# Have Salmon Endangered Maine?

*Rumors of the state's economic demise were greatly exaggerated...*

**By Ted Williams**

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**In 2000,** when the last populations of Atlantic salmon in the US were protected under the Endangered Species Act, politicians and industry lobbies warned that the ESA listing would ruin Maine's aquaculture and forest-products industries. But five years later, the sky has yet to fall.]The Endangered Species Act is currently under attack by the Bush administration, which is seeking to neutralize it by fiat (see "Salmon Shell Game," November/December 2004), and by conservative politicians who are trying to gut it legislatively. Leading the charge in Congress is House resources chairman Richard Pombo (R-CA) who proclaims that the law is "broken," has been a "failure," and is used by "radical environmental organizations [to] prohibit legal land uses of nearly every kind."

Such talk infuriates Steve Moyer, Trout Unlimited's federal advocacy coordinator, who helped procure the last reauthorization of the ESA in 1988 when he was a lobbyist for the National Wildlife Federation. "We don't enforce the Clean Water Act aggressively enough," he declares. "We weaken some federal lands laws to cut more forests. We don't bother to update a federal mining law from the 1800's. We don't make the Magnuson Act conserve marine fish. We don't provide adequate funding for federal and state wildlife programs. On and on and on. We put a huge burden on the ESA (30 species of trout and salmon from coast to coast, for example), and then some have the nerve to blame it for being 'broken.'"

But what of the human misery allegedly caused by the ESA? Consider the nation's wild Atlantic salmon-which exist only in Maine. Five years after being listed as endangered, they haven't responded; virtually no species with a multi-year life cycle could in that time frame. But five years is plenty of time for onerous federal regulations to trash a state's economy. Has this happened?

The aquaculture industry, the forest-products industry, the blueberry industry, the property-rights community, and just about every state and federal politician in Maine said it would. Consider some of the pronouncements of then governor Angus King: "It will kill the [aquaculture] industry dead. D-E-A-D, dead." The feds have "betrayed" Maine with "a partial takeover." "They're trifling with people's lives and I resent the hell out of it."

State Rep. Robert Daigle (R-York) likened the ESA listing to a "nuclear bomb." US Sen. Olympia Snowe (R-ME) fretted about "disastrous consequences" including "an end of aquaculture." US Sen. Susan Collins (R-ME) warned of "serious implications for the aquaculture, blueberry, cranberry, and forest products industries," and lamented the "cruel irony" of federal intervention after the state had already embarked on its own recovery plan. Jonathan Reisman, president of the Maine Conservation Rights Institute (a wise-use outfit) and associate professor of economics and public policy at the University of Maine-Machias, circulated the following statement over the Internet: "What they're saying to Washington County is, we don't really care about the violent sodomization you're enduring-just turn the other cheek, cooperate with your tormentor, and you'll learn to enjoy it. Personally, I've always thought violent rapists should be executed to protect the community from repetition."

Less than a month after the November 13, 2000 ESA listing, the State of Maine filed suit (unsuccessfully) against the federal government. It was joined by the state Chamber of Commerce,

Atlantic Salmon of Maine (an aquaculture venture), Stolt Sea Farm Inc., the Maine Aquaculture Association, the Maine Pulp & Paper Association, the Wild Blueberry Commission, and blueberry growers Jasper Wyman and Sons and Cherryfield Foods.

When the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) first made noises about listing in 1996, then-Sen. William Cohen (R-ME) informed then-Interior Secretary Bruce Babbitt that "the disposition of this [Atlantic salmon] petition will greatly affect my views regarding changes to the Endangered Species Act that might be warranted." Babbitt, who took the threat very seriously, backed a state restoration plan that supposedly would make listing unnecessary. It was a nice try by Babbitt who, during his tenure, single-handedly saved the act, but he underestimated Maine's recalcitrance and torpor.

On December 18, 1997 Interior's USFWS, along with the Department of Commerce's NMFS, approved the state plan, simultaneously withdrawing the proposal to list the salmon of seven Down East Maine rivers. Salmon advocates were less sanguine about the state plan than the sundry bureaucrats and politicians who oozed and gushed about it that day in Augusta. For one thing, it had no funding mechanism. For another, measures were largely voluntary. "It was a plan to avert impacts to business and industry; it wasn't about salmon restoration," says Ed Baum, who retired as the state's salmon restoration coordinator in 2000 after 32 years with the Salmon Commission. Even when Baum worked for the state he dared to tell me this, on the record: "There has never been a serious attempt to restore salmon runs in Maine."

One indication the state plan would fail was in 1999, when Cherryfield Foods asked to dewater the dangerously low Pleasant River. The state ignored its own plan and its own salmon biologists and told the company to go ahead. Another indication was that, right up to listing in November 2000, the state stridently maintained that there were no wild salmon to protect. "It's hard for me to understand how an animal that numbers in the millions can possibly be in danger of extinction," commented then-governor King. "If you carry it too far, everything's an endangered species: I guarantee that a mouse in Waterville, Maine, is different in some ways than a mouse in Watertown, New York."

Even as the governor was venting this kind of gas and wind, his senior salmon biologist, Baum, was confronting him with the truth, calling America's remnant wild salmon a "treasure of national significance." One of the nation's most respected geneticists-Tim King, of the US Geological Survey-had demonstrated for the feds that America's wild Atlantic salmon were indeed unique. As the USFWS and NMFS put it, "The loss of these populations [endemic to the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot rivers and Cove Brook] would restrict the natural range of Atlantic salmon to the region above the 45th parallel and beyond the borders of the United States. . . . The genetic resources of these most southerly stocks are considered vitally important to the species' future survival." It was the best science available, all peer-reviewed.

But the governor's office dismissed it as "junk science," and hired two obliging researchers, one from the state university, to confirm the allegation. Then, armed with their own junk science, the governor and his industry cronies went after the USGS's Tim King. "This was just outrageous, completely politically motivated," says Leon Szeptycki, Trout Unlimited's eastern conservation director. "It was incredibly wasteful and damaging. This poor guy Tim King got dragged through the mud. It got really personal. Tim didn't have a dog in this fight; all he cared about was doing the work. He provided really elegant genetic and statistical evidence of a native population structure." Maine's congressional delegation bought into the governor's bogus accusation, diverting $500,000 from salmon restoration to order up a redundant genetic study by the National Academy of Sciences. Lo, more than two years later, NAS reported that Tim King had gotten everything right.

So what happened to Maine's aquaculture industry? Is it, as former-governor Angus King predicted, "dead, D-E-A-D, dead?" Well, salmon farming looks like it might be heading in that direction, which is some of the best news for wild salmon that's come out of the state since listing. Production is a third of what it was in 1999, and far fewer escapees are showing up in the rivers. But what, if anything, has the ESA to do with the industry's current woes?

"As far as we can tell the only industry more regulated than we are is nuclear power," says Sebastian Belle, executive director of the Maine Aquaculture Association. "We had one major operation, Fjord Seafood, a Norwegian company, pull up stakes entirely. We have other companies that have scaled way back, and the last independent salmon farmer in the state [Erick Swanson of Trumpet Island Salmon Farm in Blue Hill Bay] is quitting."

Long before Belle mentioned the listing he went through a long litany of other grievances, particularly foreign competition and the February 2002 court order to get rid of European fish, which supposedly grow faster than North American strains but threatened to genetically swamp them. Interestingly enough, this order resulted not from the ESA but from the Clean Water Act. Fish farms are major sources of pollution, fouling water with feces, decaying feed, pathogens, antibiotics, pesticides and exotic genes-all of which are regulated under the statute. Forced depopulation of European stock did in Atlantic Salmon of Maine and crippled other operations. They'll even admit they are victims of the Clean Water Act.

But in fact, they are victims of themselves. Before listing they used every possible legal and political maneuver to retain their European fish. Despite the fact that this violated state and federal law, the governor's office and the congressional delegation backed them, talking the feds into looking the other way. But sometimes the cruelest word a regulator (or parent) can utter is "yes." The stubborn commitment to European fish caused major loss of production because the court not only required salmon farmers to get rid of their alien fish but to do so immediately. They had to depopulate their pens and, for the rest of the season, were left with nothing. Heritage Salmon, Inc. and Stolt Sea Farm, Inc.-based in Canada, where European stocks have long been outlawed-had North American fish on hand and therefore were able to convert their Maine operations.

In addition to fining salmon farmers for violating the Clean Water Act, the court required them to "fallow" production sites. "As a result we have about 400 people out of work in Washington County," complains Belle. "When you're mandated to go [temporarily] out of business by a court order I would say that's a pretty imposing event." True. On the other hand, fallowing-vacating a site for at least one growing season-is nothing more than good sense and standard procedure in many types of agriculture. Because the industry had declined to take this precaution, sea lice proliferated. Lice themselves are a major scourge of penned salmon, but they transmit a far more deadly scourge-infectious salmon anemia, a rapidly spreading virus that replicates in gills, kidney, liver, intestine, spleen, muscles and heart, causing hemorrhaging and killing victims in under a month. In 2002 an outbreak required Maine salmon farmers to destroy most of their stock-every fish in Cobscook Bay, about 1.5 million adults. Heritage Salmon Inc., in whose pens the outbreak apparently started, was fined $15,000 for failing to report positive test results. Another outbreak in 2003 required more destruction. Yet another outbreak is underway as I write. And now, to the alarm but not surprise of wild-salmon advocates, the virus is showing up in Penobscot and Merrimack salmon.

Maine's last independent salmon farmer, Swanson of Trumpet Island Salmon Farm, isn't going out of business. He's just switching to mussels. It's a growing trend, and great news for everyone, especially wild salmon. Around the time of listing, salmon (by value) accounted for about 95 percent of Maine's

aquaculture industry; now they're down to half. Oysters and mussels are taking up most of the slack, but a state-of-the-art aquaculture center at the University of Maine is figuring out how to raise cod and halibut. "There's a real effort to prop up the industry and go to alternative species," says Andy Goode, director of US programs for the Atlantic Salmon Federation. "I think there's recognition that, with salmon, the industry just can't compete." The fortunes of any undertaking are enhanced by diversity; so, to the extent that the ESA has provided incentive for conversion from salmon to shellfish, it has helped Maine aquaculture.

Maine's blueberry industry, which produces half the continent's wild blueberries, is having its share of problems, too-none of which is related to the ESA. For one thing, the brutal, largely snowless winter of 2003-2004 freeze-dried the buds, wiping out half the crop. For another, in 2003 a jury ruled that three Maine blueberry processors had illegally conspired to fix prices. With triple damages and attorneys' fees the processors would have had to cough up about $60 million. The growers, who had brought the suit and who couldn't survive without processors, agreed with the defendants that this would put everyone out of business and eventually settled for $5 million.

Still, Dave Bell, director of Maine's Wild Blueberry Commission reports that the industry's general health is "very good." One reason is that, unlike salmon farmers, blueberry growers devised contingency plans when it became clear they could no longer irrigate their crop by dewatering salmon rivers. Even without the listing, state and federal clean water laws would have forced growers to develop alternative water sources. Now they irrigate mostly from distant wells and artificial ponds. So, as a motivator for wise business practices, the ESA listing has benefited the blueberry industry, too. "There are some cost-share programs to help growers develop alternative water sources," says Bell. "As long as everyone works together proactively to address issues and solve problems we can co-exist. I've always believed that if we can have salmon in Down East Maine again, it's good for everyone." That sure sounds more positive than some of the industry's pronouncements when the commission was suing the feds for listing salmon.

Foreign competition, not the ESA, has hurt Maine's forest-products industry. But, according to Michael Barden, director of Environmental Affairs for the Maine Pulp & Paper Association, there have been encouraging recent developments such as the booming economy in China, where there isn't much pulp capacity, and the decline of the dollar, which is making it more profitable for US firms to export their product. Barden's association was also a partner to the state's unsuccessful suit opposing the listing of salmon, but since then all association members have sold their forestland and therefore aren't suffering even imaginary inconvenience. The only measurable effect of the listing on the forest-products industry has been to provide it with a windfall in the form of state, federal and private funds used to buy its development rights. International Paper, for example, has sold a conservation easement that protects a 1,000-foot corridor on both sides of 210 miles of the Machias River and six major tributaries. The public still gets to hunt and fish, and IP still gets to cut its timber, albeit on a sustainable basis. The second phase of the project will protect the river's headwater lakes. "This kind of habitat protection was called for under the state plan," says Tom Rumpf of The Nature Conservancy, the deal's lead negotiator. "But no way could the state have afforded it without ESA money."

"After listing, all the fighting became moot," says Baum. "There's much more cooperation among the state fisheries agencies [Inland Fish and Wildlife, Marine Resources, and the Salmon Commission]. During most of my career the commission would have to get a permit from IFW to stock salmon; and there were often rivers that were off limits. Also, IFW was stocking browns, rainbows and splake and other species in the salmon rivers and never consulting with us."

The Atlantic Salmon Federation's Goode agrees. "A year after listing you started to see a lot of collaborative projects between industry and the NGO community," he says. "For example, three big aquaculture companies got together with ASF and TU, and we designed an effective new containment management system at every site."

With help from Senators Snowe and Collins, now ardent salmon advocates, federal money is pouring into the state, and, as a result, more state and private funds are becoming available. Some of this money is funding the work of local watershed councils, now heavily invested in salmon recovery; they're controlling non-point pollution and siltation, reporting violations, buying land, and otherwise protecting habitat. According to Salmon Commission director, Pat Keliher, there are now about 28 biologists working on Atlantic salmon; before listing there were about seven. The newly moneyed commission is gearing up for a massive liming project on the Dennys River, which has been blighted by acid rain. About three quarters of the riparian habitat on that river had been unprotected; now the state has locked up about 60 percent of that. "We have every major stakeholder, including the entire state Congressional delegation, in the harness working together," says TU's Steve Moyer.

For political, not scientific, reasons there was no listing for the genetically unique salmon of Maine's Penobscot River-America's biggest Atlantic salmon river and one that sustains more fish than all Down East streams combined. Nor was there a listing for the salmon of the Kennebec and Androscoggin rivers. Yet the ESA will benefit all these runs. The second part of the National Academy of Sciences study-an inadvertant result of the ESA in that it was ordered up by Maine politicians panicked by the alleged threat of listing-was released in December 2003. It recommended dam removal-a no-brainer for anyone who knows salmon; but most politicians don't know salmon. "To have the NAS say this has been hugely beneficial," says the Natural Resources Council of Maine's Laura Rose Day, who directs an environmental coalition called Penobscot Partners.

Beneficial indeed. Last June representatives of Pennsylvania Power and Light Corporation (owner of the most hurtful dams on the Penobscot), the Penobscot Indian Nation, the State of Maine, Interior's Bureau of Indian Affairs, the National Park Service, the USFWS, American Rivers, the Atlantic Salmon Federation, Maine Audubon, the Natural Resources Council of Maine and TU signed an agreement that will open 500 miles of river habitat to easy access for salmon and 10 other species of migratory fish. Under the agreement PPL will get to increase generation at six dams once it sells three dams on the lower river-Veazie, Great Works and Howland dams-to the Penobscot River Restoration Trust. Veazie and Great Works will be removed; Howland will be by-passed by a large channel; and improved fish-passage will be installed at four other dams.

Even the Bush administration likes the idea. At the final agreement in June 2004 there wasn't going to be a press conference. But when US Interior Secretary Gale Norton heard this she demanded one, then joined Maine governor John Baldacci and other state and federal dignitaries on the banks of the Penobscot. "Today," she declared, offering an eloquent (albeit inadvertent) defense of the ESA, "it seems perfectly plausible that executives of a power company that owns dams on the river, environmentalists and sportsmen who have tried to get the dams torn down, the governor of Maine, representatives of state and federal agencies responsible for the fish in the river, and members of a Native American tribe that has fished the river for 10,000 years are all working together."