

PART 2

FORESTS, PARKS, LAKES AND RIVERS

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CHAPTER 200

MAINE'S RIVERS

Section

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Historical and Statutory Notes

Codification

Chapter 200, Maine's Rivers, was enacted by Laws 1983, c. 458, § 1.

§ 401. Maine's rivers

The Legislature finds:

1. Rivers and streams a natural resource. That the State's nearly 32,000 miles of rivers and streams comprise one of its most important natural resources, historically vital to the state's commerce and industry and to the quality of life enjoyed by Maine people;

2. Increase in value of rivers and streams. That the value of its rivers and streams has increased in recent years due to the improvement in the quality of their waters, the restoration of their fisheries, the growth in demand for hydropower and the expanding interest in river recreation activities, leading at times to conflict among these uses;

3. Use of rivers and streams. That its rivers and streams afford the state's people with major opportunities for the enjoyment of nature's beauty, unique recreational activities and solace from an industrialized society, as well as for economic expansion through the development of hydropower, the revitalization of waterfronts and ports and the attraction of both tourists and desirable new industries; and

4. Policy. That the best interests of the state's people are served by a policy which recognizes the importance that their rivers and streams have for meeting portions of several public needs, provides guidance for striking a balance among the various uses which affords the public maximum benefit and seeks harmony rather than conflict among these uses.

1983, c. 458, § 1.

Cross References

Maine Rivers Protection Fund, see 12 M.R.S.A. § 5015.

Prevention of oil spills, identification and protection of sensitive areas, see 38 M.R.S.A.- § 546-B.

Protection and improvement of shoreland areas, zoning and land-use controls, see 38 M.R.S.A. § 435.

Law Review Commentaries

Maine water resources management: A major legislative initiative. Martin J. Robles, 6 Me.B.J. 28 (1991).

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses C-36 et seq.

Encyclopedias

Power of state to control and regulate natural water courses, see C.J.S. Waters § 7.

United States Code Annotated

Cooperation between federal government and state fish and game departments, see 16 U.S.C.A. § 777.

New England Fishery Management Council, see 16 U.S.C.A.- § 1852.

New England Fishery Resources Restoration Act of 1990, see 16 U.S.C.A. § 777e-1.

Preservation of wild and scenic rivers, congressional policy, designation of rivers, see 16 U.S.C.A.- § 1271 et seq.

§ 402. Declaration of policy

In its role as trustee of the public waters, the Legislature declares that the wellbeing of the citizens of this State depends on striking a carefully considered and well-reasoned balance among the competing uses of the state's rivers and streams. Further, the Legislature declares that such a balance shall:

1. Restoration of water. Restore waters to a condition clean enough to allow fishing and swimming in all our rivers and streams;

2. Revitalization of waterfronts. Revitalize waterfronts and ports;

3. Maintenance of scenic beauty. Maintain, even in areas where development occurs, the scenic beauty and character of our rivers;

4. Interests of riparian owners. Recognize and respect the rightful interests of riparian owners;

5. Increase hydroelectric power. Increase the hydroelectric power available to replace foreign oil in the State;

6. Hydropower development. Streamline procedures to facilitate hydropower development under reasoned environmental, technical and public safety constraints;

7. Fisheries. Restore anadromous fisheries and improve the productivity of inland fisheries;

8. Recreation. Expand the opportunities for outdoor recreation; and

9. Outstanding river stretches. Protect the special resource values of the flowing waters and shorelands of the State's most outstanding river stretches, as identified by the Department of Conservation's 1982 Maine Rivers Study and as specifically delineated in this chapter.

Further, the Legislature finds that with careful planning our foreseeable needs for all of these uses may be reasonably integrated harmoniously with one another on the state's 32,000 miles of rivers and streams.

1983, c. 458, § 1.

Cross References

Outstanding river segments, designation in accordance with this section, see 38 M.R.S.A. § 480-P.

Protection of Maine lakes, see 38 M.R.S.A. § 1841 et seq.

Standards for classification of lakes and ponds, see 38 M.R.S.A. § 465-A.

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses 36 et seq.

United States Code Annotated

Preservation of wild and scenic rivers, congressional policy, designation of rivers, see 16 U.S.C.A. et seq.

§ 403. Special protection for outstanding rivers

The Legislature declares that certain rivers, because of their unparalleled natural and recreational values, provide irreplaceable social and economic benefits to the people in their existing state. It is the Legislature's intent that no new dams be constructed on these river and stream segments without the specific authorization of the Legislature, that no new water diversion, which would constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of these river and stream segments, be constructed without the specific authorization of the Legislature and that additional development or redevelopment of dams existing on these segments, as of September 23, 1983, shall be designed and executed in a manner that either enhances or does not diminish the significant resource values of these river segments identified by the 1982 Maine Rivers Study. No license or permit under Title 38, sections 630 to 636 may be issued for construction of new dams on the river and stream segments subject to this special protection without the specific authorization of the Legislature, for the construction of any water diversion project which would constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of river and stream segments subject to this special protection, without the specific authorization of the Legislature or for additional development or redevelopment of existing dams on the river and stream segments subject to this special protection where the additional development or redevelopment diminishes the significant resource values of these river and stream segments.

Further, the Legislature finds that projects inconsistent with this policy on new dams and diversion projects, which constitute hydropower projects pursuant to Title 38, section 632, and redevelopment of existing dams will alter the physical and chemical characteristics and designated uses of the waters of these river and stream segments. It finds that these impacts are unacceptable and constitute violations of the State's water quality standards. The Legislature directs that no project which fails to meet the requirements of this section may be certified under the United States Clean Water Act, Section 401.¹

For purposes of this section, outstanding river and stream segments meriting special protection shall include:

1. Allagash River. The Allagash River from Gerald Brook in Allagash up to but not including the Churchill Dam in T.10, R.12, W.E.L.S., including its tributaries the Musquacook Stream from the Allagash River to the outlet of Third Musquacook Lake in T.11, R.11, W.E.L.S.; Allagash Stream from its inlet to Chamberlain Lake to the outlet of Allagash Pond in T.9, R.15, W.E.L.S.; and Chemquasabamticook Stream from its inlet into Long Lake to the outlet of Chemquasabamticook Lake, excluding Round Pond in T.13, R.12, W.E.L.S., Harvey Pond, Long Lake, Umsaskis Lake, Musquacook Lakes (1-2), Little Round Pond in T.8, R.13, W.E.L.S., Allagash Lake and Clayton Lake;

2. Aroostook River. The Aroostook River from and including the Sheridan Dam in Ashland to Millinocket Stream, including its tributaries Millinocket Stream from the Aroostook River to the outlet of Millinocket Lake; Munsungan Stream from the Aroostook River to the outlet of Little Munsungan Lake; St. Croix Stream from the Aroostook River to Hall Brook in T.9, R.5, W.E.L.S.; and the Big Machias River from the Aroostook River to the outlet of Big Machias Lake, excluding Round Pond in T.7, R.9, W.E.L.S.;

3. Dead River. The Dead River from the Kennebec River to the upstream limit of Big Eddy;

4. Dennys River. The Dennys River from Hinckley Point in Dennysville to the outlet of Meddybemps Lake;

5. East Machias River. The East Machias River, including the Maine River, from the Route 191 Mill Memorial Bridge in East Machias to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Second Lake, Round Lake, Crawford Lake, Lower Mud Lake and Upper Mud Lake;

6. Fish River. The Fish River from its inlet into St. Froid Lake in T.14, R.7, W.E.L.S. to the outlet of Mud Pond in T.13, R.8, W.E.L.S., excluding Portage Lake, Round Pond and Fish River Lake;

7. Kennebec River. The Kennebec River from Bay Point in Georgetown to the Father Curran Bridge in Augusta and from the confluence of the Dead River with the Kennebec River up to, but not including, the Harris Dam in Indian Stream Township;

8. Machias River. The Machias River, including Fourth and Fifth Lake Streams, from Fort O'Brien in Machias to the outlet of Fifth Machias Lake, including its tributaries the West Branch Machias River from the Machias River to the outlet of Lower Sabao Lake; Old Stream from the Machias River to the outlet of First Lake; and Mopang Stream from the Machias River to the outlet of Mopang Second Lake, excluding Machias Lakes (1-4), Lower Pond and Mopang First Lake;

9. Mattawamkeag River. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township townline;

10. Moose River. The Moose River from its inlet into Attean Pond to its confluence with Number One Brook in Beattie Township;

11. Narraguagus River. The Narraguagus River from the Route 1 bridge in Cherryfield to the outlet of Eagle Lake, excluding Beddington Lake and Deer Lake;

12. Penobscot River. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs up to, but not including, the Veazie Dam, including its tributaries the West Branch of the Penobscot from its inlet into Ambajejus Lake to the western Boundary of T.3,

R.10, and from its inlet into Chesuncook Lake up to, but not including, the dam at Seboomook Lake; the East Branch Penobscot River from the Penobscot River up to, but not including, the dam at the outlet of Grand Lake Matagamon; the Wassataquoik Stream from the East Branch of the Penobscot River to Annis Brook in T.4, R.9, W.E.L.S.; the Webster Brook from its inlet into Grand Lake Matagamon up to, but not including, Telos Dam in T.6, R.11, W.E.L.S.; the Seboeis River from the East Branch of the Penobscot River to the outlet of Snowshoe Lake; and the Sawtelle Brook from the Seboeis River up to, but not including, the darn at the outlet of Sawtelle Deadwater, excluding Passamagamet Lake, Webster Lake, White Horse Lake and Snowshoe Lake;

13. Pleasant River. The Pleasant River from Seavey Point in Addison to the outlet of Pleasant River Lake;

14. Rapid River. The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;

15. Saco River. The Saco River from the Little Ossipee River to the New Hampshire border;

16. St. John River. The St. John River from one mile above the foot of Big Rapids in Allagash to the Baker Branch, including its tributaries the Big Black River from the St. John River to the Canadian border; the Northwest Branch from the St. John River to the outlet of Beaver Pond in T.12, R.17, W.E.L.S.; the Southwest Branch from the Baker Branch to 5 miles downstream of the Canadian border; and the Baker Branch from the St. John River to 1.5 miles below Baker Lake;

17. Sheepscot River. The Sheepscot River from the Route 1 bridge in Wiscasset to Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributaries the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China; and

18. West Branch Pleasant River. The West Branch Pleasant River from the East Branch to the outlet of Fourth West Branch Pond in Shawtown Township, excluding Silver Lake and West Branch Ponds (1-3).

1983, c. 458, § 1; 1983, c. 530, § § 5, 6; 1987, c. 717, § 1, eff. April 14, 1988.

¹33 U.S.C.A. § 401 et seq.

Historical and Statutory Notes

Amendments

1983 Amendment. Laws 1983, c. 530, § 5, in subsec. 5, substituted "Mill Memorial Bridge" for "bridge".

Laws 1983, c. 530, § 6, in subsec. 12, substituted a comma for "and" following "Webster Lake" and substituted "and" for a semicolon following "White Horse Lake".

1987 Amendment. Laws 1987, c. 717, § 1, in the first paragraph, in the second sentence, inserted "that no new water diversion, which would constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of these river and stream segments, be constructed without the specific authorization of the Legislature", and substituted "September 23, 1983" for "the date of the enactment of this section", and in the third sentence, inserted "for the construction of any water diversion project which would

constitute a hydropower project pursuant to Title 38, section 632, and which would bypass all or part of the natural course of river and stream segments subject to this special protection without the specific authorization of the Legislature"; and in the second paragraph, in the first sentence, inserted "and diversion projects, which constitute hydropower projects pursuant to 'title 38, section 632,'".

Effective Dates

1983 Act. Laws 1983, c. 530, § 7, provided:

"Sections 5 and 6 of this Act shall take effect 90 days after adjournment of the Legislature."

Cross References

Classification of major river basins, see 38 M.R.S.A. § 467.

High quality waters, protection, see 38 M.R.S.A. §§ 464, 465.

Maine Rivers Protection Fund, see 12 M.R.S.A. § 5015.

Protection and improvement of shoreland areas, zoning and land-use controls, see 38 M.R.S.A. § 435.

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses 36 et seq.

Encyclopedias

Power of state to control and regulate natural water courses, see C.J.S. Waters § 7.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

Words and Phrases

Words and Phrases (Perm.Ed.)

Notes of Decisions

Constitutionality 1

Construction with other laws 2

1. Constitutionality

Legislature did not fail to provide articulable criteria so as to delegate powers unconstitutionally to Board of Environmental Protection by allowing Board, in applying Maine's statutory scheme for the "special protection" of "outstanding rivers," to determine whether a particular redevelopment of an existing dam would "diminish" significant resource values and should be denied; there is no ambiguity in the word "diminishes." *Swift River Co., Inc. v. Board of Environmental Protection* (1988) Me., 550 A.2d 359.

2. Construction with other laws

Provisions of Maine's statutory scheme for "special protection" of "outstanding rivers" prohibit new dams on the listed rivers and allow denial of permit for development or redevelopment of existing dams on those rivers if it would diminish the "significant resource values of the river or stream segments," notwithstanding provisions of Maine Waterway Development and Conservation Act which provide the Board of Environmental Protection with a number of criteria to consider in the permitting process, including financial capability, safety, public benefits and environmental impact. *Swift River Co., Inc. v. Board of Environmental Protection* (1988) Me., 550 A-2d 359.

§ 403-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1.¹ Existing dam. "Existing dam" means any man-made barrier across a river segment identified in this chapter which impounds water and has not deteriorated or been breached or modified to the point where it no longer impounds water at 50% or more of its design level at normal flows.

1987, c. 717, § 2, eff. April 14, 1988.

¹No subsec. 2 was enacted.

Library References

American Digest System

Dams and obstructions to natural water flow, see Waters and Water Courses 53.

Encyclopedias

Dams and obstructions to natural water flow, see C.J.S. Waters § 18.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

§ 404. Finance Authority of Maine

The Finance Authority of Maine may not finance any energy generating system project under Title 10, chapter 110,¹ if that project is located in whole or in part on any river listed in section 403.

1983, c. 458, § 1; 1987, c. 393, § 16.

¹ 10 M.R.S.A. § 961 et seq.

Historical and Statutory Notes

Amendments

1987 Amendment. Laws 1987, c. 393, § 16, substituted "Finance Authority of Maine" for "Maine Guarantee Authority".

Library References

American Digest System

Dams and obstructions to natural water flow, see Waters and Water Courses 53.

Encyclopedias

Dams and obstructions to natural water flow, see C.J.S. Waters § 18.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

§ 405. Repealed

Historical and Statutory Notes

The repealed section, which related to development on the St. Croix River, was repealed on Jan. 1, 1988, pursuant to subsec. 4, and was derived from: Laws 1983, c. 458, § 1.

Prior to repeal, this section read:

"§ 405. **St Croix River**

"1. Special consideration. In consideration of the special status of the St. Croix River as an international boundary governed in part by the International Joint Commission and the Province of New Brunswick, the Legislature establishes the following provisions.

"2. Commercial, industrial or residential development. Except as provided in this subsection, no person may undertake any further commercial, industrial or residential development in the area within 250 feet of the St. Croix River from the Grand Falls flowage to the north end of Wingdam Island. The following activities shall be exempt from these provisions:

"A. Development of hydroelectric or other dams, plants and related facilities or improvements subject to the conditions described in subsection 3;

"B. A bridge at Vanceboro;

"C. A haul road from Grand Falls;

"D. Activities and developments related to timber harvesting, mining or extraction of sand and gravel; and

"E. Any recreational management activity conducted or approved by the State.

"3. New hydroelectric dams. No person may develop new hydroelectric dams on the St. Croix River from Grand Falls to the north end of Wingdam Island without first:

"A. Having performed a feasibility study by a qualified consultant approved by the Governor to examine the alternative potentials for hydropower development downstream from Grand Falls and make the findings available to the State for review;

"B. Having consulted with the office of the Governor or other agency of the State, designated by him, regarding the feasibility of this downstream development; and

"C. Having determined that there exists no economically feasible site downstream from Grand Falls.

In the event that the State disagrees with any of the assumptions, findings or conclusions of the economic feasibility study, the comments of the State shall be considered and responded to by the consultant. These comments and the responses of the consultant shall be noted in the final report of the economic feasibility study.

"4. Review. This section shall be reviewed every 5 years, and shall be repealed on January 1, 1988, unless reenacted by the Legislature for an additional 5-year period. In the event that the St. Croix River is included in any legislative Act or regulation which directly or indirectly has as its effect the essential prohibition of construction of new dams or development or redevelopment of existing dams on the St. Croix River, this section shall be repealed on the effective date of that Act or regulation."

See, now, § 405-A of this title.

§ 405-A. St. Croix River

1. Special consideration. In consideration of the special status of the St. Croix River as an international boundary governed in part by the International Joint Commission and the Province of New Brunswick, the Legislature establishes the following provisions.

2. Commercial, industrial or residential development. Except as provided in this subsection, no person may undertake any further commercial, industrial or residential development in the area within 250 feet of the St. Croix River from the Grand Falls flowage to the north end of Wingdam Island. The following activities shall be exempt from these provisions:

A. Development of hydroelectric or other dams, plants and related facilities or improvements subject to the conditions described in subsection 3;

B. A bridge at Vanceboro;

C. A haul road from Grand Falls;

D. Activities and developments related to timber harvesting, mining or extraction of sand and gravel; and

E. Any recreational management activity conducted or approved by the State.

3. New hydroelectric dams. No person may develop new hydroelectric dams on the St. Croix River from Grand Falls to the north end of Wingdam Island without first:

A. Having performed a feasibility study, by a qualified consultant, approved by the Governor to examine the alternative potentials for hydropower development downstream from Grand Falls and having made the findings available to the State for review;

B. Having consulted with the office of the Governor or other agency of the State, designated by the Governor. regarding the feasibility of this downstream development;

C. Having determined that there exists no economically feasible site downstream from Grand Falls; and

D. Having consulted with the St. Croix International Waterway Commission. If the State disagrees with any of the assumptions, findings or conclusions of the economic feasibility study, the comments of the State shall be considered and responded to by the consultant. These comments and the responses of the consultant shall be noted in the final report of the economic feasibility study.

4. Review. The State Planning Office shall review the status of hydropower development on the St. Croix River and shall report to the joint standing committee of the Legislature having jurisdiction over energy and natural resources by January 1, 1993 and every 5 years thereafter. The report shall include any recommendations for changes in the provisions of this section together with the justification for the changes. If the St. Croix River is included in any legislative Act or regulation which directly or indirectly has as its effect the essential prohibition of construction of new dams or development or redevelopment of existing dams on the St. Croix River, this section shall be repealed on the effective date of that Act or regulation. 1987, c. 635.

Cross References

St. Croix River, planning development and management, see 38 M.R.S.A- § 991 et seq.

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses e-36 et seq.

Encyclopedias

Power of state to control and regulate natural water courses, see C.J.S. Waters § 7.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

§ 406. Report

The State Planning Office shall provide a report no later than December 1, 1986, to the Legislature detailing the status of policy accomplishments pursuant to this chapter. 1983, c. 458, § 1.

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses 36 et seq.

Encyclopedias

Power of state to control and regulate natural water courses, see C.J.S. Waters § 7.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

§ 407 . Comprehensive river resource management plans

The State Planning office, with assistance from the Department of Inland Fisheries and Wildlife, the Department of Marine Resources, the Department of Environmental Protection and other state agencies as needed, shall develop, subject to the Maine Administrative Procedure Act, Title 5, chapter 375,¹ a comprehensive river resource management plan for each watershed with a hydropower project licensed under the Federal Power Act² or to be licensed under the Federal Power Act. These plans shall provide a basis for state agency comments, recommendations and pe@tting decisions and shall at a minimum include, as applicable, minimum flows, impoundment level regimes, upstream and downstream fish passage, maintenance of aquatic habitat and habitat productivity, public access and recreational opportunities. These plans shall update, complement and, after public notice, comment, and hearings in the watershed, be adopted as components of the State's comprehensive rivers management plan. 1989, c. 453, § 1; 1989, c. 878, § A-29, eff. April 20, 1990.

¹5 M.R.S.A § 8001 et seq.

²16 U.S.CA § 791a et seq.

Historical and Statutory Notes

Amendments

1989 Amendment. Laws 1989, c. 878, § A-29, substituted "the Maine Administrative Procedure Act, Title 5, chapter 375," for "the Maine Administrative Procedures Act, Title 5 section 375,".

Cross References

Lake restoration and protection fund, see 38 M.R.S.A. § 480-N.

Library References

American Digest System

Power of state to control and regulate natural water courses, see Waters and Water Courses 36 et seq.

Encyclopedias

Power of state to control and regulate natural water courses, see C.J.S. Waters § 7.

WESTLAW Research

Waters and water courses cases: 405k[add key number].

United States Code Annotated

Fishery conservation and management, Magnuson Act, see 16 U.S.C.A. § 1801 et seq.

Marine sanctuaries, generally, see 16 U.S.C.A- § 1431 et seq.

Notes of Decisions

2. Construction with other laws

Maine Rivers Act did not prohibit Board of Environmental Protection from issuing hydropower project permit for expansion of hydroelectric dam; statutory section listing situations restricting Board's authority to issue permit for hydropower project was not applicable because expansion of dam was not construction of "new" dam, and because existing dam under consideration was expressly excluded from being within specially protected segment of river. Atlantic Salmon Federation v. Board of Environmental Protection (1995) Me., 662 A.2d 206.