

# Bangor Daily News

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## Feds settle case over salmon habitat

By Kevin Miller

Federal officials have settled a legal dispute with several environmental groups over habitat protections for endangered Atlantic salmon in more than a half-dozen Maine rivers.

The National Marine Fisheries Service has agreed to a timeline to designate what is known as "critical habitat" areas in eight rivers with federally protected Atlantic salmon populations. U.S. District Judge D. Brock Hornby signed off on the agreement between the NMFS, the Conservation Law Foundation and the Center for Biological Diversity on Wednesday.

The eight affected rivers are the Dennys, East Machias, Machias, Narraguagus, Pleasant, Ducktrap and the Sheepsfoot rivers plus Cove Brook, a tributary of the Penobscot.

The fisheries service, which is a branch of the National Oceanic and Atmospheric Administration, has agreed to publish a draft critical habitat determination by Aug. 30, 2008, and to issue a final rule by no later than April 30, 2009.

Critical habitat is largely a bureaucratic designation under the Endangered Species Act. But the designation in the case of Atlantic salmon could have real impacts on development along the eight rivers, each of which has been determined to host a distinct genetic line of the once-abundant fish.

In essence, the critical habitat program dictates that any federal projects proposed in designated areas must receive an additional layer of review for potential impacts on habitat. That is on top of federal consultations already required for direct impacts on the protected species.

Critical habitat designation can also have an impact on private projects on private land, however, if the project requires a federal permit or receives federal funding.

For example, any project on private land that requires a U.S. Army Corps of Engineers permit for wetlands alterations or for dredging would be subject to an additional critical habitat review. Pollution discharges covered under the Clean Water Act could also be subject to an additional review.

Mary Colligan, assistant regional administrator for protected species with the NMFS' Northeast region, said federal biologists review habitat issues when conducting consultations with landowners on direct impacts on a species.

"We are already looking at impacts on habitat because that can affect the fish," Colligan said. "It just provides more focus on habitat."

Environmental groups and wildlife officials often disagree on the value of the critical habitat program, resulting in lengthy and costly court battles. The issue of critical habitat for Canada lynx in Maine and elsewhere

has been tied up in the courts for several years.

The Conservation Law Foundation and the Center for Biological Diversity filed suit against the NMFS last December to force the agency to designate critical habitat for Atlantic salmon. As part of the settlement agreement reached Wednesday, the NMFS will reimburse the plaintiffs \$12,000 for legal expenses.

Sean Mahoney, vice president and director of CLF's Maine office, said including a species on the list of endangered species does not alone guarantee restoration success. That's why critical habitat is so useful, he said.

"By designating critical habitat, you are protecting the habitat necessary for that recovery to take place," Mahoney said.

"I think it's another step on the road of recovery for Atlantic salmon," added Patrick Parenteau, a professor at the Vermont Law School who helped the two conservation groups on the case.

Colligan pointed out that the public will have a chance to comment on the proposed critical habitat designation before final rules are adopted in 2009.