

Friends of Merrymeeting Bay

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Comments to the Maine Citizen Trade Policy Commission

May 11, 2006

Ed Friedman, Chair

Senator Rotundo, Representative Patrick & Members of the Commission:

My name is Ed Friedman and as Chairman of Friends of Merrymeeting Bay I appreciate the opportunity to address you on this most important but often overlooked world trade issue critical to the well-being of every man, woman, and child in Maine and indeed, on the planet. This issue is water.

Merrymeeting Bay, a tidal riverine system at the junction of six of Maine's rivers including the Kennebec and Androscoggin, is a resource of international significance draining approximately 38% of Maine. The Bay is the largest staging ground in the northeast for migratory waterfowl, the only waterbody providing spawning and nursery habitat for all of the anadromous fish species in the Gulf of Maine and is known for its many rare plant and animal species. Friends of Merrymeeting Bay [FOMB] works to protect this unique ecosystem through research, advocacy, land conservation and education.

A distinguished former Maine Senator, Neil Bishop, was fond of noting that the Kennebec in his day was too thin to walk on but too thick to drink. He was quite clear with his son Jake who worked with us to protect the old family farm along the river, that despite the intense pollution of the day, in the future, it would be water that world wars would be fought over and that the issues around this resource would make the conflicts over oil pale in comparison.

In a 1994 Supreme Court decision, Justice O'Connor argued [No.92-1911] that water quantity is closely related to water quality, that to distinguish between water quality and water quantity is artificial. Friends of Merrymeeting Bay agree with the Justice on this and are quite concerned about both water quality and quantity as they pertain to the state of Maine and to the Merrymeeting Bay watershed in particular.

QUANTITY

The issue of water quantity arose during the recent 2006 Maine Water Conference, where Maine's bulk water law was discussed. Is water a resource to sell off to the highest bidder? If we tax it first are we rationalizing the selling off of our heritage but just quibbling about the price? I understand other jurisdictions are tackling or have wrestled with the potential impact of trade treaties on the democratic control over water, and I urge this Commission to search out these examples so that we can learn from their experience...so that we can craft state legislation, that provides the best protection possible against the intrusion of trade treaty rules into this crucial area.

QUALITY

The issue of water quality was raised in the U.S. Supreme Court in February of this year. The case, *SD Warren v. Maine Board of Environmental Protection* [04-1527] deals with the definition of "discharge" as it pertains to small dams in Maine's rivers and thus the need for our Clean Water Act required State Water Quality Certificates. The case was argued for Maine by our Attorney General Steven Rowe and co-defended by a U.S. Deputy Solicitor General. SD Warren is a wholly owned subsidiary of SAPPI, South African Pulp & Paper Inc. that owns five dams along the Presumpscot River as well as the only remaining pulp mill on the Kennebec River.

If SD Warren wins the case, states will lose most of their existing rights to regulate the discharge of pollutants into their own rivers. Can we, those citizens and organizations who are case "stakeholders", be assured that this case will not be "appealed" to a WTO tribunal should an investor challenge a ruling in favor of the BEP-or if a bilateral trade agreement with South Africa is signed?

Pulp and paper mills operating in Maine discharge 26-46 million gallons/day of wastewater into our rivers while many of these same companies operate low-flow mills elsewhere. Should our efforts to reduce or eliminate wastewater discharges at Maine mills be hampered by international treaties? Would these efforts be met by an international challenge from the Canadian company Domtar, another mill owner in Maine?

FOMB, during its studies and requests for safe migratory up and downstream passage for the American eel on the Kennebec and Androscoggin Rivers, has raised concerns about primary and secondary effects of long sequestered high levels of PCBs present in the eels. These contaminants are released into local waters and food chains when eels are mutilated by dam turbine blades on their only downstream spawning migration to the sea [www.friendsofmerrymeetingbay.org]. General migratory fish passage issues are of great concern to us as well. We now could be challenged in our fishery restoration efforts when we deal with a dam owned by a foreign corporation.

Even though the Canadian company Methanex did not succeed in its NAFTA case against California laws banning the gasoline additive MTBE, the case illustrates that global corporations can use international trade treaties to challenge state measures affecting water using a secretive and expensive process that bypasses our domestic laws

and court system. For those of us interested in watershed health, these issues are a concern.

WATERSHED

Distinguishing between groundwater and surface water is also an artificial distinction as the latter typically recharges the former. Maine watershed protection and restoration is more important and urgent than ever, now that climate change is placing new stresses on rivers, streams, wetlands, and lakes. Reducing water use, energy use and greenhouse gas emissions in Maine through more efficient use of water, reuse of wastewater, more efficient and compact development all with the underlying precept of sustainability, is probably best done most efficiently at a local or state level. Flexibility of policy at a local level is vital. Protection and restoration of our watersheds to make our waters healthy and resilient is vital. Control over water is vital to watershed health.

Finally, while we appreciate that Governor Baldacci recently wrote to the federal government, requesting that certain Maine state laws and regulations be exempted from the WTO services treaty, and we hope this provides a positive example for other states to follow, the letter did not specifically mention the need for water to be excluded from the GATS and other treaties. FOMB strongly urges the Commission to ensure that in future-water is included, as a priority item, in all future state efforts to protect state laws from trade treaty interference. It's important to recognize that **trade treaties extend beyond water as a commodity**. These rules also pertain to water **services** and water **investments**. They can affect the conditions states place on water licenses. Or the ability of states to reduce water extractions by changing the permitted volumes specified in water licenses. They can affect the water rights associated with dams. These matters relate to state laws on water services and water licenses and other water-related investments, which --unless explicitly exempted-- can be constrained by international treaties. In short, please **work to ensure that all Maine laws and regulations pertaining to water, as well as state laws pertaining to water-related services and investments, and all such future laws, are put beyond the reach of international trade treaty rules.**

Thank you for your consideration.

American Eel Distribution and Dam Locations in the Merrymeeting Bay Watershed (Androscoggin and Kennebec River Watersheds)

Androscoggin River Watershed (3,526 sq. miles)

Upper section (1,363 sq. miles)

Lower section (2,162 sq. miles)

Kennebec River Watershed (6,001 sq. miles)

Dead River (879 sq. miles)

Upper Section (1,586 sq. miles)

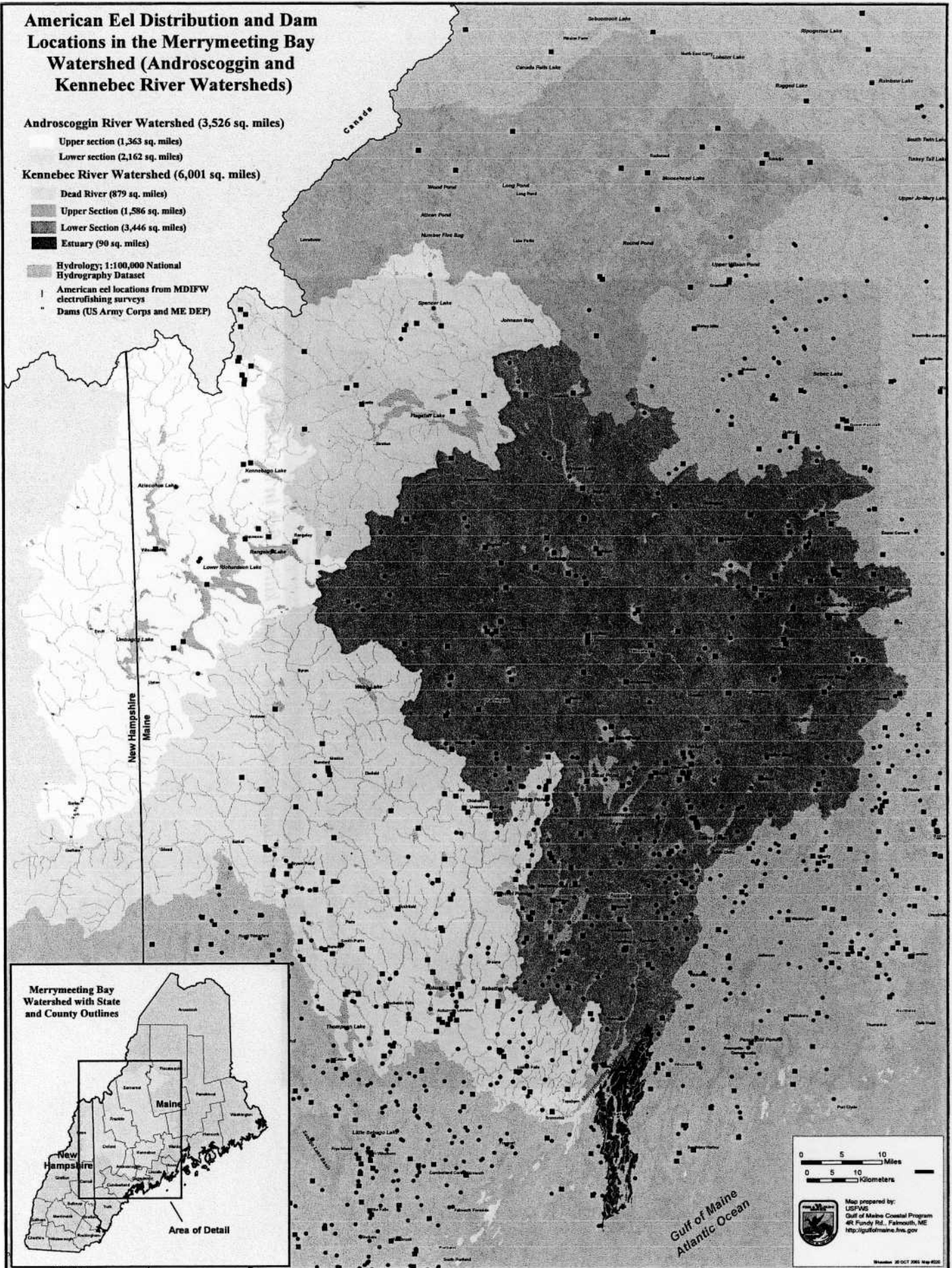
Lower Section (3,446 sq. miles)

Estuary (90 sq. miles)

Hydrology; 1:100,000 National Hydrography Dataset

American eel locations from MDIFW electrofishing surveys

Dams (US Army Corps and ME DEP)



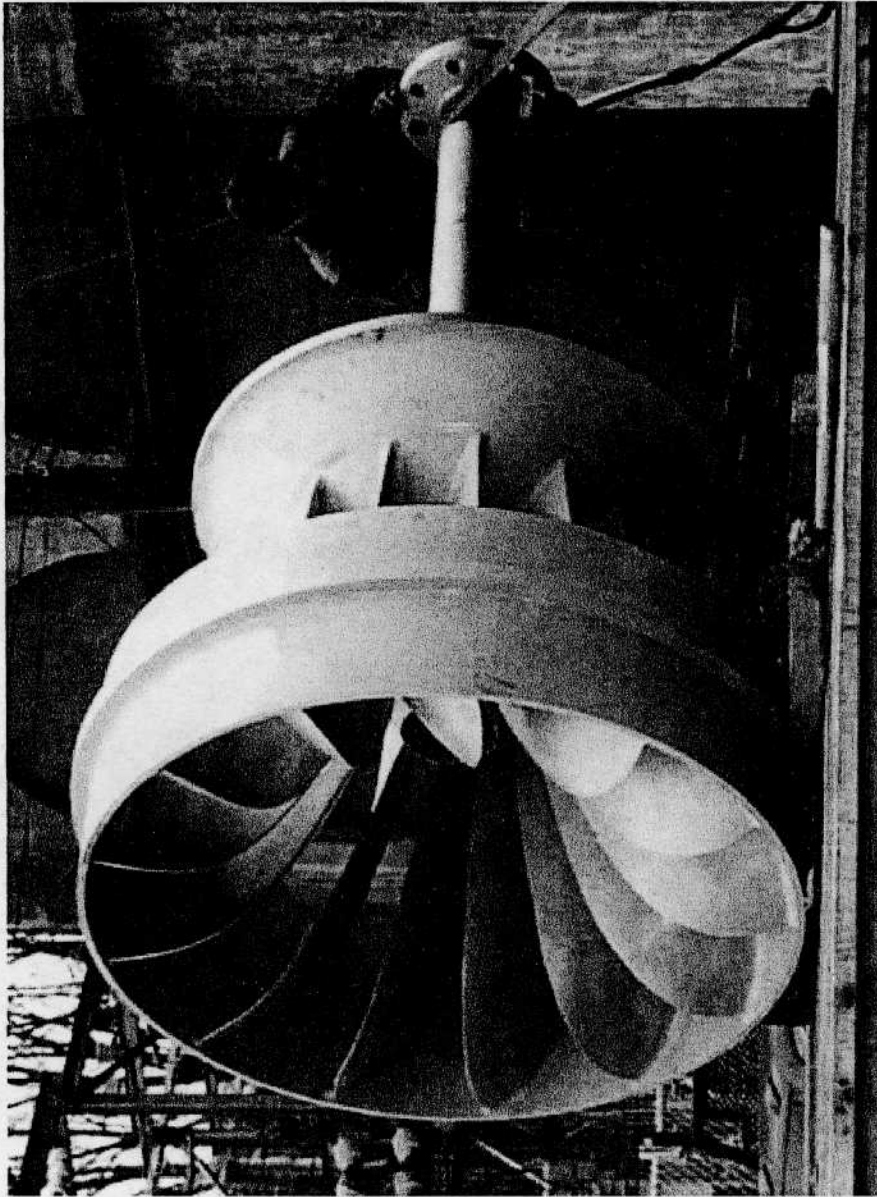
Merrymeeting Bay Watershed with State and County Outlines



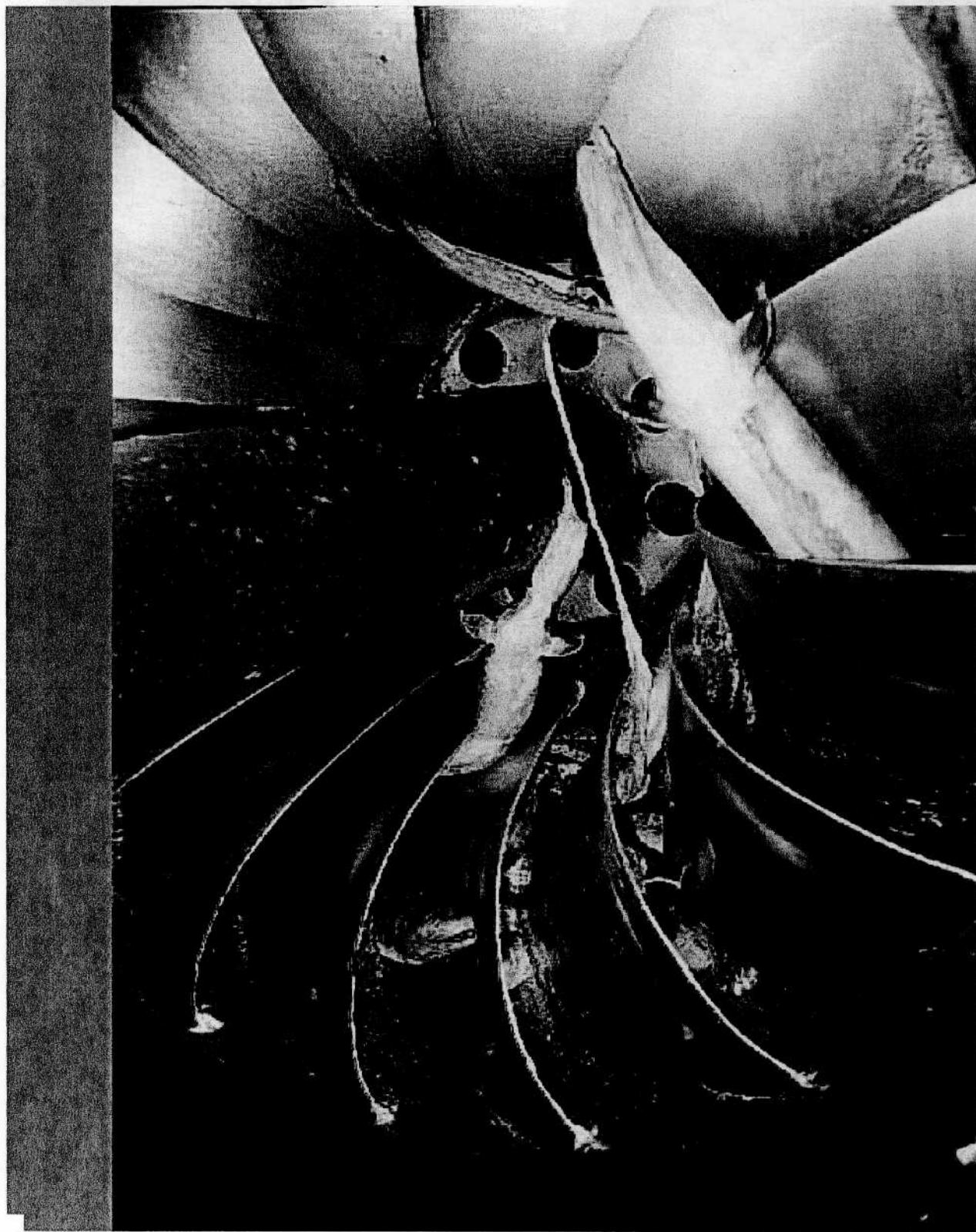
0 5 10 Miles
0 5 10 Kilometers

Map prepared by:
USFWS
Gulf of Maine Coastal Program
400 Fundy Rd., Falmouth, ME
<http://gulfmaine.fws.gov>

20 OCT 2003, Map #020



Hydroelectric dam turbine before it starts killing fish in its blades.



Turbine clogged with eels. Note eel skin stretched across shaft.

Photo: Alex Haro, Ph.D., S. O. Conte Anadromous Fish Restoration Center
Presentation-Fish Passage in the Northeast: Old Problems, New Solutions
U.S.G.S., Biological Services

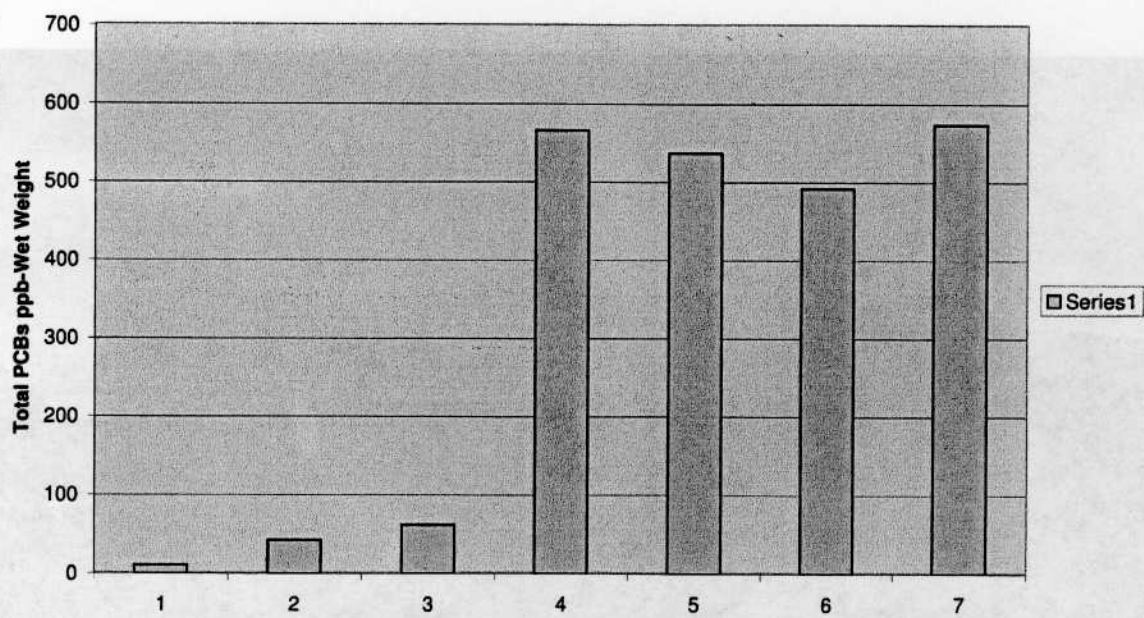


Green Power in Action!

Turbine Mortality-American Eel, Benton Falls Dam, Sebasticook River 2004

Photo: Watts Brothers

PCB Levels in Turbine-Killed Eels on Sebasticook R. 2004, FOMB



Fish Tissue Action Levels [1-cancer & 2-non-cancer] , Eel Samples [3-7]-Ages 13-23

First two bars are levels that trigger state to issue advisories

Bars 3-7 were the levels found in salvaged eels

PCB Levels in Turbine-Killing Bait on Buzzards Bay, N. 2004, FCMIS

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