

Aquatic Resource Laws and Policies



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Eastern Brook Trout (USFWS). Atlantic salmon parr (USFWS/E. Peter Steenstra).

Presentation Goals

- Provide an overview of federal and state laws that apply to aquatic resources and that regulate development and industry.
- Discuss ways to manage and protect aquatic habitat while maintaining sustainable economic development.
- Present resources available for developers to assess their projects and determine how listings will affect project budgets and timetables.
- ****Focus on Maine's Site Law****

Overview of Federal and State Regulatory Agencies

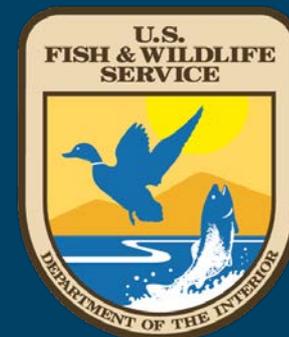
- Federal
 - U.S. Environmental Protection Agency (EPA)
 - U.S. Fish and Wildlife Service (USFWS)
 - U.S. Army Corps of Engineers (ACOE)
 - National Marine Fisheries Service (NMFS)
- State
 - Maine Department of Environmental Protection (MDEP)
 - Maine Department of Inland Fisheries and Wildlife (MDIFW)
 - Maine Land Use Planning Commission (LUPC)

Federal Regulations

- What is a “federal nexus”?
 - Applies to any project that is authorized, funded, or permitted by a federal agency.
 - Projects with a federal nexus involve a “lead federal action agency.” Such as the Department of Energy (DOE) for interstate transmission projects or the ACOE for Clean Water Act administration.
 - For regulated species, the federal action agency must consult with the U.S. Fish and Wildlife Service to ensure compliance with the federal Endangered Species Act.

Federal Regulations

- U.S. Environmental Protection Agency
 - Clean Water Act Section 404
- U.S. Fish and Wildlife Service
 - Endangered Species Act
 - Bald and Golden Eagle Protection Act
 - Clean Water Act
 - Migratory Bird Treaty Act
- U.S. Army Corps of Engineers
 - Clean Water Act Section 401
- National Marine Fisheries Service
 - Endangered Species Act



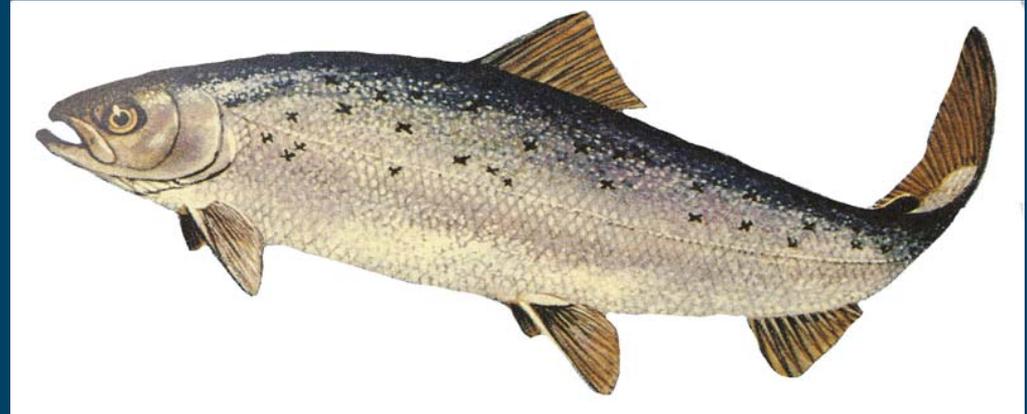
State Regulations

- Maine Department of Environmental Protection
 - **Site Location of Development Act (Site Law)**
 - Natural Resources Protection Act (NRPA)
 - Stormwater Management Law
- Maine Department of Inland Fisheries and Wildlife
 - Maine Endangered Species Act (MESA)
 - **Site Law (reviews applications)**
 - NRPA (reviews applications)
- Maine Land Use Planning Commission
 - Site Law certification and technical assistance



Federally Listed Aquatic Species

- Endangered
 - Atlantic Salmon (*Salmo salar*), Gulf of Maine DPS
- Threatened
 - Atlantic Sturgeon (*Acipenser oxyrinchus oxyrinchus*), Gulf of Maine DPS

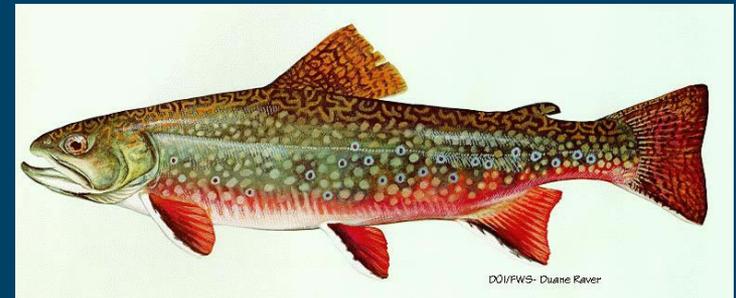


State-Listed Aquatic Species

- Endangered
 - Redfin Pickerel (*Esox americanus americanus*)
 - Rapids Clubtail (*Gomphus quadricolor*)
 - Six-whorl Vertigo (*Vertigo morsei*)
 - Blanding's Turtle (*Embydoidea blandingii*)
 - Box Turtle (*Terrapene carolina*)
- Threatened
 - Swamp Darter (*Etheostoma fusiforme*)
 - Boreal Snaketail (*Ophiogomphus colubrinus*)
 - Ringed Boghaunter (*Williamsonia lintneri*)
 - Brook Floater (*Alasmidonta varicosa*)
 - Tidewater Mucket (*Leptodea ochracea*)
 - Yellow Lampmussel (*Lampsilis cariosa*)
 - Roaring Brook Mayfly (*Epeorus frisoni*)
 - Tomah Mayfly (*Siphonisca aerodromia*)
 - Spotted Turtle (*Clemmys guttata*)

Also!

- State Species of Special Concern
- Eastern Brook Trout (*Salvelinus fontinalis*)



Maine's Site Location of Development Act

Wildlife References, DEP Chapter 375

Section 5. Erosion and Sedimentation Control

Section 8. No Unreasonable Adverse Effect on Ground Water Quantity

Section 9. Buffer Strips

Section 12. Preservation of Unusual Natural Areas

Section 15. Protection of Wildlife and Fisheries

“The Board recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptibility of certain species to disruption and interference by construction activities.”

****DEP will ask MDIFW to review applications for effects on wildlife.****

Maine Department of Inland Fisheries and Wildlife

- MDIFW mandate “...to preserve, protect, and enhance the inland fisheries and wildlife resources of the State; to encourage the wise use of these resources; to ensure coordinated planning for the future use and preservation of these resources; and to provide for effective management of these resources” (12 MRSA § 10051)
- MDIFW commissioner “has general supervision of the administration and enforcement of the inland fisheries and wildlife laws and has the responsibility for the management of all inland fish and wildlife in the State” (12 MRSA § 10103(2))
- Maine’s state agencies and municipal governments may not permit, license, fund, or carry out projects that will significantly alter habitat for any threatened or endangered species (12 MRSA § 12806).
- The commissioner can review applications and certify that actions “would not pose a significant risk to any population of endangered or threatened species within the state” (12 MRSA § 12806).
- ****MDIFW effectively has jurisdiction over all fish and wildlife in Maine through the Site Law application review process.****

Wind Project Case Study – MDIFW Comments

- Impacts to coldwater fisheries
 - Lost buffer habitat to coldwater fisheries.
 - “Regardless of whether they are perennial or ephemeral in nature, and regardless of whether or not they are in the Atlantic salmon DPS, these waters provide critical linkages to downstream resources for many species, including brook trout.”
 - “Maintaining buffers along coldwater fisheries is critical to the protection of water temperatures, water quality, and inputs of coarse woody debris necessary to support conditions required by brook trout.”
 - “MDIFW recommends that the 100-foot buffer be maintained along *all* streams, including intermittent and ephemeral streams, within the Project area.”
 - Effects from temporary and permanent fill.
 - “..Use of existing roads and culverts built during previous forestry operations are now a partial responsibility to the Project applicant through their changes in composition and use... The replacement of crossings with appropriately-sized structures will restore lost stream connectivity and significantly enhance life history requirements in these streams...MDIFW recommends...that all new, modified, and replacement stream crossings be sized to span 1.2. times the bankfull width of the stream.”

Wind Project Case Study – MDIFW Comments

- Impacts to coldwater fisheries (continued)
 - “For the protection of coldwater fisheries, all instream and all adjacency work within 100 feet should be conducted between July 15 and September 30, and all riparian vegetation should be allowed to grow back to the maximum extent possible.”
- Impacts to northern bog lemming
 - New data indicates that “...lush sphagnum peatlands at almost any elevation are sometimes used... the species may be found in Maine at any riparian area with abundant streamside herbaceous vegetation at elevations around 1,000 feet.”
- Brook floater and yellow lampmussel
 - “Because these species require clean, free-flowing riverine habitat, they are especially vulnerable to impacts from pollution, sedimentation, dams, and surrounding land use practices that degrade or alter their aquatic habitat.”
 - Site-specific riparian buffers need to be maintained.

General Recommendations

- Schedule pre-application and pre-submission meetings with state and federal regulatory agencies.
- Hire consultants that have experience and history working with state and federal regulatory agencies.
- Conservation measures are available to mitigate impacts from many development practices.
- Plan ahead for time needed to meet with agencies, assess critical issues, prepare surveys, conduct field surveys at appropriate times of the year, prepare survey reports, allow for agency review and comment, and revise plans and reports.



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