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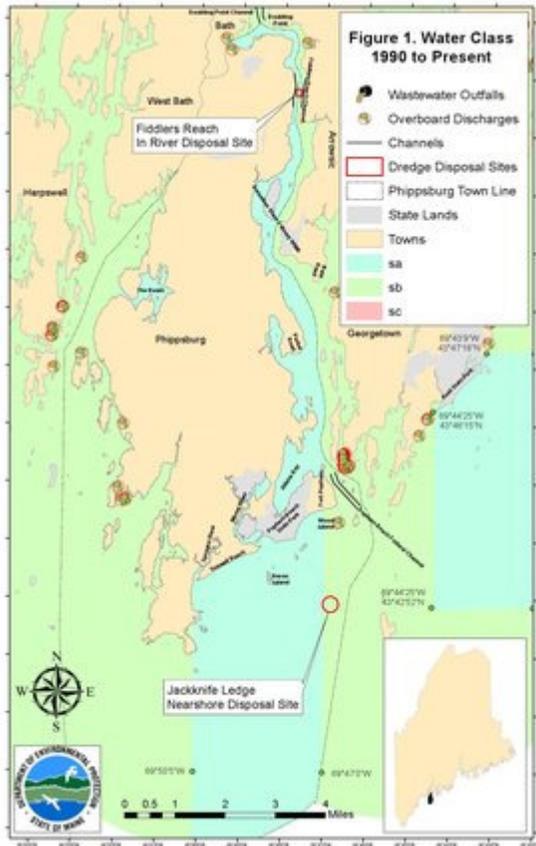
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Dredging of the Kennebec in high season?

Posted Wednesday, April 27, 2011 in [Investigation](#)



This map shows the dredging and disposal areas along the Kennebec River and offshore from Popham Beach.

by Gina Hamilton

BATH – The Kennebec is a tidal river, and because of that, marine sediments as well as freshwater sediments often mix at the mouth of the river, creating sandy shoals from the mouth of the river all the way up to Doubling Point, near Bath. For most users, this is not a significant problem; the Kennebec channel is typically deep enough for most river traffic. At Doubling Point Light, according to a survey in February, the depth of the river channel ranges from 20 to 22 feet; at Popham Beach, the depth rises to about 27 feet.

The depth nearer BIW at Doubling Point is not quite deep enough in the channel for the large destroyers built at BIW. However, BIW pilots safely navigated a new ship outside of the regular shipping channel during sea trials in February without mishap.

However, that was in February; and the *USS Spruance*, a Navy destroyer of the Arleigh Burke class, will be leaving BIW for the last time around Sept. 1, when the water level in the river will be as low as it gets.

The Army Corps of Engineers (ACE) has requested a permit to do summertime dredging of the lower Kennebec, during the most productive time in the lower river's year: tourist high season, and (barring any red tide) the height of clamming season. It is also a productive time for lobstering, a major occupation for those who make their living along the river and in the estuary.

Their plan is to dump the dredge spoils in two locations - an in-river location at Fiddler's Reach, in a section of the river also called the Kennebec Narrows, in Phippsburg, and at Jackknife Ledge, just offshore from Popham and Seawall Beaches.

Normally, any necessary dredging is done in the late fall or early spring. Although ACE had a standing permit to dredge in the fall and spring, and the Navy had requested the dredging by November at least, the Corps delayed the operation, instead, planning it for the summer. According to a spokesman at ACE, the delay occurred when the Navy did not signal its request early enough to arrange for contract bids in the late fall or early spring. Combined with a hard winter and wet spring, the Corps elected to go with an unusual August date.

Reclassification of the lower Kennebec

Not that the date is fixed yet; the Army Corps does not yet have the necessary permits to dredge, and another snag – the fact that the lower Kennebec estuary on the Phippsburg side is classified SA (the highest water quality possible) – has put yet another damper on the potential operation. Discharges are not allowed in SA waters, and dumping dredging spoils is considered a discharge.

According to Ed Friedman of the Friends of Merrymeeting Bay (FOMB), the Maine Department of Environmental Protection is now claiming that the designation of the Phippsburg side of the river in the Kennebec Narrows area, near Fiddler's Reach, as Class SA (where the Army Corps of Engineers would like to dump their dredge spoils) was an "error" in 1990. However, a look at the original documents, designating that part of the river and the beach area as SA, is of such specific intent that it is difficult to accept that a typo created the SA designation.

To be classified as SA, waters must be outstanding natural resources which should be preserved because of their ecological, social, scenic, economic or recreational importance. In Phippsburg, all of this is true. Several endangered bird species (including the least tern) nest in the Phippsburg area. The Fiddler's Reach area is also a seasonal home to the Atlantic sturgeon and is a migration path for the extremely endangered wild Atlantic salmon, considered so valuable to Maine's ecology that dams well upriver were removed just a few years ago.

The region is valuable for its intertidal life, as well. Salt marshes are the nurseries of ecologically and economically valuable species all along the Kennebec Narrows.

This area of the Kennebec is home to clam flats, and nurseries for lobsters, two of the largest economies in coastal midcoast Maine, and it is seasonally a tourist destination for those from out of state as well as those who live just inland. Kayakers and small boaters use the Fiddler's Reach area; hikers spend time at Phippsburg's land trusts and Morse Mountain, operated by Bates College close to Small Point; there is seasonal camping at Maine's only beach campground at Hermit's Island.

Steve Hinchman, an attorney who is representing the shellfish community, homeowners and business owners in Phippsburg, says that the downgrade would be a catastrophe for the region.

“When the Army Corps of Engineers dumps dredging spoils here, there is a foot of sand and muck or more, wiping out all the life in the intertidal zone,” he said. That includes the clams, especially the fragile juveniles. During the last dredging, which took about half the amount of silt and sand expected to be taken this time, it took years for the shellfish to recover, and there is still 2-6 inches of muck in certain areas. “The Corps could dredge minimally, and take the spoils to designated places. But they want to do this cheap and dirty,” Hinchman said. One such designated dump site is not far from Portland.

Hinchman said that one of the two dump sites, the Kennebec Narrows at Fiddler's Reach, is known by the Maine Geological Survey to be in such a tidally active region that spoils dumped there are carried very quickly back to Doubling Point, the dredging site. "Not only would it be disastrous for the local economy, it makes no long-term fiscal sense for the Army Corps of Engineers, either," he said.

Hinchman pointed out that previous dumps in the area were also illegal, and that the clammer's concerns had simply been ignored by the Army Corps of Engineers and the Navy. This time around, they consulted legal help and are much more engaged in preventing the dumping of dredge spoils in the fragile estuary.

"We recovered the Kennebec to the point where it is one of the most important shellfish operations in the state, and a large population in the area makes their living off clamming and lobstering," Hinchman added. "We've worked too hard and spent too much money cleaning up our rivers to allow this to happen again."



A view of Fiddler's Reach from the public landing at Morse Cove, a popular boat launch in the dump area.

An end run around the law?

Maine is attempting to do an end run around the issue of designation by claiming that the designation was in error at the time of the original finding, Hinchman believes. In a white paper draft by Susan Davies, water quality standards coordinator at Maine DEP, dated in March of this year, she acknowledges that the original designation of SA occurred at the coordinates cited, but interprets it to

be an error based on "clear intent" to protect the Popham Beach area based on different wording about the protection of Reid State Park on the Georgetown side.

Calls to Davies were not returned by presstime.

“That’s a fairy tale,” Hinchman said. “The Environmental Protection Agency will have to be convinced that it was a simple error. They can’t just make this change buried in an omnibus bill.”

Which is apparently the intention. Wording in the 2011 omnibus bill "corrects" the language of the 1990 water-quality law. Even so, according to Ed Friedman, downgrading the Narrows may not make the dredge-spoil dumping there any more legal.

From Maine law 38MRSA §465-B:

C. Discharges to Class SB waters may not cause adverse impact to estuarine and marine life in that the receiving waters must be of sufficient quality to support all estuarine and marine species indigenous to the receiving water without detrimental changes in the resident biological community. There may be no new discharge to Class SB waters that would cause closure of open shellfish areas by the Department of Marine Resources. For the purpose of allowing the discharge of aquatic pesticides approved by the department for the control of mosquito-borne diseases in the interest of public health and safety, the department may find that the discharged effluent will not cause adverse impact to estuarine and marine life as long as the materials and methods used provide protection for nontarget species. When the department issues a license for the discharge of aquatic pesticides authorized under this paragraph, the department shall notify the municipality in which the application is licensed to occur and post the notice on the department's publicly accessible website. [2007,c.291,§7 (AMD).]

In other words, dredge-spoil dumping, even in Class SB waters, is not legal if by doing so it causes any adverse impact to the biological community or closes shellfish areas.

The high cost of high-season dredging

Clearly, the dumping of dredge spoils adversely impacts the shellfisheries of the estuary. Anna Bourakovsky, a representative of the Maine Department of Marine Resources, told the Phippsburg Shellfish Conservation Committee at a meeting of the committee on March 24 that harvesting of shellfish must be suspended during any dredging of the estuary in the vicinity of Phippsburg. That means that the 40 licensed diggers will each lose an estimated \$375 a day for each day the dredging is carried out. This has not been an issue in past dredgings which took place during the recommended time period for such work, Nov. 1 to April 30.

The estimated losses are based on an average harvest per digger of two and a half bushels at \$150 per bushel when sold to local shellfish dealers. According to Bob Cummings, on the Shellfish Commission in Phippsburg, this would be disastrous for the region’s economy.

“Some harvesters harvest five or more bushels of softshell clams per day, and sell their product directly to restaurants at a higher price, and their loss would be significantly higher,” he said. “Local stores typically sell softshell clams for \$4 a pound, or \$200 for a 50-pound bushel. Also impacted would be harvesters from Georgetown and Arrowsic. All told the loss of income for the 40 licensed diggers in Phippsburg during 30 days of dredging will total between \$400,000 and \$500,000, and perhaps significantly more as the summer wholesale price of clams has been increasing annually.”

Lobster fishermen would also have to pull gear out of the water during the dredging and dumping operations, losing income at the most productive time of the year. Also expected to be impacted would be seashore businesses, such as Spinney's in Popham Village, owing to the noise and water disturbance that would make Popham Beach less attractive to visitors at the height of the tourist season.

In past dredging, the Army Corps of Engineers did not obtain the necessary 401 water-quality determination and Maine Pollutant Discharge Elimination System (MePDES) permit to dump spoils in either a Class SA or SB waterway. It is also a violation of the Clean Water Act, and may have implications for the Endangered Species Act, with respect to the Atlantic salmon, least tern, and two species of threatened sturgeon, and the Marine Mammal Act with respect to a group of harbor seals that lives in and around Fiddler's Reach.

Clean Water Act and Maine law

But just the act of downgrading the river's quality without a full review by the EPA constitutes a breach of the Clean Water Act, Friedman of FOMB says. In a letter to Robert Green of the Maine DEP and copied to Bill Kavenaugh of the U.S. Army Corps of Engineers (USACE), Friedman writes:

“The Clean Water Act prohibits the downgrade of a waterbody classification without first conducting a Use Attainability Analysis [UAA], submitting the UAA to the EPA for review and receiving approval for the proposed reclassification from the federal agency. We have been told there will be a proposed downgrade to SB of the Phippsburg river section now SA contained in an upcoming Omnibus bill before the legislature. Without at least a 45-day public notice [the federal standard], the legislature simply cannot reclassify a waterbody.”

Friedman cited the following Maine law, as well:

Reclassification is also governed by 38 MRSA §464:

2. Procedures for reclassification. Reclassification of state waters shall be governed by the following provisions.

A. Upon petition by any person or on its own motion, the board may initiate, following public notice, and the commissioner shall conduct classification studies and investigations. Information collected during these studies and investigations must be made available to the public in an expeditious manner. After consultation with other state agencies and, where appropriate, individuals, citizen groups, industries, municipalities and federal and interstate water pollution control agencies, the board may propose changes in water classification. [1989,c.890,Pt.A,§40(AFF);1989,c.890,Pt.B, §54 (AMD).]

B. The board shall hold public hearings in the affected area, or reasonably adjacent to the affected area, for the purposes of presenting to all interested persons the proposed classification for each particular water body and obtaining public input. [1989,c.890, Pt.A,§40(AFF);1989,c.890,Pt.B,§54(AMD).]

C. The board may recommend changes in classification it deems necessary to the Legislature. [1985,c.698,§15(NEW).]

D. The Legislature shall have sole authority to make any changes in the classification of the waters of the State. [1985,c.698,§15(NEW).] [1989,c.890,Pt.A,§40 (AFF);1989,c.890,Pt.B,§54(AMD).]

2-A. Removal of designated uses; creation of subcategories of designated uses. Removal of designated uses and creation of subcategories of designated uses are governed by the provisions of this subsection and 40 Code of Federal Regulations, Part 131, as amended.

A. The board must conduct a use attainability analysis:

(1) Prior to proposing to the Legislature a designated use of a specific water body that does not include the uses specified in the Federal Water Pollution Control Act, Public Law 92-500, Section 101(a)(2), as amended; or

(2) Prior to proposing to the Legislature the removal of a designated use or the adoption of a subcategory of such a designated use that requires less stringent criteria. [1993,c.344,§1(NEW).]

Friedman concluded: “Until such time as the EPA has approved a UAA proposing a lower classification, this reach of water shall remain SA and discharge of pollutants are prohibited.”

Erosion at Popham Beach

Two years ago, Popham Beach became a mere shadow of its former self. The Morse River, which flows into the ocean at Popham Beach, dividing the state park from Seawall Beach, had shifted course. Two parallel sandbars arose offshore, keeping river water from flowing in and out with the tides, instead forcing it to run parallel to the beach. This caused severe erosion to the beach, and for two years, there was concern that Popham would disappear.



An eroded dune at Popham Beach

Now, it appears that there may be a link between beach erosion and offshore dumping of dredge spoils near Popham Beach, at the site called Jackknife Ledge.

Although the correlation between previous dumpings at the ledge and Morse River changes are strong, the Maine Geological Survey says that the Morse River has a history of erosion and accretion, and the correlation may be a coincidence. Even so, there has been concern about the dumping over the last 30 years, and ironically, moving the dump site to Jackknife Ledge (directly opposite the mouth of Morse River) to keep the sand from the dredging within the Popham/Seawall Beach sand budgets may have directly caused the formation of the sandbar that led to Popham's erosion issues over the last decade.

More study would need to be done on this issue, but the Army Corps of Engineers, in relying on a 30-year-old study from before the move to Jackknife Ledge, is not interested in more studies.

In a letter to the Army Corps of Engineers by Dot Kelly, a resident of the Fiddler's Reach region who has seen first-hand the devastation of the spoil dumping there, she addresses the serious concerns about the Popham Beach dump site:

"Concerns that the erosion at Popham Beach may be linked to dredging and disposal activities in or near the Kennebec River was voiced in the first Environmental Assessment (EA) prepared in 1980 for

the dredging and in-water disposal for the Lower Kennebec River. However, the 2011 Draft Environmental Assessment does not discuss erosion at Popham Beach or provide any information about the current scientific understanding of the Popham Beach erosion/deposition system and how it relates to off-shore sand bars and disposal at Jackknife Ledge.

The 1980 EA, over 30 years old, discussed the controversy and on page D-2 pointed out the need for further investigation:

There is at least a possibility in some people's opinion that Corps dredging in the Kennebec River has resulted in the erosion that Popham Beach is now experiencing by depriving it of sand.

This ... point demands further investigation, as it finds the State of Maine and the Corps holding differing opinions on cause and effect relationships of the erosion of Popham Beach. The State of Maine (specifically a former State Geologist) believes that a strong causal relationship exists.

It is the position of the Corps of Engineers that no definitive link between dredging and Popham Beach erosion has been shown."

Bill Kavanaugh, from the Army Corps of Engineers, says that he believed that the Popham Beach question had been conclusively settled, but agreed to look at the data again in light of new concerns.

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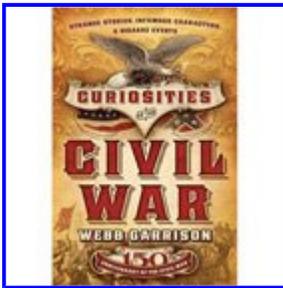
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