



Nor'East Chapter Trout Unlimited

SEPTEMBER 2015 NEWSLETTER

Protecting, conserving and restoring Massachusetts' Northshore coldwater fisheries and their watersheds.

Greetings from the President

Can you believe that it's September already?!? Here we are, headed into another season of TU meetings, autumn fishing (of whatever kind you do), and colorful leaves falling in anticipation of the coming snows... Whew. I feel like I blinked last June and suddenly summer was over ...



But we have some exciting events coming up! Our first meeting of the fall season will have a great speaker, Elliot Jenkins of Greasy Beaks Fly Fishing, to talk about fishing for false albacore and bonito down on the Cape and in Rhode Island. Then in October, we'll hear about Montana fishing on the Missouri and Big Horn Rivers from Rick Little of Shad Creek Fly, and in November we'll have an update on the Kinder Morgan Northeast Direct (NED) Pipeline project from Jim Cutler of the Pipeline Awareness Network of the Northeast (PLAN-NE).

We're also starting the planning process for our Annual Banquet next spring: we need to find appropriate gifts for the auction and to sell ads for the Banquet booklet, and we'll need help from everyone in this group effort. Furthermore, one of our weaknesses in regard to the Banquet has been in marketing this important event: we need better attendance to fund our cold water conservation efforts, of which we have a number of projects that we will report on soon at our meetings!

As always, our meetings occur on the first Monday of each month (except for Labor Day this month), starting at 7:00PM but if you come at 6:00PM you will have a great meal for a donation of just \$5.00, the best deal anywhere! Good conversations and fellowship, informative presentations and fun times. We look forward to a great season ahead!

We'll see you on September 14th at the IRWA headquarters. Come at 6:00PM for a great meal! The meeting starts at 7:00PM. We'll have a great raffle, as always. Don't miss out!

Fred Jennings
NETU President

Upcoming Events

Sept 14 Capt. Eliot Jenkins, guide and owner of Greasy Beaks Fly Fishing, will speak on fishing for False Albacore and Bonito. Eliot also guides for striped bass, tuna, as well as salmon and steelhead in N.Y., Michigan. and Oregon.

Oct 5 Rick Little owner of Shad Creek Flies, will speak on fishing on the Missouri and Bighorn Rivers in Montana.

Nov 2 Jim Cutler of the Pipeline Awareness Network will speak on the proposed Natural Gas pipeline across Northern Mass. He spoke to the Boston Chapter on this topic and was well received.

Dec 7 This months meeting will be our annual holiday pizza party and fly-tying get-together. You don't have to be a fly tier to come. We'll have pizza for all, so bring an appetite and your own holiday cheer.

MARK YOUR CALENDAR:

The Nor'East TU Annual Banquet will again be held at the Ipswich Masonic Hall on March 18, 2016.

Have you renewed your TU membership?

Do it today at www.tu.org

A BRIEF REPORT ON THE 2015 STRIPER SEASON

I can't believe it's September already! The water in Ipswich is still very warm, 70°F in the estuary at the start of this month. The fishing was great in early June (though I was an absentee angler for the first two "peak dawn periods" in June, at Grand Lake Stream, ME and then at the Farmington River, both with TU people). I won't make that mistake again, as my friend Dick had gangbuster fishing at the beginning of June with two days of 37 and 20 fish including a few "keeper sized" ones. The fishing had slowed down in late June, though I had a few days with some nice fishing. My best trip was 10 fish and my next best was 5 fish, which is a far cry from what it was 10-15 years ago... Most of the fish we've been catching this season are from the 2011 Young of the Year class, now between 22" and 26" long. They fight like tigers and seem in good health. Next year they'll be harvestable under Massachusetts regulations by recreational anglers but perhaps not yet fodder for the commercial harvest until 2017. Let's keep working for gamefish status – as well as perhaps a slot limit – just to protect these breeders!



The fishing from mid-July through August really sucked for me. Indeed, it was almost nonexistent. I'd take people out on occasion, and often they caught nothing at all or just one or two fish. I had several days myself when I had nary a hit in eight hours of fishing very hard for these fish in all my favorite places. Last Wednesday, September 2nd, on a peak dawn morning, was a good example of how unpredictable this fishing has been. I was on the water by 5:00AM (high tide was 2:17AM with sunrise at 6:09AM) and made my way downriver in my kayak. My friend Dick was planning to start at 6:00 or 6:30AM and meet me somewhere downriver. I didn't have a single hit trolling and saw not a sign of a fish on the glassy surface all the way down to my first stop. Not a hit there, wading and casting, on either of the two good stretches. Heading further on downriver a bit after sunrise, I saw no swirls but thought I heard a few pops but could see nothing on the slight wind ruffle that was disturbing the surface. But wait! There was a swirl, and then another, and suddenly the surface showed a number of swirls repeatedly not far away. I threw a few casts while drifting down with the outgoing tide, to a few sporadic swirls. Then they appeared again well uptide of me so I decided to paddle back up there and troll through them. Not a hit on my trolled fly and my kayak put them all down. I cast to where they had been and on my first cast a 24" striper grabbed my fly and towed me around in my kayak until I brought it in...

Not another strike for four hours to my hard-working fly... Dick came down and caught an 18" striper in the same area as I had, as the fish had started busting again by the time he'd arrived. He had one more hit about two hours later on his first cast in a favored spot, and then two clambers came through with their outboards and that was the end of that. We were paddling back upriver on the rising tide to fish a few spots before heading home, when Dick hooked another 18" fish on his trolled fly and pulled his kayak in on a favorite flat. I had planned to stop and fish a stretch that he had gone past but when I saw him fighting a fish I decided he'd need my help(!) so I kept going to where he was fishing! A bit after I'd gotten there and anchored my kayak and started down the flat behind Dick, I saw him raise a big fish that grabbed his fly, rolled hard on the surface and broke him off, escaping with his special green fly! My "Shameless Hooker" Clouser fly hadn't been working well though I'd seen a fish on the flat nearby, so I changed to a green sand eel fly (with an epoxy body) and started casting.

Continued on next page...

REPORT FROM THE CONSERVATION COMMITTEE

The Conservation Committee performed a quick repair at the Lock Wood Lane Culvert in January, several members were kneeling in the ice-strewn water and repairing the wash-out damage from 2014 Thanksgiving deluge rain storm. The committee members packaged some very large boulders at the upstream entrance to the culvert, and this has worked nicely since then.

Of special note is the Town of Boxford Conservation Commission chairman has noted how pleased he is with TU #154's efforts and execution of install as well as follow up on repairs. The town of Boxford has approved the next steps for culvert replacement upstream at Middleton Road and TU #154 will seek to participate as needed. To date Mike O'Neil has provided preliminary design documents to assist the Department of Public Works director to get the selectman to green light the full project.

Clean up the Mills River took place in late May (See picture below). Thanks to everybody that participated and helped cart of the garbage from the site.



WILLOWDALE FISHLADDER

← MILLS RIVER CLEANUP CREW

The fish ladder at the Willowdale Dam was repaired by TU #154 members with an engineered stay frame system. That balances out the flow evenly through the 10 chambers... TU's Conservation Committee has several target projects for the next year, more details will be unveiled at this fall's meetings.

REPAIRS BEING MADE →

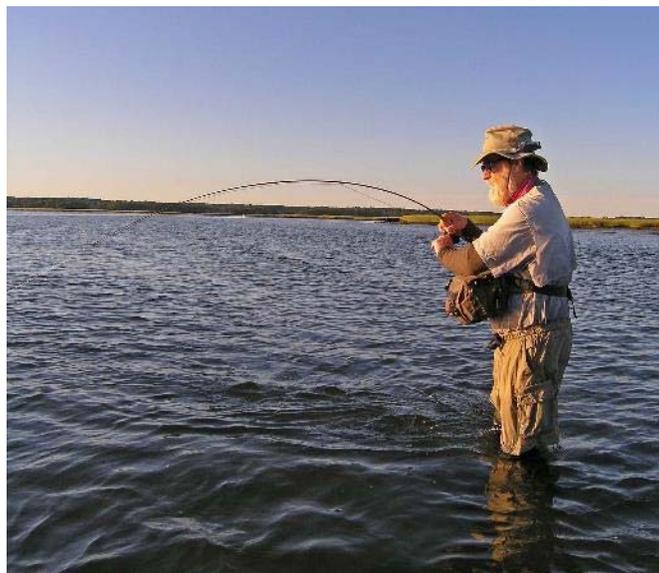
BEAVER DINNER...THE OLD BOARDS



A BRIEF REPORT ON THE 2015 STRIPER SEASON (CONTINUED)

Continued from previous page...

Shortly after that fly change, I had a strong take from a good fish that took 100 yards of line on its first run and then we argued over line for a while before I landed this 30" fish (my biggest – so far – of the season). Shortly after that, I had another hit that missed the hook and so Dick came over and took my only remaining sand eel fly, as he had no similar flies in his box. I then hooked another nice fish of what turned out to be 26" and while I was fighting that fish Dick tied into a really good one with my sand eel fly. His fish ran downcurrent between me and the fish I had on and then came up onto the flat until I felt Dick's line against my legs so I backed up in a hurry! Dick came down the flat, went under my line, both of us fighting big fish, and then I landed mine. Dick was still working on his, and I was tempted to tease him about how long he was taking with that fish (maybe 6-8 minutes) when he got it into shallow water and showed me a 38" fish, which he revived and released!

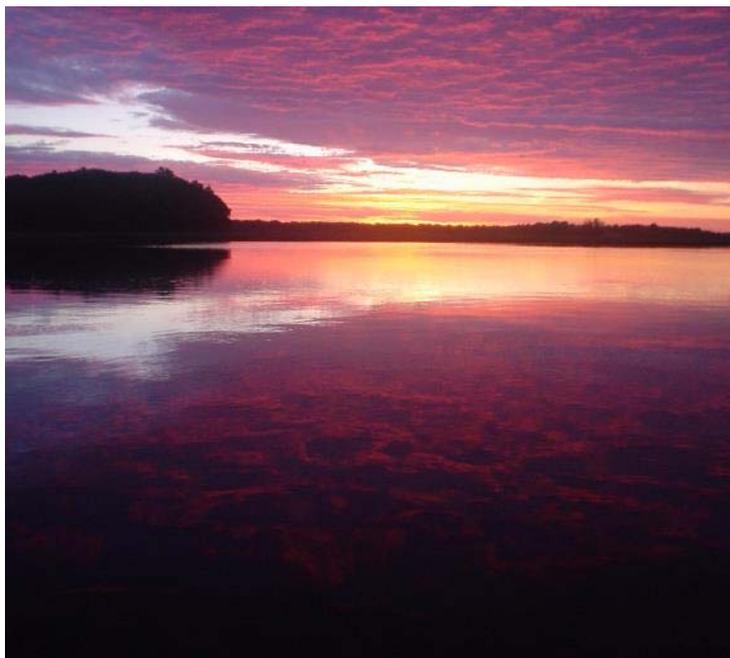


That's the biggest striper that he has ever caught in our river, and it ties my best fish of 38" taken 20 years ago on an equally bright August day. He caught it on a 7 foot 2-weight that I had given him some years before; I was using my own precious 6½ foot 2-weight that day. After that, we had no more hits. I suspect that fighting that 38" fish spooked the whole bunch of them away. We finally headed upriver, stopping once more but had no hits. So it goes...

One of the greatest things about this striped bass fishery is that even when the fishing is lousy you have a chance of tying into a very big fish without warning. So you keep casting, feeding on hope, which is always the engine of effort.

Tight lines, everyone! We've still a month or more left in the salt, and then perhaps salmon or steelhead trout to the west of us will attract your attention. In any event, the fishing is always fun, whether catching or not. Good luck!

Fred Jennings
Peak Dawn Anglers
Ipswich, MA



STRIPER FISHING WITH FRED JENNINGS AND GEOFF DAY

Getting up at 2:30am is not my idea of fun. The wife thinks I am crazy and turns over lazily, certain that she has got about another full night of sleep ahead. I get up and head for a quick shower and the coffee maker. Any sane person would still be snoring away and here I am rubbing the sleep from my eyes and getting into my wet-wading gear. Driving from Newburyport to Ipswich the only thing I encounter is some lost turkeys and a few delivery trucks. It is the weekend and the moon is full. Fred Jennings and Geof Day are supposed to meet me in Ipswich at 3:00am and to my surprise both are in the parking lot and ready to go...

We head to Argilla road where Fred has friends and keeps his canoes. The full moon is helpful and we are just slightly past high tide when we load the canoe and walk down a narrow strip of planking to the river. At 3:30am we glide down the Castle Neck river with an outgoing tide and a full moon behind us. Everything is very quiet, still and beautiful. As we land on Gravel Island, our first stop, Fred hooks into the first striper and I into the second one, which releases itself without me ever seeing it...we continue fishing and ultimately head down toward the area behind Crane. Fred points us towards a pool and suggests to try that one...



Low and behold! I hook into another fish and this time I am able to land it cleanly. Geof brought his Go-Pro and catches the whole action on camera (www.youtube.com/watch?v=U8roMq5mpZc). This is my first striper caught on a flyrod (a 3 weight at that)! A whole new experience. Unfortunately after releasing the fish,



my excitement gets the better of me, and I decide to climb in the canoe from the deep water side. After an unexpected swim in the river (completely under I went), Fred and Geof hand me a wind breaker to make sure I don't end up with hyperthermia (cotton kills, another lesson learned). We end up slowly peddling back upriver with the incoming tide but catch only a few more fish. A great day on the water though and at least everyone got a fish.

Peter Vandermeulen
Newburyport, MA

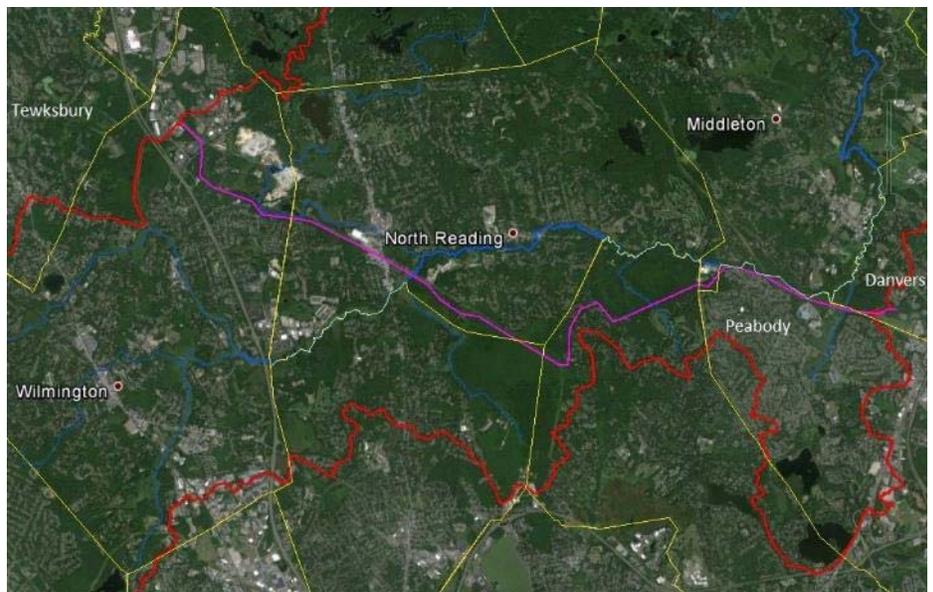
THE KINDER MORGAN NORTHEAST DIRECT (NED) PIPELINE PROJECT

As many of you know already, a natural gas pipeline has been proposed by Kinder Morgan to run from the Marcellus Shale fracking areas in Pennsylvania across New York and northern Massachusetts and southern New Hampshire to Dracut, with a “lateral” extension from Dracut to Danvers that will cut through 11 miles of the Ipswich River watershed and run right along the riverbank for two of those miles. The pipeline construction right-of-way is 100 feet in width and will be clear cut during construction, with a permanent open right-of-way at least 50 feet wide. This project will carve and leave an ecologically devastating swath through very important watersheds and conservation lands, crossing many streams, vernal pools and wetlands through its lengthy course, both in Massachusetts and elsewhere.

The economics of this project are also rather disturbing, where if a local economic “need” for this energy can be established, then local rate payers will be assessed for the full costs of construction. There is much debate over this alleged “need” that remains to be proved; Massachusetts Attorney General Maura Healey has commissioned a study of this important issue to be completed this October, while Kinder Morgan is doing its level best to fast track the approval process, circumventing any delays. The “Danvers lateral” extension of this pipeline was added late in the game, as a means of connecting the pipeline to another existing Kinder Morgan pipeline to Canada for which they have recently applied for a “reversal of flow” permit, thus changing an import flow to an export flow of natural gas to be exported to Europe. What a deal, right? Their plan appears to be this: to establish a local “need” for energy, so all the construction costs will be paid by local rate payers, and then use the pipeline to export this energy overseas to Europe for a better price and more profit!

The Nor’east Trout Unlimited (NETU) Chapter has weighed in on this issue! NETU President Fred Jennings traveled to two hearings with Wayne Castonguay, Director of the Ipswich River Watershed Association (IRWA), both on August 3rd and August 11th, to testify orally against this project before the MA Energy Facilities Siting Board (EFSB) and the Federal Energy Regulatory Commission (FERC). Additional written testimony was sent in by Fred and Wayne (independently) to both the EFSB and FERC. Another NETU Board and IRWA Board member, attorney Greg Murrer, also filed written testimony against this project from his own perspective, emphasizing the constitutional issues surrounding the proper legal protection of conservation land in the Commonwealth. These documents should soon be available on the NETU and IRWA websites.

At NETU’s regular chapter meeting on November 2nd, we will also have as our featured speaker Jim Cutler of the Pipeline Awareness Network of the Northeast (PLAN-NE), who will update us about current developments regarding this pipeline proposal and detail the plans and progress so far. Mr. Cutler will also be available to answer questions about this project and the complexities of its lengthy approval process. Be assured that NETU and IRWA are watching and monitoring this project closely, as it threatens many important cold (and warm) water fisheries in Massachusetts and elsewhere.



Fred Jennings
NETU President

BIG! (BURSETTI)



MONTANA (GARY UHRING)



Nor'East Chapter

To conserve, protect and restore Massachusetts' northshore coldwater fisheries and their watersheds.

———— www.tunoreast.org ————

August 10, 2015

Stephen August, Presiding Officer
Energy Facilities Siting Board
One South Station
Boston, Massachusetts 02110

Re: Natural Gas Pipeline Proposed by the Tennessee Gas Pipeline Company (the "Project")

Mr. August:

This letter responds to Siting Board's request for comments concerning the referenced Project, which includes the installation of more than 100 miles of new gas pipelines in central and eastern Massachusetts. My comments are addressed to that portion of the proposed installation that will impact eastern Middlesex and Essex Counties, including the Ipswich River Watershed.

I am a 20+ year resident of Boxford, MA which lies within the Ipswich River Watershed. I serve as the Chairman of the Boxford Lakes, Ponds & Streams Committee; a member of the Board of Directors of the Ipswich River Watershed Association, and am a 30+ year member of Trout Unlimited. I am a practicing attorney, admitted to the MA and NY bars. In these capacities I have a particular interest in corporate projects that impact the integrity of public lands, open space and wetlands. It is my understanding that this Project will impinge upon all of these otherwise "protected" properties.

The proposed route of this Project appears to reflect a corporate decision to pursue a path of least resistance, avoiding the challenges and costs inherent in routing pipelines through private property. Instead, as the pipeline enters Wilmington and progresses through North Reading, Reading, Lynnfield and Peabody, it would "utilize" wellhead protected areas (DEP Approved Zones II), Article 97 lands, and assorted wetland areas, at times crossing under the Ipswich River. Employing the leverage of legal preemption under various federal statutes, I anticipate that FERC and the participating power companies (which I will collectively refer to as "TGPC") believe they can run roughshod over our state and local laws and regulations as well as our state constitution, all formulated over many years to preserve and protect these socially, economically and environmentally sensitive zones. Before embarking on a siting decision that will most certainly provoke litigation by various public interest groups, I would hope that the Siting Board would consider other less intrusive and costly alternatives. Moreover, there are two fundamental questions that must be addressed before this Project deserves any attention by your office.

First, as the Attorney General has rightfully questioned: Does the requisite demand for natural gas exist in Massachusetts to justify this or any other gas delivery project? On July 6, 2015 the Attorney General commissioned a study to "understand the facts" as to future demand and cost-efficient methods of meeting that demand. The key focus of this study is to address the question

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of just how much additional natural gas is needed and what capacity is required to accommodate that demand. With less than half of the product volume of this Project committed under proposed contracts with Massachusetts utilities, the truth of “demand” remains an open question. In light of these considerations, to allow TGPC to rush forward with this Project makes little sense.

Second, it seems quite clear that TGPC is moving as aggressively as possible to outrun its rivals. As noted, their advance precedes any fair, objective determination of need. Moreover, as TGPC does not appear to own or control any exiting delivery systems in eastern Massachusetts, they must embark on an expensive, disruptive and potentially damaging installation of new pipeline. I understand that several competitors to this proposed Project have in-place delivery systems that would require very moderate upgrades to accommodate additional product. More importantly, utilizing those existing systems would not have the additional adverse property and environmental impacts of this Project. I must therefore ask this question: Even if the Attorney General’s question about future demand is answered in the affirmative, is this the optimal delivery system?

There has been some suggestion that the siting of this Project across Article 97 lands may proceed without the state legislative approval mandated by Article 97. This approach appears to be based on a presumption that federal law, and in particular the authority of FERC to regulate the interstate transportation of natural gas, may preempt the state’s approval process. I do not believe that to be the case. I believe that the siting of this Project without a 2/3rds vote of our legislature as to the affected Article 97 lands, would be a violation of our state constitution.

The Supremacy Clause of the US Constitution (Article VI) gives clear priority of the Constitution and laws of the US over all conflicting laws and constitutions of the states. This is the source of preemptive power invoked by the federal government, including its agencies such as FERC. Specifically, FERC has successfully fought legal battles over the reach of its preemptive powers through its authorizing legislation, the Natural Gas Act and the Federal Power Act. However, as demonstrated in the Supreme Court’s decision in *ONEOK, Inc. v. Learjet, Inc.* earlier this year, the power of preemption is not limitless. In that case the Court found that state anti-trust legislation addressing the possible manipulation of retail natural gas prices was not trumped by regulatory oversight of wholesale pricing granted to FERC under the Natural Gas Act.

As expressed by the Supreme Court in *ONEOK, Inc.* the reach of federal regulatory authority is necessarily confined to a field of activities intended to be covered by authorizing federal legislation. To suggest that the power to regulate the transportation of natural gas includes the right to ignore a state constitutional article that preserves and protects land for the public’s use and benefit under the Public Trust Doctrine, seems an extraordinary stretch of regulatory authority more severe than that in *ONEOK, Inc.*

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The legacy of Article 97 includes 2000 years of common law together with laws predating the adoption of the US Constitution (Colonial Ordinances of 1641 - 1647). Article 97 is the only embodiment of the Public Trust Doctrine in a state constitution within the United States. It was adopted in 1972 recognizing the right of all citizens of our state to “clean air and water...and the natural, scenic, historic, and esthetic qualities of their environment”. To be clear, I am not addressing solely environmental concerns that might otherwise be treated through the submission of an EIS under the National Environmental Policy Act. These are broader rights of public use and enjoyment not easily surrendered as evidenced by the required legislative approval of the disposition of any interest in Article 97 lands. While one might argue that enforcement of the Article 97 approval process frustrates the authority vested in federal agencies under the theory of implied conflicts preemption, that argument does not lie when less offensive alternatives exist to deliver the same natural gas by TGPC’s competitors.

The foregoing are my comments as a resident of the state of Massachusetts and are not intended to represent the position of any other person or organization with respect to the Project or the siting process.

Sincerely,

Gregory J. Murrer

Gregory J. Murrer

MA Bar No. 674471