



MAKING WAVES

SPRING
2009

THE NEWSLETTER OF MAINE RIVERS

CROOKED RIVER DAM APPEAL DENIED

On April 16, 2009, the Maine Board of Environmental Protection (MBEP) rejected the appeal by Scribner's Mill Preservation, Inc. (SMPI) from the December 31, 2008 order by the Department of Environmental Protection (MDEP) denying an application for a permit to construct a hydro-mechanical dam at Scribner's Mill on the Crooked River, and affirmed the MDEP order.

The Crooked River is the principal spawning tributary for the unique indigenous land-locked salmon of Sebago Lake, one of only four such populations in Maine. More than 70% of the wild fish in Sebago are spawned in the river. Sixty five per cent of the spawning and nursery habitat is upstream of Scribner's Mill, the site of a dam that furnished water power to run a sawmill from 1849 to 1962 when the mill ceased operation.

The Crooked River was identified in the 1982 Maine Rivers Study as one of only seven rivers in Maine that are "the state's most significant inland fishery rivers." It is the only one in the southern part of the state. The 1983 Rivers Act designated the Crooked River as worthy of special protection because of its value as a fishery resource.

The SMPI application was a real test of the 1983 Rivers Act. It is gratifying to know that the process works.

In 1972 the dam at Scribner's Mill was removed. Three years later the site was acquired by Scribner's Mill Preservation, Inc (SMPI) whose principals are John and Marilyn Hatch. Their goal has been to restore the mill as an educational exhibition of the water powered industrial technology that pre-dates fossil fuels. An application to MDEP to rebuild the

dam was filed in 2002. In 2007 a revised application was filed. It called for reconstruction of the dam with a rock ramp fishway, and an 11 acre impoundment extending upstream for a mile.

Studies conducted for the applicant showed that mature landlocked salmon could make use of the fishway, but there would be a severe reduction in the ability of juvenile salmon to migrate upstream

because of water velocity. Also, the impoundment would destroy existing salmon spawning and nursery habitat, at the same time improving habitat for such warm water predator species as small-mouth bass and pickerel.

Francis Brautigam, Regional Fishery Biologist for the Maine Department of Inland Fisheries and Wildlife (MDIFW) filed comments opposing reconstruction of the dam with MDEP. Maine Rivers, NRCM and 9 other non-governmental organizations also filed comments opposing reconstruction of the dam. All pointed out the prospective damage to the Sebago Lake salmon fishery as their reason.

Both the Departmental and Board orders denying the application conclude that the unique fishery resource is too important to put at risk, and that the prospect of harm from the dam outweighs the benefit of a historic water-powered sawmill.



Emily Bastian holds a 6.5 lb wild salmon she caught in Sebago Lake in 2008

- continued on page 3

NEW CONCERN FOR RESTORING THE PENOBSCOT: NORTHERN PIKE

The Penobscot River Restoration Trust (PRRT) has launched impressive and ambitious river restoration plans which have garnered national attention. The Trust is working to restore Atlantic salmon, American shad, alewives, blueback herring, striped bass, sturgeon and other native anadromous fish species to much of their historic range in the Penobscot Watershed by removing dams at Veazie and Great Works, installing new fish passage at the Milford Dam in Old Town, all on the main stem of the river, and by installing a fish bypass at the Howland Dam, at the mouth of the Piscataquis River.

Public and private fund raising has generated over \$25 million to purchase the Veazie, Great Works and Howland Dams from Pennsylvania Power and Light. The purchase option has been exercised. PRRT now seeks authority to remove the two main stem dams and modify the Howland Dam. The project balances energy production of the river with fisheries restoration by providing PPL with the opportunity to produce the same amount of energy by increasing production at six other dams.

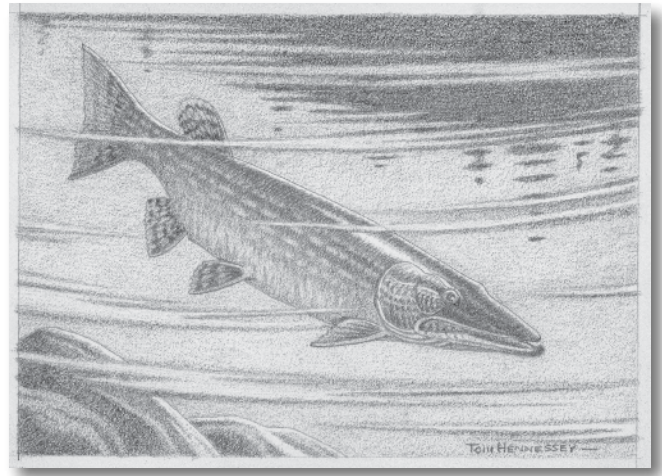
Recently, a potential problem related to northern pike has surfaced. While it seems unlikely that this issue will ultimately have an adverse affect, it is keeping the project's managers on their toes. Northern pike are not native to Maine, but are established in some Maine waters. They are not welcome visitors because they are exclusively fish eaters, with a voracious appetite. Unfortunately, numerous "bucket biologists" have taken it upon themselves in recent years to spread pike to dozens of Maine lakes and ponds.

Illegally introduced northern pike were recently found in Pushaw Lake, connecting to the Penobscot River via Pushaw Stream in Old Town. MDIFW began a study of these fish in order to identify spawning areas and to remove fish prior to their spawning season. Complete extermination of northern pike is probably not possible in Pushaw Lake, but recent efforts do appear to have reduced their number.

In the winter of 2008-2009, The Fin and Feather Club of Millinocket and Paul Johnson, a retired MDIFW fishery

biologist, were busily beating the drums in opposition to the Penobscot River restoration project. Their concern is that northern pike will migrate down Pushaw Stream, up the Penobscot and Piscataquis Rivers, and cross to the West Branch of the Penobscot. They claim that northern pike would devastate the brook trout of the West Branch Watershed. This opposition exists even though it has yet to be shown that northern pike have migrated out of Mud Pond below Pushaw Lake into the main stem of the Penobscot.

Fishery biologists engaged in the Penobscot River Restoration Project have been aware of the presence of northern pike in Pushaw Lake since early in the project. It is the consensus that the concern over northern pike expressed by the Fin and Feather Club and Paul Johnson is vastly overblown.



Dr. Ray B. "Bucky" Owen, Jr., retired chair of the Wildlife Department at the University of Maine's flagship campus in Orono, who also served as Commissioner of MDIFW, does not consider the existence of northern pike in the Penobscot Watershed to be a major issue. In an Op-Ed piece in the Bangor Daily News, he pointed out that the best antidote to invasive species will be healthy populations of native anadromous fish, whose sheer numbers will help minimize any threat posed by non-native predators.

Ed Baum, former director of the old Atlantic Sea Run Salmon Commission, agrees. He points out that there is little habitat for northern pike in the Penobscot. They like still and weedy water, not the runs and riffles preferred by Atlantic salmon. When Mr. Baum started his career as a fishery biologist more than 40 years ago, he was engaged in active establishment

- continued on page 7

[Crooked River.. continued from page 1](#)

SMPI has alternative options for powering its sawmill. The opponents of the dam do not oppose the reconstruction of the historic site, only the damage to the even more historic population of indigenous landlocked salmon.

In the March, 2009 issue of Fly Rod and Reel, environmental writer Ted Williams quoted a conversation he had with Marilyn Hatch, which led to his comment that the dam proponents have a “vast and impressive misunderstanding of fish.”

That observation was borne out by the presentation made for SMPI to MBEP in support of the appeal. Scott Hatch, son of John and Marilyn, attacked the MDIFW comments in many particulars, but totally missed the point that it is the overall impact on the ecosystem formed by the Crooked River and Sebago Lake, not the square yards of spawning and nursery habitat in the area of the proposed impoundment, that underlie MDIFW’s concern and MDEP’s order.

The SMPI application was a real test of the 1983 Rivers Act. It is gratifying to know that the process works. As Dana Murch, the Dams and Hydropower Supervisor in the MDEP Bureau of Land and Water Quality pointed out to the MBEP during consideration of SMPI’s appeal, a similar application for a dam in many other rivers might have been

successful; but when the balancing tests of the statute were applied, the unique fishery resource was recognized as being of paramount importance.

In a separate but related proceeding, the Water Quality Reclassification bill reported out of Committee to the Maine Legislature upgrades the segment of the Crooked River at Scribner’s Mill from its existing classification as A to AA, the highest classification. No dams are permitted for AA waters. The rest of the Crooked River is already classified as AA. See related story on the reclassification legislation.

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MOUSAM AND KENNEBUNK RIVERS ALLIANCE FORMED

As this newsletter goes to print, plans are underway for the May 29 conference at the Wells Reserve: **The Mousam and Kennebunk Rivers: Past, Present and Future**. The conference will include information about research done on watershed histories and opportunities for restoring sea-run fish. At a Roundtable on the Rivers, participants will discuss current river-related projects from the headwaters to the sea, as well as visions for the future of the watersheds. Conference participants and others are invited to join efforts underway to improve the watersheds--the **Mousam and Kennebunk Rivers Alliance** has been formed by Maine Rivers in conjunction with the Wells Reserve and several local volunteers working to improve the watersheds. One goal of the newly formed Alliance is to begin work to update the fisheries restoration and management plan for the Mousam River; the existing plan dates back to 1955. Projects are underway to do water quality testing on the

Mousam River, assess habitat quality along the waterways, survey fish communities, and coordinate information about projects in the watersheds. For more information, contact Landis, landis@mainerivers.org or to volunteer, Jacob, jacobaman@wellsnerr.org



“Two Ladies at the Old Falls Dam” courtesy of the Maine Memory Network and the Sanford Historical Committee

WATER QUALITY RECLASSIFICATION LEGISLATION

Since the 1950s, all of Maine's waterways have been part of a classification system. As part of the Clean Water Act, Maine's Department of Environmental Protection (MDEP) must periodically review the quality of our surface waters, and propose a legislative upgrade of the classification of those waters that meet standards for higher classification. This process is in pursuit of the long-term goal to attain the highest possible quality for surface waters. There are four tiers of classification, AA, A, B and C, based on numerical and written standards for dissolved oxygen content and aquatic life criteria.

MDEP began the current process by consulting with resource agencies, municipalities, industrial users and non-governmental organizations such as Maine Rivers and its allies. It then presented a proposal to the Maine Board of Environmental Protection (MBEP), which held a public hearing, and recommended amendments for proposed upgrades to the Maine Legislature. The legislation, L. D. 330, has been reported out of the Joint Standing Committee on Natural Resources, and awaits floor action in both the Senate and House of Representatives. Most recommendations are not controversial, however, some have resulted in differences of opinion among members the Committee and resulted in a majority report and 2 minority reports.

1. **Crooked River.** This largest tributary of Sebago Lake is the home of a native strain of land-locked Atlantic salmon which spawn in the river and grow large in the lake. It The lake is also the source of drinking water for the City of Portland. The river is classified AA, the highest water quality category, except at Scribner's Mill, where the current classification is A. Dams are not permitted in AA waters, but are in A waters. Both MBEP and the majority Committee report recommend upgrade to Class AA, which would bar a future dam at Scribner's Mill. Reclassification would not affect the outcome of the proceeding on the application of Scribner's Mill Preservation, Inc. (SMPI) to construct a hydro-mechanical dam at Scribner's Mill.

2. **Kennebec River.** MBEP recommends upgrading the 10 mile segment from the Shawmut Dam to Messalonskee Stream from Class C to Class B.

Two impoundments (Hydro-Kennebec and Lockwood) in this segment would remain Class C, because of lack of data.

MBEP says that upgrade of the entire 25 mile main stem segment between Skowhegan and Messalonskee Stream, including all impoundments, from Class C to Class B should be a state water quality goal. It urges a cooperative effort to obtain the necessary data to characterize water quality in all 3 impoundments in this segment (Shawmut, Hydro-Kennebec and Lockwood).

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3. **Long Creek.** This stream is classified as C in both Portland and South Portland, but a 0.3 mile segment in Westbrook was inadvertently classified B in 1990. It does not meet Class B standards. For consistency, MBEP and the majority report recommend downgrade of this segment to Class C, however strong objections to this were voiced in the work session.

4. **Lower Androscoggin River.** Communities from Auburn and Lewiston all the way down to Merrymeeting Bay support upgrade of classification of this 30 mile segment from C to B. However, the amount of data necessary for the upgrade has been a source of controversy. Data collection efforts will go on over the summer, delaying a clear decision to upgrade the river.

The Norcross Wildlife Foundation provided funding for the publication and distribution of this issue of Making Waves.

Our mission is to protect, restore and enhance the ecological health of Maine's river systems

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RIVERFRONT COMMUNITY DEVELOPMENT BOND AWARDS

Three years ago, Maine Rivers and its partners, the Atlantic Salmon Federation and Natural Resources Council of Maine, recognized the need for the State of Maine to support local efforts to protect river front communities. We began to focus efforts on a state bond issue that would protect communities from unwise development, restore assets and enhance important habitat for fish and wildlife.

Working with the office of Governor John Baldacci, the Environmental Priorities Coalition, and with the sponsorship of Senator Peggy Rotundo and other key legislators, legislation was introduced in the 2007 session for a \$5 million bond, which was approved by the voters in November 2007.

Rules were developed and administered by the Maine Department of Economic and Community Development in 2008. Maine Rivers, ASF and NRCM took a vigorous role in ensuring that the process was consistent with the intent of the legislation. There was concern that the process might be “high-jacked” by developers more interested in money than in the purposes of the bond. A satisfactory process was developed, and applications were submitted and reviewed by MDECD and a citizen’s board.

DECD is charged with dispersing the funds but has no budget to oversee implementation. Maine Rivers has applied for a grant to follow the progress of the projects, with a view to publishing a report on their results, and to bolster support for another bond issue for further river protection in a future legislature.

In December, 2008, Governor Baldacci announced the award of \$4.9 million. The legislation took a leaf from the play book of the Land for Maine’s Future Board, and required that the bond funds be used in conjunction with matching funding from other sources. As a consequence, the bond funds leverage some \$41.7 million in other public and private funds.

A wide range of projects include public access to rivers, improvements to habitat, trails and waterfront parks. In East Machias, the funds will go toward renovating a building donated by Bangor-Hydro to the Downeast Salmon Federation after removal of the dam on the East Machias River. DSF will use it as an educational center and hatchery for Atlantic salmon in the program of restoration of these fish in Washington County.

In the Kennebec River Basin, with the guidance of Ken Young of the Kennebec Valley Council of Governments, successful recipients Gardiner, Augusta, Richmond and Skowhegan all tied their applications in to the Kennebec River Network. Pittsfield on the Sebasticook also received an award.



In Aroostook County, grant recipients include the St. John River towns of Fort Kent, Frenchville, Madawaska and Van Buren under the collective name of Grand Isle, as well as Houlton.

In the Penobscot Basin, Bangor, Orono and Milo all were successful applicants. In southern Maine, Biddeford and Saco, twin towns on the Saco River, received awards, as did Sanford on the Mousam River and Thomaston on the St. George River.

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THE CLEAN WATER RESTORATION ACT

In 1972, urged on by Senator Ed Muskie of Maine, the United States Congress enacted far-reaching reform legislation popularly known as the Clean Water Act. The law established the goal of constant improvement of water quality, created comprehensive standards for clean up of rivers, lakes and marine waters, and provided for federal funding to do so.

In the following years, municipal sewage treatment plants were constructed, industrial discharges were licensed and regulated, and development proposals affecting the nation's water bodies were considered by the Environmental Protection Administration (EPA), the Army Corps of Engineers, and various state agencies charged with protecting water quality.

Progress was often slow, funding was never enough, and there were many who resisted the concept that the quality of the nation's waters was more important than their ability to do what they wanted in the race for wealth.

Nevertheless, while the record was far from perfect, real progress in pursuing the goal of cleaner waters was made under the Nixon, Ford, Carter, Reagan, Bush 41 and Clinton administrations. By the year 2000, it could be said with a straight face that, generally speaking, the waters of the United States were noticeably cleaner than they had been three decades earlier.

When Bush 43 took office in 2001, the environmental community foresaw trouble. It was not long in coming. While it took several years for the full extent of the administration's disdain for environmental protection to be revealed, it was obvious early on that it would not be a strong advocate for protection of natural resources.

In 2001, the United States Supreme Court decided *Solid Waste Agency of Northern Cook County vs. Army Corps of Engineers*, a case that limited federal jurisdiction over isolated waters. While of concern, the case was not devastating. In 2006, the Supreme Court released its decision in *Rapanos vs. U.S.*, which really overturned the apple cart. In a "messy split decision," the majority

suggested various tests for jurisdiction over waters not directly connected to navigable waters, leaving the issue in a state of confusion, while the minority would limit jurisdiction only to navigable waters and wetlands directly connected to them.

Even so, had the Bush 43 administration not seen an opportunity to roll back protection of water as a result of the confusion arising from SWANCC and *Rapanos*, matters might not have been so bad. However, in 2003, EPA and the Army Corps effectively abandoned isolated waters, and in 2007 both agencies issued "guidance" which went far beyond any limitations required or suggested by *Rapanos*. The result is virtual abandonment of application of the Clean Water Act to a huge swath of the nation's waters which had been generally accepted as subject to the CWA prior to SWANCC and *Rapanos*.

The Clean Water Restoration Act, S. 787, sponsored by Senator Russ Feingold and 23 other Democratic and Independent senators would restore the jurisdictional concepts that existed under both EPA and ACE regulations prior to the Supreme Court decisions.

Federal jurisdiction over the nation's waters derives from the Commerce Clause of the United States Constitution. Over a long period, a series of Supreme Court decisions established federal jurisdiction over navigable waters. Navigability is one fundamental criterion for federal jurisdiction.

Just for example, the scope of the Federal Power Act rests upon the Commerce Clause, and the Federal Energy Regulatory Commission (FERC) does not regulate hydro-electric dams located on waters it deems non-navigable.

However, navigability may not be the only Federal jurisdictional criterion based on the Commerce Clause. The CWRA seeks to tie the scope of CWA coverage to the relationship of the quality of the nation's waters to interstate commerce through relationships other than navigability. This is a noble effort. Some very smart lawyers have drafted the language by which this result is sought. But it is probable that other very smart lawyers representing developers will attack the legislation if it is enacted, and eventually the question of the scope of the CWA will probably wend its way back to the Supreme Court. So the Fat Lady has yet to sing. Stay tuned.

ONWARD, KENNEBEC RIVER NETWORK!

The Kennebec River is an outstanding economic, social and environmental asset that should be protected from degradation. To advance this cause, the Kennebec Initiative has re-named itself the **Kennebec River Network**, concluding in April 2009 that the program has developed sufficient critical mass to become a viable networking program for communities, land trusts and others interested in the future of the river. Growing from a 2004 meeting at the Maine Maritime Museum in Bath, the program has been sponsored by the Maine Department of Conservation (MDOC). In the fall of 2008, the Kennebec River Council was established, with members from The Forks at the headwaters to Phippsburg at the mouth.

Reach Committees have now been established to build on the 2008 Action Plan which included input from more than 350 individuals. These Committees cover Phippsburg

to Augusta (the Tidal Reach), Augusta to Skowhegan (the Middle Reach), and Skowhegan to The Forks (the Northern Reach). Each Reach Committee has elected a chair, and started the heavy lifting to address water quality, land use, preservation of farmland, public access to water, fisheries, trails, economic development and “quality of place.”

The Kennebec River Network is staffed by Project Manager Ken Young (Executive Director of the Kennebec Valley Council of Governments), and Project Director Josh Platt (Kennebec Soil and Water Conservation District). Chair of the Kennebec River Council is Clinton B. “Bill” Townsend. Chair of the Tidal Reach Committee is Carrie Kinne, Executive Director of the Kennebec River Estuary Collaborative. Chair of the Middle Reach Committee is Michael Duguay, Director of Economic Development for the City of Augusta. Chair of the Northern Reach Committee is Dr. John D. Gibson III, president of Somerset Woods Trustees.

MAINE RIVERS WELCOMES NEW BOARD MEMBERS



Maine Rivers is pleased to welcome Dan Marra of Winslow as a new member of the Board of Directors. A long time board member of the Kennebec Valley Chapter of Trout Unlimited, Dan lives on the Sebasticook River and can frequently be found fishing in, or paddling on, one of Maine’s rivers or streams. A graduate of Colby College and the University of Maine School of Law, Dan practices law in Waterville.



Ted Koffman has also joined the Maine Rivers Board. Ted is now the Executive Director of Maine Audubon but previously served for eight years in the Maine House of Representatives. He is the most recent recipient of the Maine League of Conservation Voters’ Environmental Leadership Award.

Northern Pike.. continued from page 3

of northern pike in Rhode Island, which proved to be very difficult. So he knows first-hand that it is not a given that northern pike will run rampant.

Northern pike are well established in the Belgrade Lakes, part of the Kennebec River system. In spite of their presence for over 30 years, there is little indication that they have moved into other parts of the watershed. Elsewhere, northern pike have co-existed with salmonids in Canada since the retreat of the glaciers. In Quebec and Labrador, healthy populations of brook trout and land locked and sea run Atlantic salmon share waters with northern pike, with no apparent detriment. In western Canada and Alaska, Pacific salmon, Arctic char and grayling flourish in the presence of northern pike. In Europe, Atlantic salmon and sea-run brown trout share the brackish waters of the Baltic Sea with northern pike.

PRRT project managers have been working with Maine’s fisheries agencies to ensure that factual information is available to realistically assess the threat of pike and to keep people informed about the tremendous benefits that come from restoring native sea-run fish. The bottom line is that the opponents of the Penobscot River Restoration Project seem unlikely to derail it.



Maine Rivers

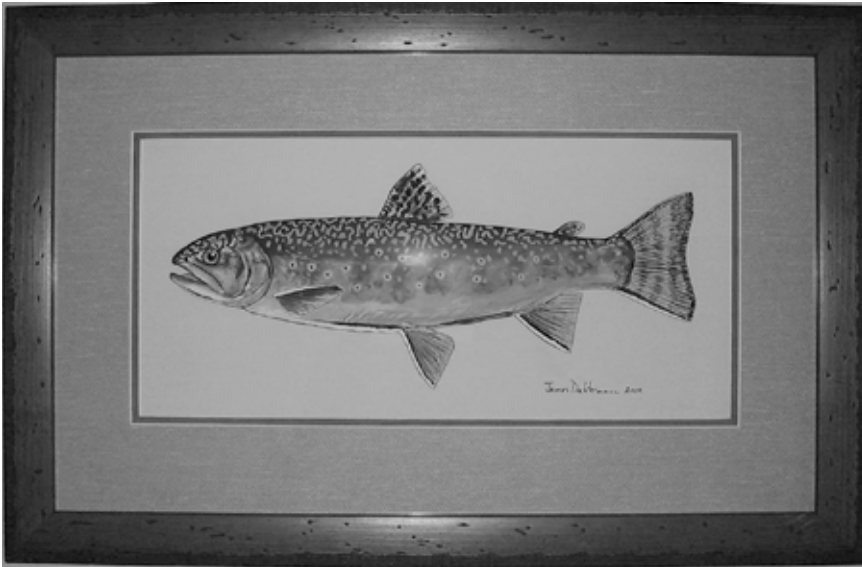
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**Crooked River Dam Appeal
Denied, see page 1**



WIN THIS BROOKIE!

Drawing will be held November 18, 2009

Win a spectacular piece of art by James Dochtermann. Matted, framed and ready to hang, this work was done in watercolor on gouache, masterfully capturing the vibrant and distinctive colors of a wild brook trout. Jim's painting are featured in the 2008 book "Fish of Southern Maine and Seacoast New Hampshire." Proceeds from the raffle will go to our river restoration efforts!

Please go to www.mainerivers.org to see a full color image of the painting.

Drawing will be held November 18, 2009

Ticket price: \$5 per ticket or 5 for \$20 (please note how many you would like, we will make copies of the ticket).

Clip and mail the above ticket with a check payable to Maine Rivers and mail it to: Maine Rivers, 81 Bridge Street, Yarmouth, ME 04096

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