

**Notice of Agency Rule-making Proposal**

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 60 Section 10; “Kennebec River Fish Restoration Management Plan”

TYPE OF RULE (*check one*):         Routine Technical         Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: The proposed rulemaking will adopt the Kennebec River Management Plan Diadromous Resources Amendment, which updates the 1993 Kennebec River Resource Management Plan (1993 Plan; State Planning Office, 07-105 Chapter 1) that served as a comprehensive examination by the State of Maine of the various resources and beneficial uses of the Kennebec River from 1993 to 1998. The 1993 Plan updated the 1986 Strategic and Operational Plan.

Date, time and location of PUBLIC HEARING (*if any*): none scheduled

COMMENT DEADLINE: January 29<sup>th</sup>, 2021

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRSA §6171 (2-A)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

\* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

**Please approve bottom portion of this form and assign appropriate AdvantageME number.**

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
 (authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

DEPARTMENT OF MARINE RESOURCES  
CHAPTER 60 - RESOURCE MANAGEMENT PLAN

TITLE INDEX

- 60.10 Kennebec River ~~Fish Restoration~~ Management Plan
- 60.20 Saco River Interim Restoration Goals
- 60.21 Saco River Strategic Plan for Fisheries Management

## DEPARTMENT OF MARINE RESOURCES

### Chapter 60 - Resource Management Plan

#### 60.10 Kennebec River Fish Restoration Management Plan

##### SUMMARY:

The Kennebec River Management Plan Diadromous Resources Amendment (Amendment) updates the 1993 Kennebec River Resource Management Plan (1993 Plan; State Planning Office, 07-105 Chapter 1) that served as a comprehensive examination by the State of Maine of the various resources and beneficial uses of the Kennebec River from 1993 to 1998. The 1993 Plan updated the 1986 Strategic and Operational Plan outlines that outlined the Department of Marine Resource's plan for the restoration of American shad and alewives to their historical spawning and nursery areas in the Kennebec River above Augusta from 1986 to 1998. The Strategic Plan identifies the Department's specific goals and objectives for fish restoration. The long term goal is to restore shad and alewives to their historical spawning and nursery areas above the Augusta dam. The objectives to be attained from this goal are to achieve an annual production of 6.0 million alewives and 725,000 American shad in the waters of the Kennebec River above the August dam.

The Operational Plan provides detail on how the Department of Marine Resources intends to carry out its plan during the period 1986 – 1998 (Phase I). The Operational Plan includes a "Fish Passage Action Plan" which identifies relevant dams and specifies dates when upstream and downstream fish passage facilities will be constructed. The "Fish Passage Action Plan" reflects conditions mutually agreed upon by the Department of Marine Resources, Department of Inland Fisheries and Wildlife, Atlantic Sea-Run Salmon Commission, and a number of dam owners known as the Kennebec Hydro Developers Group (KHDG). During the time period covered by the Operational Plan (Phase I), the restoration methods consist of truck stocking of shad and alewives collected from various waters within and outside the state; selective passage of fish over the Augusta dam; and trapping of alewives and Atlantic salmon at the Augusta dam for trucking around selected upriver dams.

The Amendment expands the target species to include all of Maine's native diadromous fish; updates descriptions of the physical, biological, and ecological conditions in the watershed; revises goals, objectives, and actions for restoration in the Kennebec River; provides a rationale for the decommissioning and removal of dams; and provides performance standards for target species when available. The Amendment will be updated or expanded upon in the future as appropriate.

The 1993 Plan also served as the State's "comprehensive plan" for the Kennebec River for purposes of consideration by the Federal Energy Regulatory Commission (FERC) regarding hydroelectric licensing and relicensing within the Kennebec basin. The Amendment will be submitted to FERC to be recognized as the State's comprehensive plan for the Kennebec River. Under section 10 (a) (2) (A) of the Federal Power Act, FERC is required to consider the extent to which proposed hydroelectric projects, and the continued operation of existing projects, are consistent with "comprehensive plans" prepared by federal and State agencies. The Amendment is intended to be used by FERC in its analysis of beneficial uses of the Kennebec River.

To the extent that previous State publications have identified goals and objectives for the Kennebec River resources, those goals and objectives either have been included within the Amendment or have been balanced against other goals and objectives in developing the Amendment's recommendations and conclusions. The Amendment incorporates State Policies regarding Kennebec River resources.

The above referenced management plans are attached as appendixes to this rule and are incorporated herein as:

Appendix A - Kennebec River Management Plan Diadromous Resources Amendment

Appendix B - 1993 Kennebec River Resource Management Plan

Appendix C - 1986 Kennebec River Fish Restoration Management Plan

~~A complete copy of the Plan may be obtained from:~~

~~Department of Marine Resources  
Anadromous Fish Division  
State House Station #21  
Augusta, Maine 04333~~

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 60 Section 10; "Kennebec River Fish Restoration Management Plan"

STATUTORY AUTHORITY: 12 MRSA §6171 (2-A)

DATE AND PLACE OF PUBLIC HEARING(S): none scheduled

COMMENT DEADLINE: January 29<sup>th</sup>, 2021

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

This proposed rulemaking is intended to satisfy the requirements of 12 MRSA §6171 (2-A) with regard to the Kennebec River Basin by adopting the Kennebec River Management Plan Diadromous Resources Amendment. The Amendment expands the target species to include all of Maine's native diadromous fish; updates descriptions of the physical, biological, and ecological conditions in the watershed; revises goals, objectives, and actions for restoration in the Kennebec River; provides a rationale for the decommissioning and removal of dams; and provides performance standards for target species when available.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The proposed rule would update the State's comprehensive Kennebec River Management Plan. As such it will set forth State policy with regard to Kennebec River resources and will be used by State natural resource agency personnel in the development of comments on Federal relicensing application and by the Federal Energy Regulatory Commission in their action on such applications.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]:

In developing the proposed rule, the Department considered the best available information that led to the goal and objectives described in the Amendment.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

The Kennebec River Management Plan Diadromous Resources Amendment is not legally enforceable and therefore will have no fiscal impact. If the goals set forth in the Amendment are adopted by agencies in permitting decisions then there could be some economic ramifications. These ramifications, which could be positive in some instances and negative in others, are too speculative to quantify.

**FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:**

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[*see* §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]*

*BENEFITS OF THE RULE: [see §8057-A(2)(C)]*

*Note: If necessary, additional pages may be used.*