threatened species. In the case of New Bedford Harbor, the identification of endangered species as a restoration priority (Section 2.6) means that specific restoration actions can help conserve and recover protected species and so further the goal of Endangered Species Act.

The Trustee Council determined that the preferred restoration activities would not have any adverse effects upon threatened or endangered species. This determination was forwarded to the National Marine Fisheries Service and U.S. Fish and Wildlife Service (Terrill, 1997) requesting concurrence in the determination for threatened and endangered species under their jurisdiction. Both agencies agreed with the determination (Bartlett, 1997 and Rosenberg, 1997) and concluded that several of the preferred alternatives (Restoration of New Bedford Area Shellfishery, Eelgrass Habitat Restoration, and Restoration and Management of Tern Populations) will provide indirect or direct benefits to threatened or endangered species. No further consultation on these projects is necessary provided project plans do not change or new information becomes available.

### **Fish and Wildlife Coordination Act (FWCA), 16 USC §661 et seq.**

FWCA requires that federal agencies consult with the U.S. Fish and Wildlife Service (USF&WS), the National Marine Fisheries Service (NMFS), and state wildlife agencies for activities that affect, control, or modify waters of any stream or bodies of water, in order to minimize the adverse impacts of such actions on fish and wildlife resources and habitat. This consultation is generally incorporated into the process of complying with Section 404 (see Clean Water Act, above); NEPA (see National Environmental Policy Act, below); or other federal permit, license, or review requirements.

In the case of New Bedford Harbor, the fact that the three consulting agencies for FWCA are represented on the Trustee Council means that FWCA compliance will generally be inherent in the Trustee decisionmaking process. In addition, FWCA provides NMFS and USF&WS with grantmaking authority which may be useful in disbursing funds for specific restoration projects, or for leveraging restoration projects with additional federal funding.

### **National Environmental Policy Act, 42 USC §4321 et seq.**

NEPA is the basic national charter for protection of the environment. Its purpose is to "encourage productive and enjoyable harmony between man and the environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological systems and natural resources important to the Nation." The law requires the government to consider the consequences of major federal actions on human and natural aspects of the environment in order to minimize, where possible, adverse impacts. Equally important, NEPA establishes a process of environmental review and public notification for federal planning and decisionmaking.

The Trustee Council has integrated this restoration plan with NEPA's Environmental Impact Statement process in order to comply with NEPA. Moreover, the integrated RP/EIS allows the Trustee Council to use the NEPA process as the basic framework for public involvement in restoration planning. However, public involvement in the restoration planning process thus far has been far greater than required for NEPA compliance alone. The Trustee Council envisions continued close public involvement in the restoration planning process, whereby the public will be involved in developing, shaping, and commenting on restoration decisionmaking throughout the restoration of New Bedford Harbor.

As discussed in Chapter 5, this restoration plan complies with NEPA by serving as a "programmatic EIS" that assesses impacts of the restoration as a whole, as well as impacts of specific restoration projects (Chapter 4). Implementation of future restoration actions may in some cases require additional NEPA documentation, probably in the form of project-specific Environmental Assessments (EAs).

### **Rivers And Harbors Act, 33 USC §401 et seq.**

The Rivers and Harbors Act regulates development and use of the Nation's navigable waterways. Section 10 of the Act prohibits unauthorized obstruction or alteration of navigable waters and invests the Corps with authority to regulate discharges of fill and other materials into such waters. Restoration actions that require Section 404 permits (see Clean Water Act,

above) are likely to also require permits under Section 10 of the Rivers and Harbors Act, but a single permit generally serves for both; therefore the Trustees can ensure compliance with the Rivers and Harbors Act through the same mechanisms.

### **Other Potentially Applicable Federal Laws**

Clean Air Act, 42 USC §7401 et seq.  
Emergency Wetlands Resources Act, 16 USC §3901.  
Estuarine Protection Act, 16 USC §1221 et seq.  
Fish and Wildlife Conservation Act, 16 USC §2901 et seq.  
Marine Protection, Research, and Sanctuaries Act, 33 USC §1401 et seq.  
Migratory Bird Treaty Act, 16 USC §703 et seq.  
National Historic Preservation Act, 16 USC §461 et seq.  
Oil Pollution Act, 33 USC §2701 et seq.

### **6.1.2 State Laws**

#### **Massachusetts Endangered Species Act (MESA), MGL Ch. 131A**

MESA works in much the same way as the federal Endangered Species Act (Section 6.1.1, above) to list and protect rare species and their habitats. Like ESA, MESA defines specific species as "endangered" or "threatened" and considers a third category as well: "species of special concern." MESA is more protective than ESA: listed species include federally protected species as well as others of specific concern to Massachusetts. MESA is administered by the Massachusetts Natural Heritage and Endangered Species Program (NHESP), which identifies rare species habitats and other high-priority natural areas. Compliance of the proposed restoration with MESA overlaps ESA compliance. As noted above, the Trustees have identified endangered species, including state-listed species, as a restoration priority. Before finalizing the RP/EIS, the Trustees will consult with NHESP to ensure that no aspects of the Plan would have a negative effect on species designated as endangered, threatened, or of special concern by the Commonwealth.

#### **Massachusetts Environmental Policy Act (MEPA), MGL Ch. 30 §61 et seq.**

MEPA is the state equivalent of NEPA (Section 6.1, above). MEPA sets forth a process of environmental review and requires Commonwealth agencies to consider and minimize adverse environmental impacts of State actions on the environment. Like NEPA, MEPA requires public notification and comment before decisions are finalized. The document used to assess impacts is the Environmental Impact Report (EIR), which must be approved by the MEPA office within the EOEA before major State actions can proceed. The law applies to projects directly undertaken by State agencies as well as private projects seeking permits, funds, or lands from the State, but does not apply to private projects requiring local approval only. MEPA review is expressly required for projects that dredge, fill or alter more than one acre of wetlands.

Both NEPA and MEPA encourage consolidation of the two processes where possible to avoid duplication of effort. Therefore, this Draft RP/EIS is also a Draft EIR, conforming to the notice, comment, timing, content, and other relevant provisions of MEPA. Likewise, future restoration actions that require additional NEPA documentation will, where appropriate, incorporate the

MEPA process into restoration decisionmaking. Since MEPA is somewhat more inclusive than NEPA, some restoration actions which do not require NEPA review may require review under MEPA; in such cases, separate MEPA review will be undertaken by the Trustee Council.

### **Public Waterfront Act ("Chapter 91"), MGL Ch. 91**

Chapter 91 is designed to protect public rights in Massachusetts waterways, not unlike the federal Rivers and Harbors Act, above, which it predates. It ensures that public rights to fish, fowl, and navigate are not unreasonably restricted and that unsafe or hazardous structures are repaired or removed. Chapter 91 also protects the waterfront property owner's ability to approach his land from the water, and helps protect wetlands resource areas by requiring compliance with the Wetlands Protection Act. It is administered by MADEP's Division of Wetlands and Waterways through a program of permits and licenses. Chapter 91 authorization is required for alterations of tidelands, great ponds, and some rivers and streams, as well as for dredging and construction of piers, wharves, floats, retaining walls, revetments, pilings, bridges, dams and some waterfront buildings. The Act requires public, municipal and agency notification before a project is authorized, and provides for public hearings, review by affected parties, and the imposition of conditions before authorization is granted. Certain Chapter 91 projects also require MEPA review, above. In order to maintain restoration plan compliance with Chapter 91, the Trustee Council will seek the approval of the Division of Wetlands and Waterways before implementing restoration actions that fall within the law's scope and will ensure that the law's notification provisions are met where required.

### **Rivers Protection Act, St. 1996, C. 258**

The Rivers Protection Act, passed in 1996, modifies the Wetlands Protection Act, below, to strengthen and expand existing protection of watercourses and the lands adjacent to them. The Act establishes a "riverfront area" that extends 200 ft (25 ft in certain urban areas) from the mean annual high water line on each side of perennially flowing rivers and streams. The Act requires projects in the riverfront area to meet two performance standards: no practicable alternatives, and no significant adverse effect. While regulations for implementing the Rivers Protection Act have not yet been written, the Trustee Council intends to follow such developments in order to ensure that restoration actions that fall within the law's scope are in full compliance with it.

### **Wetlands Protection Act, MGL Ch. 131 §40**

The Wetlands Protection Act restricts the removal, filling, dredging or alteration of fresh and salt water wetlands and coastal areas. Permit authority for the administration of the law is delegated to local conservation commissions with oversight and involvement of the Massachusetts Department of Environmental Protection. The Act requires landowners who plan work in a wetland to notify these entities as well as abutters and other nearby landowners, and provides for public hearings and the imposition of conditions before permission is granted. More direct State involvement is required where wetlands greater than 5000 s.f. are affected.

In order to maintain restoration plan compliance with the Wetlands Protection Act, the Trustee Council will seek the approval of the local conservation commission and/or other appropriate authorities before implementing restoration actions that fall within the law's scope, and will

ensure that nearby landowners and other affected parties are notified, as appropriate, of planned restoration actions.

### **Other Potentially Applicable State Laws**

**Massachusetts 401 Water Quality Certification Program, 314 CMR 9.00** (discussed under Clean Water Act, above).

#### **6.1.3 Local Laws**

As appropriate, restoration actions will consider and comply with local zoning ordinances, comprehensive plans, shoreline plans, growth management plans, construction grading or fill permits, noise permits, wetlands bylaws and permits, and other relevant laws, regulations, bylaws, and ordinances.

### **6.2 Policies**

#### **6.2.1 Federal Policies**

##### **Environmental Justice - Executive Order 12898**

EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires federal agencies to identify and address disproportionately high and adverse human health or environmental effects of programs, policies, and activities on minority or low income populations. Environmental justice review should be incorporated into the NEPA process and, where disproportionate adverse effects on minority and low-income populations are identified, address those impacts.

As discussed in Chapter 3, all residents and users of the New Bedford Harbor region have been affected by the contamination of the Harbor and would therefore benefit from natural resource restoration. However, residents of the area surrounding the Upper Acushnet River Estuary--in the North End of New Bedford as well as coastal areas of Acushnet--have been particularly affected by the contamination. In addition, this is a low-income area with relatively large minority populations, primarily of Portuguese or Hispanic descent. A second area that has been particularly affected is the South End of New Bedford, which is also a low-income area with relatively large minority populations.

The Trustees have reviewed the potential for disproportionate adverse impacts of the proposed action on these communities, and have not identified such impacts. Moreover, in order to fully address environmental justice issues in the New Bedford Harbor Environment, the Trustees will seek to implement restoration alternatives with specific benefit to these communities--for example, the proposed Riverside/Belleville Marine Recreation Park described in Chapter 4. Since these are areas where contaminant dredging is planned as part of the Superfund clean-up, implementation of some such actions must wait until completion of the dredging. However, the Trustees have encouraged EPA to expedite clean-up activities in the Upper Estuary in order to allow early selection and implementation of this and other restoration ideas directed toward benefiting minority or low-income populations.

#### **6.2.2 State and Local Policies**

As appropriate, restoration actions will consider and comply with other relevant policies at the state and local levels, e.g. the Massachusetts DEP Stormwater Discharge Policy.

## **6.3 Programs**

### **6.3.1 Federal Programs**

#### *Buzzards Bay Project (BBP)*

BBP is part of the National Estuary Program, a collaborative effort of the EPA and the Commonwealth of Massachusetts. The BBP prepared a "comprehensive conservation management plan" (CCMP) in 1991. The CCMP directs the development and implementation of management recommendations that would preserve and protect water quality and living resources in Buzzards Bay. The bay-wide approach provides a valuable setting for restoration work in the New Bedford Harbor Environment, including management and monitoring tasks.

#### *U.S. Army Corps of Engineers (ACOE)*

ACOE is responsible for maintaining the main federal navigation channel from Buzzards Bay into New Bedford Harbor, operating the navigation gate of the Hurricane Barrier, and assisting in the design and implementation of the Superfund cleanup. The federal navigation channel needs dredging to maintain commercial depths and safe passage. ACOE estimates that approximately 1.7 million cubic yards of unconsolidated sediments will need to be removed. (ACOE 1996). Dredging of the federal channel and associated state channels is now under consideration during planning for remedial and restoration work in the same waters.

ACOE completed construction of the Hurricane Barrier in 1966 providing protection to approximately 1400 acres. The Barrier is maintained by the City of New Bedford, but ACOE would need to be consulted for design changes.

### **6.3.2 State Programs**

#### *Massachusetts Coastal Zone Management (MCZM)*

MCZM's coastal zone management program provides a comprehensive tool to protect marine resources and to promote responsible economic development. Program direction is specified in 27 policies which cover harbor management, hazards, important resources and environments, waterfront development, access, aesthetics, submerged resources, and many more topics of direct interest to restoring New Bedford Harbor.

With financial and technical assistance from the MCZM, New Bedford and Fairhaven are engaged in harbor planning aimed at developing a comprehensive plan for the area between the Hurricane Barrier and the Coggeshall Street Bridge. The master plan will address the needs of various commercial and recreational sectors and will balance economic development with other waterfront uses.

*Massachusetts Department of Environmental Management, Division of Waterways (DEM)*

DEM cooperates with local municipalities to dredge channels connecting federal navigation channels to shoreside facilities. DEM has worked with New Bedford and Fairhaven on numerous dredging projects since the 1940s, including spurs to the State Fish Pier, New Bedford City Marina off Route 6, and the Fairhaven commercial fish wharves.

*Massachusetts Environmental Trust (MET)*

MET was established in 1988 by the Massachusetts Legislature. The Trust acts as an environmental philanthropy and funds programs related to its three purposes:

- 1) to restore, protect, and improve Massachusetts waterways;
- 2) to increase understanding of the harbors, bays, watersheds, rivers and their resources; and
- 3) to engage the public in activities that promote the harbors, bays, watersheds, rivers and their resources.

*Massachusetts Natural Heritage and Endangered Species Program (MNHESP)*

MNHESP, within the State Division of Fisheries and Wildlife, is responsible for the conservation and protection of hundreds of plant and animal species that are not hunted, fished, trapped, or commercially harvested in the State. The Program's highest priority is the protection of species that are considered endangered, threatened, or of special concern in Massachusetts. Its overall goal is the preservation of the Commonwealth's biodiversity, accomplished through a comprehensive program of inventory, data management, research, wildlife management, project review and habitat protection. The Program collects information on the abundance, distribution, and conservation needs of endangered and other nongame wildlife and plant species, and develops maps of rare species and natural communities.

The Trustee Council has worked with MNHESP in developing this Restoration Plan in order to identify restoration alternatives that further the protections of habitats of rare species and other areas of exceptional natural value within the New Bedford Harbor Environment, while working to avoid adverse impacts to such natural assets. Toward these ends, the Trustees intend to continue consulting with MNHESP throughout the restoration process.

### **6.3.3 Local Programs**

Regional planning efforts such as the Buzzards Bay Project and a harbor plan must be integrated with local ordinances from the four affected municipalities. The Trustees acknowledge that restoration must also proceed with continuous local involvement and integrate local ordinance.

#### *Wastewater treatment infrastructure*

Water, sediment, and resource health in the New Bedford Harbor region are strongly influenced by local wastewater treatment systems. The area is served by a mix of residential systems, water pollution control facilities that intercept nutrients from entire neighborhoods, and combined sewer overflows (CSOs) that convey wastes and stormwaters.

The timing of restoration efforts will be coordinated with on-going efforts of the four communities (City of New Bedford, Towns of Acushnet, Dartmouth, and Fairhaven), the Commonwealth's Department of Environmental Protection, and the U.S. Environmental Protection Agency. The Fort Rodman water pollution control facility (located on the western edge of the outer harbor), the CSOs, and regional non-point sources have been shown to contribute PCBs to harbor waters. Source reduction and improved overall water quality are essential ingredients in restoring habitat health and resource availability.

#### **6.4 Non-governmental Partners**

Several private organizations with concerns or interest in the Harbor are active in the region. Information follows on some of the groups expected to participate in the restoration of the New Bedford Harbor Environment.

##### *Coalition for Buzzards Bay (CBB), New Bedford, MA*

CBB was formed in 1987 as a public outreach organization dedicated to informing and involving the public in the clean-up, restoration and protection of Buzzards Bay. The Coalition is a non-profit organization with approximately 1800 members. Major accomplishments include the creation and implementation of the Citizens' Water Quality Monitoring Program, the Environmental Report Card, the New Bedford Project, and several other outreach efforts designed to connect citizens to the Bay. The Coalition is involved in public policy and legislative issues that affect Buzzards Bay.

##### *Citizens for a Clean Harbor, Fairhaven, MA*

Citizens for a Clean Harbor is a community group concerned with the clean-up and restoration of the New Bedford Harbor/Acushnet River. The group's purpose is to update, educate and inform the public on the activities surrounding the New Bedford Harbor Superfund Site so informed and educated decisions can be made.

##### *Hands Across the River Coalition (HATRC), New Bedford, MA*

HATRC was formed in 1990. HARC is an environmental organization that concentrates on environmental justice issues confronting the residents of Southeastern Massachusetts. One of the Coalition's primary goals is the total clean-up of the Acushnet River and New Bedford Harbor. The Coalition has approximately 700 members.

##### *National Wildlife Federation (NWF), Washington, DC*

NWF is the nation's largest citizen conservation education organization with over 4 million members and supporters. Its mission is to educate, inspire, and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources, and to protect the Earth's environment in order to achieve a peaceful, equitable, and sustainable future. This is accomplished through programs focusing on regional issues, conservation education for both the public and schools, publications, camps and training for camps, outdoor ethics to develop environmental awareness, and evaluating and responding to environmental policy and issues. (NWF 1995)

NWF is an ex-officio member of the Trustee Council through settlement of their 1992 lawsuit.

*Waterfront Historic Area League (WHALE), New Bedford, MA*

WHALE is a 34 year old non-profit preservation and development corporation. WHALE's primary focus is to preserve the character of the communities that it serves, through community and economic development. WHALE services the communities from Westport to Wareham. WHALE's membership totals 620.

### **6.5 Summary of Compliance with Potentially Applicable Laws**

Table 6.1 summarizes the laws, regulations and policies potentially applicable to environmental restoration of the New Bedford Harbor Environment, and presents the approach that the Trustees will use to ensure that the restoration plan, as well as each individual restoration action, complies with all applicable laws and requirements.

**Table 6.1 Summary of Compliance with Potentially Applicable Laws**

FEDERAL				
LAW/REGULATION	SCOPE	RESPONSIBLE AGENCY	COMPLIANCE	PERMIT?
Anadromous Fish Conservation Act, 16 USC 757	Conservation and restoration of anadromous fish resources and habitat	NMFS, USF&WS, MDFW	Project-specific coordination with responsible agencies	No
Clean Water Act (CWA), 33 USC 1251 et seq.; Section 404 & 301	Regulating discharge of dredge and fill material in waters of the US; protection of wetlands.	ACOE, EPA	Project-specific	Yes
Clean Water Act, Sections 401 & 402	Compliance with state water quality standards.	EPA, MADEP	Project-specific	Yes
Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601	Provides authorization and program framework for Superfund site remediation and restoration; requires plan development and public involvement.	NBHTC (NOAA, DOI, EOEA) with advice from DOJ	Through use of the NEPA process to guide plan development and public involvement; consultation with DOJ and federal court as necessary.	No
Coastal Zone Management Act (CZMA), 16 USC 1451 et seq.	Compliance with CZMA for protection of coastal zone; certification by state required.	NOAA, MCZM	Project-specific; review at state level.	No
Endangered Species Act (ESA), 16 USC 1531 et seq.	Continued existence of listed threatened and endangered species.	USFWS, NMFS	Partial compliance with RP/EIS. Project-specific consultation with USFWS and NMFS as appropriate.	No
Fish and Wildlife Coordination Act, 16 USC 661	Protection of fish and wildlife. Applies to federal actions only.	USFWS, NMFS	Project-specific coordination with USFWS and NMFS.	No
National Environmental Policy Act of 1969 (NEPA), 42 USC 4321-4370d; 40 CFR 1500-1508.	Disclosure of environmental impacts of proposed project; evaluation of alternatives. Applies to federal actions.	Federal lead agency, EPA	Partial compliance through RP/EIS process. Additional project-specific NEPA compliance as appropriate.	No
Rivers and Harbors Act of 1899, 33 USC 403, et seq.; Section 10	Prohibits obstruction or alterations of navigable waters. Regulates construction of any structures within navigable waters of the US.	ACOE	Project-specific	Yes

STATE				
Massachusetts Endangered Species Act, MGL Ch. 131A	Continued existence of State-listed species.	NHESP	Partial compliance with RP/EIS. Project-specific consultation with NHESP as appropriate.	No
Massachusetts Environmental Policy Act (MEPA), MGL Ch. 30	Disclosure of environmental impacts of proposed project; evaluation of alternatives; public notification and review.	Lead state/local agency, EOEA MEPA Office	Partial compliance if RP/EIS is adopted by the state. Project-specific MEPA documentation as appropriate.	No
Public Waterfront Act, Ch. 91	Public rights to and protection of shorelines and some rivers and streams	Local Conservation Commissions; MDEP	Project specific through consultation and permit as appropriate	Yes
Rivers Protection Act	Protection of rivers and streams and adjacent lands	Local Conservation Commissions; MDEP	Project specific through consultation and permit as appropriate	Yes
Wetlands Protection Act, MGL 131	Protection of wetlands and adjacent lands	Local Conservation Commissions; MDEP	Project specific through consultation and permit as appropriate	Yes
Massachusetts 401 Water Quality Certification Program	Protection of water quality	MDEP	Project specific through consultation and permit as appropriate	Yes
LOCAL				
Zoning Ordinances	Restrict types of development within designated zones.	Local government	Project-specific	No
Noise/Nuisance Ordinances	Restrict noise and nuisance levels.	Local government	Project-specific	No