

**Supplemental Historic Records
Related to the
Anadromous Fisheries of the Presumpscot River
and Sebago Lake, Maine**

Prepared by:

American Rivers
Friends of the Presumpscot River
Friends of Sebago Lake

September 2002

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Introduction	3
Executive Summary	7
Discussion of Historic Records	9
Supplemental Historic Chronology Relating to Nature and Range of Anadromous Species on Presumpscot River.....	20
Map of the Presumpscot River drainage, with historical names and places.....	24
References Cited	25
Appendices	26

Introduction

This report presents new information relating to the nature and historic range of native anadromous fish species in the Presumpscot River and Sebago Lake, Maine. This subject is of interest due to the removal of the Smelt Hill dam, the lack of fish passage at what will shortly become the first-in-river Cumberland Mills dam, and the imminent re-licensing by the Federal Energy Regulatory Commission (FERC) and the Maine Department of Environmental Protection of the next five hydro-electric dams on the Presumpscot River.¹ All six of these dams (Cumberland Mills, Saccarappa Falls, Mallison Falls, Little Falls, Gambo Falls, Dundee Falls) are owned by the SAPPI Corporation and currently lack any means of passing native migratory anadromous fish upstream and downstream. These six dams are located in the towns of Windham and Gorham and the City of Westbrook. For more than a century, these dams have barred access by native anadromous fish species, such as Atlantic salmon, American shad, and alewife to the Presumpscot River above Cumberland Falls in the City of Westbrook.

For several years, various national, state, and local conservation organizations (American Rivers, Friends of the Presumpscot River, Friends of Sebago Lake, the Maine Council of the Atlantic Salmon Federation and the Sebago Chapter of Trout Unlimited) have recommended the removal of three of these dams (Saccarappa Falls, Mallison Falls and Little Falls), either removal or construction of mechanical fish passage at the non-generating Cumberland Mills dam, and construction of mechanical fish passage at the Gambo Falls and Dundee Falls dams. These measures have been recommended to allow the Presumpscot River's native anadromous fish to regain access to their historic habitat above Saccarappa Falls in the City of Westbrook.

¹ These five dams are known as the Saccarappa, Mallison Falls, Little Falls, Gambo and Dundee projects.

In filings before FERC, the owner of these six dams, the SAPPI Corporation, while acknowledging that Atlantic salmon, American shad, blueback herring and alewife are native to the Presumpscot River, has argued that there is insufficient evidence to determine the exact historic range of these species in the Presumpscot River drainage. Claiming that "installation of fish passage facilities on the Presumpscot would constitute an enhancement, not a restoration of the species to their historic ranges"², SAPPI stated to FERC in January, 2002 that,

“Until resource agencies can provide conclusive documentation that American shad and alewives actually occurred in the projects areas, fish passage facilities for these species are not warranted at the Presumpscot River Projects.”³

By contrast, intervening conservation organizations have argued to FERC that by any fair and impartial reading of the historical record, it is clear that: various anadromous fish species were present in the Presumpscot in great numbers before the river was dammed; American shad and alewife "ascended at least above the current site of the Saccarappa dam, despite the unsubstantiated claims to the contrary by S.D. Warren"; Atlantic salmon ascended all the way up the river; and that Native Americans and settlers alike living near the river were in disputes -- sometimes violent disputes -- over preservation of and access to these prodigious fisheries.⁴

In July, 2002, the Federal Energy Regulatory Commission (FERC) issued its Final Environmental Impact Statement (FEIS) for the five Presumpscot River dams undergoing relicensing. Regarding the dispute over the nature and range of the historic anadromous fishery, and based on the historical information before it at that time, FERC staff stated:

² See Sappi letter to FERC regarding comments on Draft Environmental Impact Statement, December 4, 2001, page 2.

³ See additional Sappi letter to FERC regarding additional comments on Draft Environmental Impact Statement, January 4, 2002 letter, page 7.

⁴ See Comments on Draft Environmental Impact Statement (FERC/DEIS - 0139D) for Presumpscot River, Maine by American Rivers and Friends of the Presumpscot River, November 30, 2001, p.16.

The size of the historical anadromous fish populations and the precise distribution within the basin, however, are not known. The falls that occurred on the river historically may have restricted the upstream migrations of some of these species (shad, herring, alewife). [FN: The sites of these falls are now either inundated by impoundments or serve as sites where dams were constructed.] However, salmon likely were more successful than the clupeid species in negotiating these barriers, and probably had a greater distribution within the basin, reportedly migrating into the tributaries of Sebago Lake.⁵

FERC staff went on to conclude that while the *exact* historic range of Atlantic salmon, American shad, alewife and blueback herring in the Presumpscot River may not be known at this time, upstream passage for these anadromous fish species at SAPPI's dams is warranted because evidence shows that sufficient habitat exists in the Presumpscot River above SAPPI's five dams to support viable populations of these native fish species, and the use of mechanical fish passage devices at SAPPI's dams to restore viable populations of these native fishes to the Presumpscot River is in the public interest, representing an equitable balance of power and non-power uses of the Presumpscot River.

During the summer of 2002, subsequent to the release of the FEIS, American Rivers, Friends of the Presumpscot River, and Friends of Sebago Lake conducted supplemental research into the historic range of Atlantic salmon, American shad and alewives in the Presumpscot River drainage. The focus of this supplemental research was on primary source historic documents from the 18th century, when mill dams were first constructed on the Presumpscot River and local residents first protested the impacts of these dams on the migratory fish populations of the Presumpscot River.

This report summarizes the key findings of this research effort. Most of the materials utilized and cited in this report are available for study at the Maine State Library in Augusta, Maine and the Maine State Law Library in Augusta, Maine. This report also utilizes secondary historic sources from the 19th and 20th centuries. Primary source documents from the 18th century, located in this research effort, confirm the veracity of most 19th and 20th century

⁵ See Final Environmental Impact Statement (FERC/FEIS-0139F), Presumpscot River Projects, Maine, June 2002, page 67.

descriptions of the historic anadromous fisheries of the Presumpscot River. The primary researcher for this report is Douglas Watts, a journalist and consultant to the three sponsoring organizations.

Executive Summary

Newly located primary source historic documents from the 18th century demonstrate that prior to the construction of mill dams, the Presumpscot River watershed hosted large numbers of migratory fish which seasonally inhabited the Presumpscot River and Sebago Lake. Migratory fish species specifically mentioned by 18th century Presumpscot River residents as important food sources include the Atlantic salmon (*Salmo salar*), American shad (*Alosa sapidissima*) and the Alewife (*Alosa pseudoharengus*). These documents show that these species were an important source of food for Native Americans and early European settlers living in the area.

Statements made and actions taken (legal and otherwise) by 18th century Native Americans and European settlers, as dams were first being constructed on the Presumpscot River, document clearly and unequivocally the existence and historic range of Atlantic salmon, American shad and alewife. These statements and actions demonstrate the importance to them of ensuring that migratory fish have free access to the river above Saccarappa Falls and to Sebago Lake. Native Americans and colonists repeatedly sought to achieve fish passage at these dams to ensure the migratory fishery would continue as before, and continue unharmed.

For example, the plantations of Bridgton and Pearsonstown (Standish) were parties to 18th Century legal actions intended to force dam owners on the lower Presumpscot River to provide upstream passage for the migratory fish. Crucially, both of these plantations are located on Sebago Lake. Legal advertisements in the *Falmouth Gazette* in 1785 state that requirements for fish passage at mill dams were created at the request and to benefit citizens residing in "interior" settlements of Gorham, Windham and Pearsonstown.

Historic research conducted for this report found no documents -- none -- which state or suggest that natural falls on the Presumpscot River prevented American shad, alewife and Atlantic salmon from reaching Sebago Lake. In fact, all documents found suggest just the opposite. For example:

- Petitions filed in 1776 by the towns of Gorham, Windham, and Pearsonstown (Standish), and in 1781 by these towns and Bridgton, cite the need for fish passage at dams on the lower Presumpscot River to allow American shad, alewives and Atlantic salmon access to those portions of the Presumpscot River in these towns. These towns are all located above the existing SAPPI dam at Saccarappa Falls in Westbrook. Bridgton is located above all five of the SAPPI dams on the Presumpscot River; and Pearsonstown (Standish) is above all of SAPPI's dams except Eel Weir, located at the outlet of Sebago Lake.
- The report of the Dam Viewing Committee appointed by the Massachusetts Great and General Court in 1777 for the Presumpscot River states that the owners of all mill dams on the river at that time (specified as Presumpscot Falls in Falmouth, Ammoncongion and Saccarappa Falls in Westbrook, and Mallison Falls in Windham) agreed to provide passage for migratory fish at these dams when requested to do so by the Committee. According to the Committee's report to the Massachusetts Great and General Court, none of the mill dam owners claimed that natural falls on the river prevented migratory fish from ascending the Presumpscot River or its tributaries; and
- The 1785, 1789, and 1794 Massachusetts laws requiring fish passage at all existing and future Presumpscot River mill dams specifically cites the need and benefit for migratory fish to have access to the entire Presumpscot River drainage. This law required that all dams on the Presumpscot River and its tributaries provide passage for migratory fish species. No records have been found to show or suggest that mill dam owners on the Presumpscot challenged the law on the basis that natural falls on the Presumpscot River prevented migratory fish species from ascending the Presumpscot River or its tributaries.

It is important to note that *all* of the newly discovered primary source material is entirely consistent with the other available historical reports and accounts previously submitted to the Federal Energy Regulatory Commission and the Maine Department of Environmental Protection by either American Rivers and Friends of the Presumpscot River, Friends of Sebago Lake, and/or the Maine Department of Marine Resources. *None* of the newly discovered primary source material supports in any way the assertions made previously by the SAPPI Corporation.

Discussion of Historic Documents

- Before Dams Were Constructed on the Presumpscot River

The use of the Presumpscot River by Native Americans for harvesting large numbers of migratory fish is established by a 1725 letter from Col. Thomas Westbrook to Massachusetts Governor Jonathan Belcher. Colonel Westbrook was a military officer appointed by the Massachusetts government to lead attacks on various Native American tribes in Maine in the 1720s during the military campaign known today as Lovewell's War. In 1725 there were no mill dams on the Presumpscot River. In his May 21, 1725 letter Col. Westbrook states:

"Wee judge that the greatest part of the Enemy are drawn some distance back, on the great Rivers, this being their time to fish for Salmon & other fish up the fresh Rivers on which the Indians yearly make a fishing voyage. Our winter scouts discovered sundry of their fishing places on Saco, Pesomscott & Amuscoggin Rivers where they made large quantities last Summer. The new recruits are not yet come, notwithstanding wee have had so many Westerly winds. As soon as they arrive, if Arm'd, I will endeavor to visit some of their fishing places." *See Appendix 1.*

- The First Dam on the Presumpscot River -- 1735

After the end of Lovewell's War in 1727, Colonel Thomas Westbrook and other local entrepreneurs constructed a sawmill and dam across the Presumpscot River at the river's head of tide at Presumpscot Falls in Falmouth (Willis 1862).⁶ According to the diary of the Rev. Thomas Smith of Falmouth, this dam was under construction in 1734 (Willis 1849). In a diary entry dated Nov. 8, 1734, Rev. Smith wrote: "I rode with my father to see the Colonel's great dam."

The construction date of this mill dam is further confirmed by the October 10, 1735 report of the Falmouth Highway Committee, which mentions locating a new road "about ten or twelve rod above the Head of the Falls above the new Mill on Pesumpscot River." (Collections of Maine Historical Society, Second Series, Vol. 6, p. 43.)

⁶ This location is believed to be the where the Smelt Hill dam was subsequently constructed.

A Sept. 7, 1736 letter from an unnamed associate of Massachusetts Governor Jonathan Belcher to Col. Westbrook shows that local Indians protested to the Massachusetts colonial Governor the construction of the mill dam at Presumpscot Falls in Falmouth by Col. Westbrook, almost immediately after it was completed. This letter to Col. Thomas Westbrook, apparently written by an aide to the Governor in response to this local Indian protest, reads:

"His Excellency, the Governor, has lately received a letter, dated the 23rd of May past, from Harrow House, in Falmouth, with out being signed by any person, complaining of Insults and Threatenings &c. some of your people have met with from some of the Indians, without giving reason for in said Letter. Which inclosed a letter from Capt. Thomas Smith of the Truck House at Saco Falls, directed to yourself, wherein His Excellency was informed that three Indians were at Biddeford in Order to take Passage on Board a Sloop bound here, and that their business was to complain that the River leading to the Sebago Ponds was so dammed and obstructed.

"Fish is their principal Subsistence in the Summer time and that for the want of which they are likely to be Starved &c. which is thought to be the reason that they have troubled you. In your letter you speak of sending up Affidavits of the whole affair in a little time. His Excellency thinks it not proper for him to give any order in this matter until the Complaint be more properly laid before him.

"I believe it will be therefore Advisable if the Indians continue their Complaints & Insults to get your evidences sworn & their depositions sent up, with your complaint in form and what Claims you have to make to the River & so as to Justify the stopping the Course and then the affair probably may be fully heard and determined. But you must look upon this only as my private opinion." *See Appendix 2.*

This letter shows that in the spring of 1736 local Indians initiated two methods of protesting the completion of the dam at Presumpscot Falls in Falmouth. Indians appeared at the site of the mill and dam and threatened workers there; and three Indians traveled to Biddeford on the Saco River to take a ship to Boston to protest to the colonial government about the impact of the dam on their ability to harvest fish migrating up the Presumpscot River. The letter's reference to Sebago "Ponds" suggests the Indians' grievance was in part due to the mill dam preventing fish from migrating up to Sebago Lake and other lakes draining into Sebago.

Records in the Massachusetts Archives show that an August 10, 1739 meeting was held in Boston between Governor Belcher and Chief Polin, an Indian sachem from the Presumpscot River. These records show Polin traveled to Boston to discuss a number of issues of concern to

his tribe, including the impact of mill dams on the Presumpscot River on the rivers' migratory fish populations. Polin was accompanied to Boston by Captain Robert Jordan of Falmouth, who served as Polin's interpreter during the meeting.

At this meeting, Polin states that Col. Westbrook had promised two years earlier to provide passage for fish at his dam at Presumpscot Falls. This statement suggests that in 1736 or 1737 some agreement was made between local Indians and Col. Westbrook that fish passage would be provided at Col. Westbrook's mill dam at Presumpscot Falls in Falmouth. Polin's statements indicate Col. Westbrook failed to provide passage for fish at his dam.

According to the meeting transcript, Polin states:

"Your Excellency, when the treaty was sealed was pleased to say that if any thing should happen that we could not understand or did not approve of we should inform your Excellency of it: and what we are most aggrieved at is that the River Pesumpscut is dammed up so that the passage of fish which is our food is obstructed, and that Col. Westbrook did promise about two years ago that he would leave open a place in the dam and that the fish should have a free passage up said river into the Pond in the proper season but he has not performed and we are thereby deprived of food." *See Appendix 3.*

Records show that after this meeting between Polin and Governor Belcher, a letter dated August 13, 1739 and signed by John Willard, the Governor's secretary, was sent to Col. Thomas Westbrook. The letter reads:

"Col. Westbrook

Sir,

I am directed by His Excellency & the Council to acquaint you that divers Indians inhabiting on Pesumpscot River have complained that by the dams built on that river the course of the fish is stoped & they are thereby deprived of a great part of their subsistence, that upon your first building the dam a passage was made therein for the fish & kept open in the proper season, but of late that passage has been wholly stoped up. I am further to acquaint you that the Governor and Council apprehend it but reasonable to leave open a sufficient passage for the fish and this they may expect may be done that no further complaint may be made in this matter and the rather because the deed of President Danforth to the Town of Falmouth does make an express saving of the rivers. It is also desired that you would take care and give orders that the people of Pesumpscot River treat the Indians kindly that come hither.

J. Willard."

See Appendix 3.

- The Second Dam on the Presumpscot River -- 1738

During the late 1730s, when Chief Polin was protesting the impacts of Col. Thomas Westbrook's dam at Presumpscot Falls in Falmouth, construction was underway at a second dam on the Presumpscot River at a falls called Nagwamqueeg. This falls, located five miles above Saccarappa Falls, was later known as Horse Beef Falls and Mallison Falls. (Dole 1974) According to statements made by Chief Polin to Governor Belcher in August 1739, local Indians claimed ownership of all of the lands along the Presumpscot River above Saccarappa Falls in Westbrook and opposed any settlers moving into the area above Saccarappa Falls.

Despite this ownership claim, in the 1730s the Massachusetts legislature created several new townships along the Presumpscot River above Saccarappa Falls. (Dole 1974) One of these townships, named New Marblehead, was laid out on the north side of the Presumpscot River extending upriver from Saccarappa Falls. This is now the town of Windham, Maine.

Records indicate that on January 19, 1738, the proprietors of New Marblehead township offered settlers the water rights to any of the Presumpscot River falls lying above the "Great Bridge" at Saccarappa for the purpose of building a mill and dam. Settlers chose the falls called Nagwamqueeg or Mallison Falls and in 1738 began to build a dam across the river (Dole 1974). Local Indians stopped settlers from building the dam, claiming it would block fish migrations and that they owned the land on both sides of the falls. Dole (1974) states that New Marblehead settlers encountered similar protests from Indians when they tried to build a meeting house near Nagwamqueeg Falls in 1737.

On March 1, 1739, the proprietors of New Marblehead voted to give settlers additional time to build a dam at Nagwamqueeg Falls, stating that the delay in finishing the dam was because, "They having been impeded by the Menaces of the Indians." The settlers were given a deadline of September, 1740 to complete the dam. Minutes of the Dec. 14, 1740 meeting of the New Marblehead proprietors state that the dam at Nagwamqueeg Falls was completed that year. Dole (1974) states that a flood in 1743 destroyed the mill dam at Nagwamqueeg Falls.

The above chronology helps to explain why Chief Polin did not specifically protest construction of dam at Nagwamqueeg Falls during his August 1739 meeting with Governor Belcher. By the time of this meeting, the Indians had successfully stopped settlers from building the dam at Nagwamqueeg Falls. Records show that settlers did not attempt to resume construction of this dam until 1740, a year after Polin's meeting with the Governor.

These records demonstrate that in the early 18th century, local Indians utilized the Presumpscot River above Saccarappa and Nagwamqueeg Falls for harvesting migratory fish. If natural falls at Saccarappa or Nagwamqueeg were impassable to migratory fish, it is doubtful the Indians would have taken direct action to stop the construction of a small mill dam on the Presumpscot River at Nagwamqueeg. Support for this is given in Pierce (1862), which states that Indians had a fishing station for American shad on the Little River. The Little River enters the Presumpscot just below Nagwamqueeg Falls and five miles above Saccarappa Falls.

Records show that after 1740 hostilities between local Indians and settlers on the Presumpscot River increased sharply. Encroachment by settlers on lands claimed by the Indians above Saccarappa Falls and the repeated failure of mill dam owners to provide fish passage on the Presumpscot were most likely key factors. McClellan (1903) describes the burning of the mill dam at Presumpscot Falls by local Indians in 1741:

"Cloudman was accustomed to run the mill all night, and one night in 1741, he saw an Indian creeping up with his gun, who twice attempted to fire at him, but his gun snapped and missed fire. Cloudman hurled the bar used for placing the log on the carriage at the Indian. It hit him on the head and killed him instantly. He then threw the body into the wheel-pit, shut down the mill and went home. The night following, the Indians burned the mill." (McClellan, 1903, p. 433)

- Indian Wars and the American Revolution

From the 1740s to the 1760s, the Presumpscot River region endured two protracted wars, known today as Gov. Shirley's War and the French and Indian War. These wars resulted in the deaths of numerous Indians and settlers along the Presumpscot River. During this period the small number of settlers living along the Presumpscot River above Saccarappa Falls constructed

small forts and stockades to protect themselves from attacks by Indians. (McClellan 1903; Willis 1849; Dole 1974)

Historic records during this period regarding the Presumpscot River are scarce. McClellan (1903) states that Col. Westbrook's dam at Presumpscot lower falls was destroyed by a flood on July 31, 1751. This is corroborated by Rev. Thomas Smith's journal entry for that day: "The freshet has carried away many bridges, hay &c. on Presumpscot River. Saccaribig bridge and the Presumpscot great dam broke." (Willis, 1849, p. 147). It appears the dam at Presumpscot Falls was rebuilt by 1759, since an account of the estate of Gen. Samuel Waldo, who died in 1759, states: "Presumpscot mills -- three saws." (Goold, p. 266).

1. The 1776 Petition and Response

On April 19, 1775, the Revolutionary War began with the battle of Lexington and Concord in Massachusetts. That same year, British military forces burned and destroyed most of the town of Falmouth, Maine. (Willis 1862) Records show that most of the adult males of the settlements along the Presumpscot River became soldiers in the Revolutionary War (McClellan 1903). Critically, during this period a blockade of the Maine and New England coast by the British navy stopped most fishing boats from leaving Maine ports for many years, severely restricting the cod and haddock fishery on which the colonists relied.

This blockade appears to be a key motivation behind an August 1776 petition to the Massachusetts legislature by the towns of Gorham, Windham, Pearsonstown (Standish) and Cape Elizabeth calling for fish passage at dams on the Presumpscot River. The petition reads:

"To the Honourable Council and House of Representatives of the Colony of the
Massachusetts Bay in New England in General Court Assembled

The Petition of the Towns of Cape Elizabeth, Windham, Gorham and Pearsonstown in the
County of Cumberland

Humbly Shew

That the said Towns lay bordering on Presumpscutt River, so called, and for many years after the Settlement of this Eastern Country were plentifully supplied with Salmon, Alewives, Shad & other sorts of Fish that frequented the said River in great abundance it being peculiarly commodious for the Spawn & increase of Fish by reason of a large pond called Sebago or Sebacook which extends upwards of thirty miles from the mouth of the said River as far as Pondicherry as also the many branches of said river that used to bring a plenty of aforesaid Fish near to many of our doors, your Petitioners further shew that by reason of several Mill Dams being built quite across said River, without leaving a sluice way for Fish to pass up, as by Law is directed, and since the said Mill Dams have been erected on the said River the passage of all kinds of Fish as aforesaid has been totally obstructed & stopt in their course up said River to the great prejudice of many back Towns which depended (in their Inland state) on the said River for a part of their support, as also to the prejudice of all the Inhabitants of the Sea Coast near the mouth of said River by causing a scarcity of Codfish, Haddock, and many kinds of Fish that frequent the mouths of such extensive Rivers after a quantity of small bait that abound in such places. And our fishing on the Banks as well as on our Coast off shore being in a great measure impracticable by reason of the Enemy's cruisers that infest our Coast, reduces us to the necessity of adopting some method whereby the fish may come to us. And the Laws of this Colony have been found ineffectual hitherto for the removal of your Petitioners cause of Complaint, Wherefore your Petitioners pray Your Honours to take the matter of our Complaint into your consideration and Grant to your petitioners such relief as in Your great Wisdom & Clemency You may Judge meet & your Petitioners as in Duty bound shall ever pray. August 22, 1776." (emphasis added) See Appendix 4.

This primary source document, possibly more than any single piece of the existing historical record, fully and completely refutes SAPPI's contention that migratory species did not travel beyond Saccarappa Falls. The towns' petition: identifies the migratory species of concern to the Presumpscot's 18th century settlers as Atlantic salmon, alewives and American shad; attributes the abundance of these migratory fish species in part to their ability to gain access to Sebago Lake and the watershed around it; and stresses the importance of allowing these migratory fish to regain access to the river tributaries in the "back towns" of the Presumpscot, i.e., Gorham, Windham and Standish.

In response to the 1776 petition, on April 4, 1777 the Massachusetts legislature passed a Resolve appointing a committee of three men to view the mill dams on the Presumpscot River to determine "where proper sluice ways be made for the passage of said fish." (Journal of the Mass. House of Representatives, 1776-1777.) This Resolve states:

"Resolved that John Lewis Esq., Joshua Fabyan Esq., Samuel Thompson Esq. be a Committee to view the mill dams upon Presumpscott River in the Town of Falmouth & County of Cumberland, which have been represented to this Court totally to obstruct the Salmon, Alewives, Shad &c in their passage to Sebago pond to lay their Spawn & that said Committee be directed to Confer with the owners of said dams & view & examine where proper sluice ways may be made for the passage of said fish & report a State of facts to the next General Court on the Second Tuesday of their first Session." *See* Appendix 5.

In June 1777, the committee presented its report to the Massachusetts Legislature. The committee stated that in the third week of May, 1777 they inspected five mill dams on the river, located at Presumpscot Falls, Ammoncongion Falls, Saccarappa Falls (two dams) and Horse Beef Falls. During this inspection the committee spoke to the dam owners or their representatives at each dam. The committee reported that four of the five dams they inspected were impassable to migrating fish. The committee stated that the owners of all the dams inspected agreed to construct sluice ways at their dams for migrating fish. The committee's report concluded, "the River is large & was said formerly to abound with a variety of fish that frequents said Streams, but the several dams appeared to the Committee almost or quite a total obstruction to their passage especially the dam on Presumpscot falls, which the Committee were informed was built about forty-four years ago." (emphasis added) *See* Appendix 6.

This document shows there were five mill dams on the Presumpscot River in 1777. Four of these dams, at Ammoncongion Falls, Saccarappa Falls (two dams) and Horse Beef Falls (aka Nagwamqueeg or Mallison Falls) are at the sites of dams now owned by the SAPPI Corporation. In 1777, the Committee reported the dam at Ammoncongion was owned by Major Benjamin Waite; the two dams at Saccarappa were owned by a Mr. Conant, and the dam at Horse Beef Falls was owned by a Mr. Osgood. According to the Committee's report, all three owners agreed to provide fish passage at their dams. None challenged this request on the basis that the falls upon which these dams were built naturally prevented the migration of salmon, shad or alewives upriver. The Committee also noted during their inspection that sluice ways for migratory fish

could be easily constructed at all four dams. The Committee expressed no reservations that the falls themselves might prevent fish from migrating upriver.

No records have been found stating if the Presumpscot River dam owners actually constructed fish passage in response to this 1777 Resolve.

2. The 1781 Petition and Response:

Four years later, on October 30, 1781, the upper Presumpscot River towns again petitioned the Massachusetts legislature requesting that fish passage be constructed on all of the mill dams of the Presumpscot River. On this occasion, the town of Bridgton joined the towns of Gorham, Windham and Pearsonstown in the request for fish passage at the Presumpscot River dams. Bridgton is located more than ten miles across Sebago Lake from the Presumpscot River. In this petition, the four towns stated:

"The reasons why the Prayer of this Petition should be granted are that the inhabitants of the plantations adjoining said Stream are many of them but in a state of infancy with respect to Settlements and their Cultivations but small that renders it difficult for them to procure the absolute necessities of life in these circumstances a plenty of fish coming even to their own Doors would greatly contribute to their support ..." See Appendix 8.

This petition is of interest because it was signed exclusively by towns located above Saccarappa Falls on the Presumpscot River. The petition states that fish passage at the river's mill dams would allow migratory fish to come to the "doors" of residents of Gorham, Windham, Standish and Bridgton. It is unlikely these towns would repeatedly ask for fish passage at the river's mill dams if local knowledge indicated that natural falls on the river prevented these fish from reaching the towns of Gorham, Windham, Standish and Bridgton.

Apparently in response to this petition, records show that on March 14, 1785 the Massachusetts Legislature passed "An Act for Opening Sluice-Ways in the mill-dam or dams which have or may be erected on Presumscut River, in the County of Cumberland, and upon any Stream or Streams which fall into the same river." The Preamble of the Act states:

"Whereas it appears to this Court that the people who live in the neighborhood of the Presumpscot River in the County of Cumberland, have heretofore, and still may, derive extensive benefits from the fishery on the said river and streams which fall into the same, unless prevented by the mill-dams which have or may be erected across the said river and streams, the increase or even continuance of which unregulated, for any considerable length of time, must inevitably destroy the annual course of the fish up the said river." (emphasis added) *See* Appendix 9.

The text of the Act went on to identify "salmon, shad and alewives" as the fishery from which the people "heretofore, and still may, derive extensive benefits", and which the erected mill dams were preventing upstream migration. To rectify this situation, the 1785 fish passage law established a three person fish committee, appointed by the Massachusetts Legislature and charged with inspecting the mill dams on the Presumpscot River, to see if dam owners had complied with the fish passage law. The committee was also charged with hiring people to provide fish passage if the dam's owners refused to do so. The law states, in pertinent part:

Be it enacted by the Senate and House of Representatives in General Court assembled and by the authority of the same, That the Court of General Sessions of the Peace for the said county of Cumberland, be, and they are, hereby authorized and directed, annually, to appoint a committee consisting of three indifferent and discreet persons, within the same county, whose duty it shall be to take effectual care that sufficient sluice ways be annually opened in all mill dams erected, or that may be erected across the said river or streams, in order that the fish may not be obstructed in their passage up the same; and that the said sluice ways be annually kept open during the season in which salmon, shad and alewives usually pass up the said river ... " (emphasis added) *See* Appendix 9.

By requiring all existing and future mill dams on the Presumpscot River and its tributaries to have fish passage, the 1785 law is premised on the finding that natural falls on the Presumpscot did not create impassable barriers to migratory fish. No record appears of opposition to this law based on disagreement regarding the range of salmon, shad and alewife migration on the Presumpscot.

A number of public notices were published by the fish committee in a local weekly newspaper, the *Falmouth Gazette*. A public notice on July 29, 1785 notifies mill dam owners that the committee would be inspecting their dams. A September 7, 1785 public notice states,

"The owners of the mills on Presumpscot river, having neglected to open sluice ways in their dams agreeably to the notice and request of the Committee -- The Committee hereby request, that if any other person or persons will perform that service, they would apply to them without delay." *See Appendix 10.*

A third public notice by the fish committee implores residents of Gorham, Windham and Pearsontown to volunteer to provide fish passage at the river's mill dams. The September 28, 1785 public notice in the *Falmouth Gazette* states:

"One Advertisement more (and the last for the present year) respecting Sluice-Ways. The Committee appointed to see that sufficient sluice-ways in the several dams on Presumpscot River, having notified the owners of the mills on said river, to open such sluice ways; and on their neglecting so to do, endeavored to procure other persons to perform that business, but without effect (although they have met several times for that purpose, at Saccarappa, agreeable to notifications in this Gazette;) and willing, as far as possible, to discharge the duty incumbent upon them -- Do, as their last attempt (for the present year, at least) hereby give notice to the inhabitants of Gorham, Windham, Pearsontown, and other places, in the interior part of the county, at whose request the act for opening such sluice-ways was made, and who would be most benefitted by the execution thereof -- that if they wish or expect to have said sluice-ways opened, they must procure some persons to open the same, or open the same themselves, under the authority of said Committee ..." *See Appendix 10.*

Statements in this legal advertisement show that the 1785 Presumpscot fish passage law was enacted at the request of the towns of Gorham, Windham and Pearsontown and other places "in the interior part of the county"; and that these interior towns would be "most benefitted" by the provision of fish passage at the Presumpscot River mill dams. These towns are located above Saccarappa Falls. These statements provide additional credence to the view that migratory fish historically ascended the Presumpscot River past the SAPPI dams on the river.

Supplemental Historic Chronology Relating to Nature and Range of Anadromous Species on Presumpscot River

July 26, 1684 -- A deed for the land that is now Falmouth and Portland, Maine is conveyed by Massachusetts Governor Thomas Danforth to the Trustees of Falmouth, specifically excepting and reserving to Massachusetts the "rivers and coves contained within the limits or bounds of said township." (Collections of the Maine Historical Society, Vol. 1. 1831). This reservation is cited by Massachusetts in 1736 as the legal basis for its request that fish passage be provided at mill dams on the Presumpscot River in Falmouth.

May 21, 1725 -- Col. Thomas Westbrook describes finding Indian fishing stations along the Presumpscot River:

"Wee judge that the greatest part of the Enemy are drawn some distance back, on the great Rivers, this being their time to fish for Salmon & other fish up the fresh Rivers on which the Indians yearly make a fishing voyage. Our winter scouts discovered sundry of their fishing places on Saco, Pesomscott & Amuscoggin Rivers where they made large quantities last Summer. The new recruits are not yet come, notwithstanding wee have had so many Westerly winds. As soon as they arrive, if Arm'd, I will endeavor to visit some of their fishing places." (Trask 1901) *See* Appendix 1.

1734 -- Construction begins on a dam owned by Col. Thomas Westbrook and others at Presumpscot lower falls, near the present day site of the Smelt Hill Dam. The Journal of Rev. Thomas Smith for Nov. 8, 1734 states: "I rode with my father to see the Colonel's great dam." (Willis 1849).

1735 -- The dam at Presumpscot lower falls is completed. Willis (1862) states: "in 1735, Col. Westbrook, Samuel Waldo, and others built a sawmill on the lower falls of the Presumpscot." The October 10, 1735 report of a Falmouth highway committee mentions locating the new road "about ten or twelve rod above the Head of the Falls above the new Mill on Pesumpscot River." (Collections of the Maine Historical Society, Second Series, Vol. 6, p. 43.)

1736 -- A Sept. 7, 1736 letter from an unnamed agent of Massachusetts Governor Jonathan Belcher to Col. Thomas Westbrook indicates that local Indians threatened and protested very soon after the dam at Presumpscot lower falls was built in 1735 (Baxter 1910). The letter also indicates the local Indians relied on the Presumpscot River's migratory fish for food. The letter reads:

"His Excellency, the Governor, has lately received a letter, dated the 23rd of May past, from Harrow House, in Falmouth, without being signed by any person, complaining of Insults and Threatenings &c. some of your people have met with from some of the Indians, without giving reason for in said Letter. Which inclosed a letter from Capt. Thomas Smith of the Truck House at Saco Falls, directed to yourself, wherein His Excellency was informed that three Indians were at Biddeford in Order to take Passage on Board a Sloop bound here, and that their business was to complain that the River leading to the Sebagoe Ponds was so dammed and obstructed.

"Fish is their principal Subsistence in the Summer time and that for the want of which they are like to be Starved &c. which is thought to be the reason that they have troubled you. In your letter you speak of sending up Affidavits of the whole affair in a little time. His Excellency thinks it not proper for him to give any order in this matter until the Complaint be more properly laid before him.

"I believe it will be therefore Advisable if the Indians continue their Complaints & Insults to get your evidences sworn & their depositions sent up, with your complaint in form and what Claims you have to make to the River & so as to Justify the stopping the Course and then the affair probably may be fully heard and determined. But you must look upon this only as my private opinion." *See* Appendix 2.

1737 -- A letter from Col. Thomas Westbrook, dated August 25, 1737, informs a Mr. William Pepperell of Kittery: "I hope we shall saw some time next month and as soon I can get any quantities I will send word immediately." An undated letter from the same period from Col. Westbrook states: "I received your favours per Mr. John Wilson, of

the 9th instant, and am very sorry we have not water to saw you a sloop load of boards as you desire, our dam not being mended at Presumpscot ... " (Trask 1901).

Jan. 19, 1738 -- Proprietors of New Marblehead township (Windham) vote to give several petitioners the water rights to any of the falls lying above the "Great Bridge" to build a mill and dam and to have it constructed by no later than August of the year next (Dole 1974). Minutes of the proprietor's meeting states that the petitioners "made the choice of the falls next above the aforesaid bridge, Called by the Indians Nagwamqueeg ..." Dole (1974) locates the site of this falls as Horse Beef falls, also called Mallison Falls, the first falls above Saccarappa. Various sources place the "Great Bridge" just above Saccarappa Falls.

1738 -- Indians protest and do not allow the settlers to complete the dam at Nagwamqueeg (Mallison Falls). The Indians claim the dam will block fish migrations and that they own the land on both sides of the falls site (Dole 1974). Construction of the dam is halted. A year earlier, the settlers of New Marblehead (Windham) encountered similar protests by Indians when they attempted to build a meeting house in the same area, after voting on June 9, 1737 to build one. (Dole 1974).

A petition dated March 16, 1738 states: "... the Indians hath forbid the proceeding of the workmen in Building the Meeting House on said Land hath not only put a stop to said proceeding, but is also of great discouragement to those who designed Settlement on several Lotts this spring (The time being near expiring for said settlement according to the Conditions of the Great and General Court)." (Dole 1974).

March 1, 1739 -- New Marblehead Proprietors vote to give petitioners additional time to build the dam at Nagwamqueeg (Mallison Falls), stating that the delay in the past year was because, "They having been impeded by the Menaces of the Indians." The deadline to complete the dam is "September next," ie. Sept. 1740. (Dole 1974)

August 10, 1739 -- Chief Polin, with his interpreter Robert Jordan of Falmouth, has conference in Boston with Mass. Governor Jonathan Belcher. Chief Polin tells Governor Belcher that fish cannot pass the dams on the Presumpscot, and asks that fish passage be provided at the dams. Chief Polin states that Indians continue to own all the lands along the Presumpscot River above "Saukarappa", that his ancestors never sold the lands above Saccarappa, and the Indians do not want any more settlers to move onto the land along the river above Saccarappa. Polin states that Colonel Thomas Westbrook had promised two years earlier to provide a passage for fish at his dam at Presumpscot lower falls but Polin says Westbrook has not done so. A letter is sent to Col. Thomas Westbrook on behalf of the Governor requesting Col. Westbrook provide passage for fish at his dam to satisfy the Indians' complaints. (Baxter 1910; Dole, 1974). *See Appendix 3.*

1740 -- First mill and dam at Saccarappa Falls built. (Collection of the Historical Society of Maine, Second Series, Vol. 10)

Dec. 14, 1740 -- New Marblehead petitioners report to township proprietors that the dam has been completed at Nagwamqueeg (Mallison Falls). (Dole 1974)

1741 -- The Mass. Legislature passes a law requiring fish passage at all dams on rivers used by migratory fish. (Massachusetts Laws, Acts & Resolves, 1741)

1741 -- McClellan describes the destruction of the mill at Presumpscot lower falls by the Indians: "Cloudman was accustomed to run the mill all night, and one night in 1741, he saw an Indian creeping up with his gun, who twice attempted to fire at him, but his gun snapped and missed fire. Cloudman hurled the bar used for placing the log on the carriage at the Indian. It hit him on the head and killed him instantly. He then threw the body into the wheel-pit, shut down the mill and went home. The night following, the Indians burned the mill." (McClellan 1903)

1743 -- Dole (1974) states that the dam at Nagwamqueeg (Mallison Falls) was destroyed by a freshet in the spring of 1743.

1751 -- McClellan (1903) states that Col. Westbrook's dam at Presumpscot lower falls was destroyed by a freshet on July 31, 1751. This is corroborated by Rev. Smith's journal entry for that day: "The freshet has carried away many bridges, hay &c. on Presumpscot River. Saccaribig bridge and the Presumpscot great dam broke." (Willis 1849)

1759 -- It appears the Presumpscot lower falls dam was rebuilt after the 1751 flood, since an account of the estate of Gen. Samuel Waldo, who died in 1759, states: "Presumpscot mills -- three saws." (Goold 1997).

June 17, 1776 -- Settlers of Gorham vote at town meeting to petition the Great and General Court of Massachusetts for fish passage on the river (McClellan 1903).

October, 1776 -- Townships of Gorham, Cape Elizabeth, Windham and Pearsontown (Standish) file petition with Mass. Great and General Court asking for fish passage at Presumpscot River dams (Baxter 1910). *See* Appendix 4.

Nov. 5, 1776 -- The daily Journal of the Mass. House of Representatives notes petition of Cape Elizabeth, Windham, Gorham and Pearsontown "praying that some measures may be taken by this Court to open passages for alewives and other fish to pass up rivers into the ponds to cast their spawns." The court directs Brigadier Palmer, Col. Lithgow, Mr. Choat, Mr. Coddings and Capt. Hosmer to "consider the matter at large." (Journal of the Mass. House of Representatives, 1776-1777).

April 4, 1777 -- House of Representatives passes a resolve appointing a committee of three men to view the mill dams on the Presumpscot River to determine "where proper sluice ways be made for the passage of said fish." (Baxter 1910). *See* Appendix 5.

May, 1777 -- Dam viewing committee reports back to the House of Representatives that all of the dams viewed are impassable but that dam owners agree to install sluice ways for fish to pass (Baxter 1910). *See* Appendix 6.

June 25, 1777 -- In response to the 1776 petition for fishways by the four towns, the Mass. House of Representatives approves a resolve that the petitioners notify all Presumpscot River dam owners that they "appear on the third Tuesday of the next setting of the General Court, and Shew Cause, if any he have why he should not make and keep open a sufficient Sluice or Passage Way through and around said Dam for the Passage of Fish up said River and pay the charge arising thereon." (Baxter 1910). *See* Appendix 7.

Oct. 15, 1781 -- Windham residents at town meeting, "Vote that Edward Anderson, be an Agent for this Town to meet with the Agents of the neighboring Towns, to prosecute measures as they judge best to obtain good and sufficient fish courses through the several Dams on the Presumpscot River." (Dole 1974).

Oct. 30, 1781 -- Towns of Gorham, Windham, Pearsontown (Standish) and Proprietors of Bridgton petition Mass. Great and General Court for fishways at Presumpscot River dams (Baxter 1910). *See* Appendix 8.

March 14, 1785 -- Massachusetts Legislature passes "An Act for Opening Sluice-Ways in the mill-dam or dams which have or may be erected on Presumpscot River, in the County of Cumberland, and upon any Stream or Streams which fall into the same river."

The Preamble of the Act states: "Whereas it appears to this Court that the people who live in the neighborhood of the Presumpscot River in the County of Cumberland, have heretofore, and still may, derive extensive benefits from the fishery on the said river and streams which fall into the same, unless prevented by the mill-dams which have or may be erected across the said river and streams, the increase or even continuance of which unregulated, for any considerable length of time, must inevitably destroy the annual course of the fish up the said river." *See* Appendix 9.

July 29, 1785 -- The three man fish committee created by the March 14, 1785 Act places a public notice in the Falmouth Gazette and Weekly Advertiser stating that it has viewed the mill dams on the Presumpscot and found none of them have passage for fish. *See* Appendix 10.

October, 1785 -- A fall freshet destroys bridges, mills and dams on the Presumpscot River. The Falmouth Gazette states: "Most of the bridges and mills, within a circle of between twenty and thirty miles, are entirely destroyed; and immense quantities of mill-logs, boards, and other lumber swept away, and gone irrevocably."

1789 -- Massachusetts Legislature passes "An Act to Prevent the Destruction and to Regulate the Catching of the Fish Called Salmon, Shad, and Alewives in the Rivers and Streams in the Counties of Cumberland and Lincoln, and to Repeal All Laws Heretofore Made for that Purpose."

This law specifically mentions the following rivers: "The Rivers of Presumpscot, Androscoggin, Merrymeeting Bay, Kennebec, Sheepscot, Bristol, Muscongus alias Medumcock, St. Georges & Penobscot ..." *See* Appendix 11.

1794 -- Massachusetts Legislature passes "An Act, in Addition to An Act, Intituled, An Act to Prevent the Destruction and to Regulate the Catching of the Fish Called Salmon, Shad, and Alewives in the Rivers and Streams in the Counties of Cumberland and Lincoln, and to Repeal All Laws Heretofore Made for that Purpose."

The Act states: "Whereas the time during which provision is made by said Act that good & sufficient sluice-ways & passages for the said Fish shall be kept open has been found too short, with respect to the Presumpscot-River, & the several rivers & streams communicating with & running into the same."

The act extends the time fishways must be open on the Presumpscot from May 1st to July 20 to April 15 to July 20. *See* Appendix 12.

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Appendices 1-12