



June 7, 2022

Mr. Kyle Olcott
Hydropower Coordinator
Bureau of Land Resources
Maine Department of Environmental Protection
State House Station 17
Augusta, ME 04333

Re: Pejepscot Hydroelectric Project Draft Water Quality Certification

Dear Mr. Olcott:

The Atlantic Salmon Federation (ASF) respectfully submits the following comments on the Maine Department of Environmental Protection's (MDEP) Draft Water Quality Certification (WQC) for the Pejepscot Hydroelectric Project. ASF is concerned with two issues. The first is related to fish passage and impacts of the Project on the diadromous fish community, and the second is whether MDEP applies Class C or Class B water quality standards to the Project.

In addition, ASF would also like to ask MDEP to establish a clearer process for public review and comment of Draft WQCs. As you are aware, I had been checking the MDEP Website for the Draft WQC periodically this spring and it was not until reaching out late last week that I found out that the Draft had been issued. It seems that many of the other organizations that have been involved in issues around water quality or diadromous fish in the Androscoggin were also unaware of the Draft WQC. This left many of us scrambling to understand what was happening and we only had about a day to review and develop comments.

Water Quality Classification

ASF is one of many conservation and environmental organizations that supported the reclassification of the lower Androscoggin River from Class C to Class B. This reclassification was approved by the Maine Legislature and signed into law earlier this spring by the Governor. We believe that Class B standards should apply to section of the lower Androscoggin affected by the Pejepscot. We understand that the reclassification will not legally take effect until later this summer, but given the clear intent of the Legislature, Governor, and the Maine Board of Environmental Protection, and the fact that the applicant's own studies have shown that Class B standards are being achieved, we feel strongly that Class B standards should be incorporated into the final WQC.

Diadromous Fish Species and Fish Passage

ASF is concerned that the proposals from the applicant incorporated in the Draft WQC are insufficient with respect to minimizing the Pejepscot Project's impacts on diadromous species



and to guaranteeing safe, timely, and effective upstream and downstream fish passage at the Project. The Settlement Agreements (SA) between the applicant and the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service outline the actions that the applicant will take regarding diadromous species at the Project. Specifically, the SAs discuss performance standards and establish an iterative process for studying and implementing changes to the Project to address impacts on diadromous species. There is great merit to this, however, the specific language in the SA with NMFS around performance standards, schedule, and process provides no certainty that meaningful restoration of diadromous fish species above the Pejepscot Project will happen in the immediate future. For example, with respect to performance standards for alosines (American shad, alewife, and blueback herring), the NMFS SA only mentions “anticipated performance standards” that “may be similar to those required on other river systems.”¹

The upstream passage studies completed at Pejepscot found that the existing fish lift is an almost complete failure at passing American shad and alewife, with estimated passage effectiveness of 0% and 19.8% for the two species, respectively. This is a situation that calls for immediate and significant action. Instead of following the uncertain language within the SA, which is also reflected in FERC’s Draft Environmental Assessment (EA), MDEP should establish clear, immediate, and binding performance standards for alosines and Atlantic salmon in the WQC. For alosines, the applicant has already agreed to meet an upstream passage effectiveness standard of 70% passing within 48 hours and a downstream standard of 95%, so these standards should be required within the WQC. Standards for Atlantic salmon are to be determined by NMFS, but these are likely to be 95% or greater for both upstream and downstream passage.²

In addition, the Draft WQC only requires that MDMR be consulted by the applicant when setting the annual fish lift operating schedule and lift frequency. ASF believes that MDMR (and/or MDEP) needs to have greater authority in all facets of the decision-making process related to fish passage. Strengthening the language around this in the final WQC will help ensure that the ambiguity within the SA with NMFS and the FERC Draft EA does not lead to lengthy delays or stalemating. One only needs to look at the situation with the Brunswick Hydroelectric Project, located four miles downriver from Pejepscot, to understand our concern. Per MDEP’s 2018 / 2020 / 2022 Integrated Water Quality Monitoring and Assessment Report (May 25, 2022):

The segment of the lower Androscoggin River between the Pejepscot Dam and the Brunswick Dam is listed in Category 4-C (impaired by non-pollutant) based on information from DMR that this segment fails to support an indigenous species of fish, the American shad, as required by statute. The dam at Brunswick and the associated fish passage device fail to allow passage of a sufficient number of shad to establish a

¹ “Settlement Agreement for Modified Prescription for Fishways Between Topsham Hydro Limited Partnership and the United States Department of Commerce National Marine Fisheries Service” as found in the Draft Environmental Assessment for Hydropower License for the Pejepscot Hydroelectric Project. FERC. June 2022. B-7.

² Ibid, 43.



sustainable population in the river above the dam. This facility is licensed by the Federal Energy Regulatory Commission (FERC) and has a requirement for fish passage as part of a State-adopted restoration plan for this species. The FERC license for the Brunswick Dam is due for renewal in 2029 and it is expected that DMR and other fisheries agencies will require improved fish passage.

Any fixes to the long standing fish passage problem at the Brunswick Project will not occur until the early 2030s, a half-century after the construction of the existing fish ladder at the dam. It is completely unacceptable that this impact on a public resource will be allowed to continue for fifty years. But absent a stronger WQC for the Project, the mechanisms for the State or the public to remedy the situation are limited to petitioning FERC to re-open their license for the Project, which is far from an easy task.

The State of Maine needs to avoid having another Brunswick Dam situation on its hands. To minimize that risk, the final WQC for the Pejepscot Project should set clear standards and a clear schedule for meeting those standards. The WQC also needs to ensure that the State has the ability to require and enforce fish passage so that the biological integrity of Maine's waters is maintained and restored.

Thank you again for the opportunity to comment on the Draft WQC. I very much appreciate your responsiveness on this issue. If you have any questions, please feel free to contact me at jburrows@asfmaine.org or at (207) 415-6637.

Sincerely,

John R.J. Burrows

Executive Director, U.S. Operations

Atlantic Salmon Federation