

STEPHEN F. HINCHMAN
ATTORNEY AT LAW

June 1, 2011

Kurt Spaulding, Regional Administrator
Environmental Protection Agency, Region One
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Colonel Philip T. Feir, Commander and District Engineer
U.S. Army Corps of Engineers, New England
696 Virginia Road,
Concord, MA 01742-2751

Re: August Dredging of the Kennebec River, Maine

Dear Mr. Spaulding and Colonel Feir,

On behalf of the Town of Phippsburg, the Phippsburg Shellfish Conservation Commission, the Phippsburg Land Trust, the Kennebec Estuary Land Trust, Friends of Merrymeeting Bay, Bob Cummings, Lawrence Pye, Dean Doyle, Dot Kelly, Captain Ethan DeBery, and Laura Sewall (together as “Commenters”), I am writing to express Commenters’ deep concerns about the Army Corps of Engineers proposed full scale hydraulic dredging and overdredging of the Kennebec River this August.

Over the last 25 years, in a series of decisions in 1989, 1997, 2000, and 2002, every state and federal permit to dredge the federal navigation project (“FNP”) in the lower Kennebec River and Estuary has prohibited *any* dredge work in summer in order to minimize environmental impacts, particularly to endangered sturgeon. The most recent permit, a 10-year license issued by the state in 2002 which is still in effect, expressly prohibits maintenance dredging or advanced maintenance dredging of the FNP by hydraulic dredge except between Dec. 1 and March 1, and by mechanical dredge except between Nov. 1 and April 30.

Last year the Navy requested that the Corps dredge the FNP to enable passage of the newly built U.S.S. Spruance for sea trials in February and final delivery in September. The Corps, however, was unable to dredge during its open permit window last winter. The Spruance safely transited the river this spring for sea trials, but there are still concerns about the September delivery. Thus, the Corps is seeking a special permit to dredge the river in August.

Unfortunately, the Corps is not simply seeking to conduct minimal dredging at the single reach of river where shoals present a potential barrier to the Spruance. Instead, the Corps is seeking permits for full scale hydraulic dredging – plus over-dredging by an extra two to five feet – of over 37 acres of river bottom at two locations, and to dump dredge spoils in-river (50,000 cubic yards at the Kennebec Narrows) and near-shore (20,000 cubic yards off Jackknife Ledge).

Commenters are concerned that dredging and dumping on this scale in August would be devastating, both to the river and shore environments and to the Phippsburg community. It could smother some of Phippsburg's most productive lobster grounds and shellfish flats at a time of year when lobstering and clamming are busiest and most profitable. It will cloud water quality and ruin striper fishing; it will likely kill or injure large numbers of endangered Atlantic salmon and shortnose sturgeon, as well as many of the other fish species migrating down the Kennebec in August. It may drive recreational boaters, fishermen, beach-goers and other tourists out of the area at the height of the season.

Even the Corps' staff has acknowledged that the impacts of dredging in August are severe: project manager Bill Kavanaugh wrote to the Maine DEP and DMR on April 5, 2011, "we're all in agreement that August isn't the best month for dredging – in fact it probably can't get any worse relative to the Kennebec."

Nonetheless, the Corps is pressing forward with a full scale summer project. Despite the lack of an environmental assessment or a biological opinion and incidental take statement for shortnose sturgeon and salmon (or Atlantic sturgeon, which is proposed for listing), the Corps has already completed and closed its public comment period, issued its "Construction Solicitation and Specifications" (#W912WJ-11-B-0002), and obtained a 401 water quality certification and wetlands permit from the state.

Commenters have appealed the state licenses to the Maine Board of Environmental Protection, and have submitted a letter to the Corps regarding violations of NEPA and the section 404(b)(1) guidelines¹. Commenters believe the action as proposed will violate both state and federal laws. Specific problems include:

- Failure to consider less environmentally damaging practicable alternatives (including minimum dredging; upland/offshore disposal; and mechanical dredging);
- Violation of Maine Class SA and Class SB water quality standards from disposal of 70,000 cubic yards of dredge spoils in-river and near-shore;
- Failure to meet the 40 C.F.R. § 230 guidelines for evaluation of dredging and disposal sites;
- Harassment, injury and death of endangered sturgeon and salmon; and
- Failure to analyze and disclose reasonably foreseeable and locally intensive economic impacts to area lobstermen, shellfish harvesters, fishing guides, boaters, and tourism and recreation businesses.

Commenters believe these impacts are wholly unnecessary and can be avoided. To the extent summertime dredging proves necessary at all, an emergency minimal dredge using mechanical clamshell buckets would be sufficient to clear a safe path for delivery of the Spruance and yet avoid the severe consequences that a full scale summer dredge would cause to the river, endangered and commercial fish species, and the many local businesses that depend

¹ Copies of these documents, and related comments and appeals are available at: <http://www.friendsofmerrymeetingbay.org/cybrary/#legal>.

upon clean water. Reduced spoils could then be affordably disposed of upland or in the existing ocean dump site off Portland.

Commenters request that your agencies take a closer look at this project and consider solutions that could avoid the above legal concerns. Commenters also request that a staff person from the Regional Administrator's and District Engineer's offices be assigned to this case. In turn, Commenters will make available any and all members of the group and/or counsel to discuss solutions with your agencies.

Commenters understand and support the need to keep the FNP in the Kennebec River open to allow transit of deep draft ships to Bath Iron Works. But, consistent with federal law and common sense, we request dredging be done in a manner and during the season of year that produces the lowest possible impact to the other users and resources on the Kennebec.

The Phippsburg region depends upon both ship-building and fishing/tourism. We need a solution that will keep each of these sectors of our economy strong and healthy. Full scale dredging in August is the wrong approach.

Thank you for your consideration of our concerns, and please let us know if we can provide any additional information.

Sincerely,



Stephen F. Hinchman, Esq., counsel for
Commenters

Cc: Nancy Stoner, Acting Assistant Administrator, EPA Office of Water
David Evans, Director, Wetlands Division, Office of Wetlands, Oceans and Watersheds
Mary Colligan, Director, Protected Resources Division, NMFS Northeast Regional Office
Sen. Olympia Snowe
Sen. Susan Collins
Rep. Chellie Pingree