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Report to the Joint Standing Committee on Environment and  
Natural Resources  
130<sup>th</sup> Legislature, First Regular Session

# Pending and Anticipated Water Quality Certification Applications for Hydropower Projects

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## Contents

1. Overview .....	2
2. Summary of FERC Relicensing Process .....	3
3. Summary of Hydropower Projects Due for Relicensing in 2020-2024.....	4
APPENDIX A: Pending and Anticipated WQC Applications .....	6

## 1. Overview

The Maine Department of Environmental Protection (Department) is submitting this report to the Joint Standing Committee on the Environment and Natural Resources pursuant to 38 M.R.S. § 638. This statute requires the Department to list the applications pending for hydropower water quality certification (WQC), and for applications anticipated to be submitted to the Department in the next five years.

The Department is currently reviewing four WQC applications for hydropower relicensing projects.

During calendar year 2020, the Department issued three WQC decisions for the following hydropower projects as part of the Federal Energy Regulatory Commission (FERC) relicensing process:

- Goose River Hydro (WQC issued January 21, 2020; FERC deadline January 23, 2020)
- Ellsworth Hydroelectric Project (WQC (denial) issued March 19, 2020, FERC deadline March 20, 2020)
- Mattaceunk Hydroelectric Project (WQC issued March 25, 2020, FERC deadline March 27, 2020)

The Department also reviewed the WQC application for the Brassua Project. The application had most recently been withdrawn and refiled by the project owner on September 18, 2019. The Department was in the process of reviewing the WQC and anticipated issuing a decision within one year of the refiling. During this period, FERC issued a license for the project, citing the D.C. Circuit Court's 2019 *Hoopa Valley Tribe v. FERC* and finding the state waived certification following a decade of the project owner withdrawing and refiling WQC applications.

The Department anticipates receiving 15 new WQC applications associated with FERC dam relicensing in the next five years. In addition, the Department oversees two tidal energy projects (Cobscook Bay Tidal and the Western Passage, which includes two installations). One tidal energy project, Cobscook Bay Tidal, has a tidal power general permit that has a water quality certification that will expire in 2022; the project in the Western Passage has a preliminary permit (which does not include a water quality certification). The Department expects the preliminary permit for Western Passage to be replaced by a tidal power general permit when the project transitions to the in-water construction and testing phase.

Two hydropower facilities (Somersworth and Lower Mousam) that previously were anticipated to complete WQC and FERC relicensing efforts filed to surrender their operating licenses in 2020. The owners of the Goose River Project, for which the Department issued a WQC in 2020, also have initiated surrender of their FERC license. At least two additional facilities (not identified in the 5-year outlook) (Bar Mills which would relicense in 2048, Gilman Stream which holds a FERC exemption and so is not required to relicense) also have indicated they will file to surrender their license or exemption.

## **2. Summary of FERC Relicensing Process**

In Maine, there are 122 hydropower dams administered through 97 federal licenses or exemptions authorized by the Federal Energy Regulatory Commission (FERC). Per Section 401 of the federal Clean Water Act (33 U.S.C. § 1341), a federal license may not be issued for a hydropower project unless the state water quality certifying agency has either issued a water quality certification (WQC) for the project or has waived certification. This process affords the states and authorized tribes an opportunity to address the water resource impacts of federally-issued permits and licenses. By Executive Order of the governor of the State of Maine, the Department is the State certifying agency for the federal licensing of hydropower projects in Maine. Section 401 provides up to one year for states to issue decisions on WQC applications.

Title 38, section 638 requires the Department to submit an annual report on the status of pending WQC applications and a list of the relicensing projects anticipated to be submitted to the Department in the next five years. Section 638 states:

By January 15, 2015, and annually thereafter, the department shall submit to the joint standing committee of the Legislature having jurisdiction over natural resources matters a report describing all pending applications for water quality certification under Section 401 of the federal Clean Water Act for dams located in the State that are subject to the jurisdiction of the Federal Energy Regulatory Commission. The report submitted under this section must include, for each pending application, the filing date of the application, the respective response deadline for the department and a short statement describing the department's plan to address that deadline. The report must also include a list of the licensing or relicensing deadlines for the dams described in this section that are anticipated to occur within 5 years after the date of the report and, if applicable, the department's plan to address each deadline.

### 3. Summary of Hydropower Projects Due for Relicensing in 2020-2024

The Department currently is reviewing three WQC applications for hydropower projects, listed below, with a brief statement of steps the Department is taking to achieve the WQC deadlines. Additional project details can be found in Appendix A.

- Rollinsford – The applicant submitted a WQC application on June 12, 2020, and the application is currently under review. A Department decision is expected to be issued prior to the statutory deadline of June 11, 2021.
- Scopan – The applicant submitted a WQC application on July 3, 2020, and the application is currently under review. A WQC decision will be issued prior to the FERC filing deadline of July 2, 2021.
- Shawmut – The applicant submitted a WQC application on August 28, 2020, and the application is currently under review. A WQC decision will be issued prior to the FERC filing deadline of August 27, 2021.

The Department maintains steps to improve the internal permitting process for hydropower WQC applications, including:

- Maintenance of a calendar identifying WQC milestones and statutory deadlines;
- Communication and coordination among Department staff involved in the review of WQC applications.

The Department anticipates receiving 16 new WQC applications (15 hydropower dams, one tidal hydropower project) for FERC relicensing in the next five years. For these projects, the dates listed are the anticipated dates for receiving a WQC application:

- Lower Great Falls – 2021
- Cobscook Bay (tidal hydropower project) - 2021
- Pejepscot – 2021
- Hiram – 2021
- Upper Barker – 2021
- Lowell Tannery – 2021
- Green Lake 2022
- West Enfield – 2022
- Hackett Mills – 2022
- Rumford Falls – 2022

- Aziscohos – 2023
- Worumbo – 2023
- Lewiston Falls – 2024
- Penobscot Mills – 2024
- Ripogenous – 2024
- Eustis - 2024

Appendix A includes a spreadsheet listing all pending and anticipated WQC applications within the next five years, including a brief description of the steps the Department is taking to achieve the WQC deadlines.



## APPENDIX A: Pending and Anticipated WQC Applications

### Hydropower Licensing Actions Completed in 2020

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Licensing Action Completed	Comments
Project is no longer operating	2804	Goose River	Swan Lake Dam Mason's Dam Kelly Dam Mill Dam CMP Dam	January 23, 2019	January 22, 2020	2020	A Final License Application was filed with FERC in February 2018 and the Project found to be ready for Environmental Analysis in November 2018. An Environmental Assessment was completed by FERC in June 2019. An initial WQC application submitted to DEP on January 23, 2019 was returned for improper notice; the application was resubmitted on February 11, 2019. A DEP decision granting water quality certification was issued on January 21, 2020. On April 10, 2020, FERC dismissed Goose River's Final License Application; a rehearing was granted on June 8, 2020 and an Order addressing rehearing arguments was issued on September 3, 2020 directing Goose River Hydro to file a surrender application for the Project.
December 31, 2017	2727	Ellsworth*	Graham Lake Dam, Lake Leonard Dam	March 21, 2019	March 20, 2020	2020	A WQC application was withdrawn and a new application simultaneously submitted on March 20, 2019. In its reapplication, the applicant modified its proposed operations to address impoundment habitat criteria and proposed to collect additional BMI data. A DEP decision was on March 19, 2020 denying certification. That decision is under appeal to the BEP.



August 31, 2018	2520	Mattaceunk*	March 27, 2019	March 26, 2020	2020	<p>The WQC application was resubmitted on March 27, 2019. BEP approved a DEP proposal to correct an error in the water quality classification for the East Branch Penobscot River, and to upgrade the water quality classification in the pertinent segment of the main stem of the Penobscot River. DEP issued the WQC on March 26, 2020. The WQC was appealed to the BEP, and DEP subsequently issued a minor revision and corrected Order on June 24, 2020. The BEP appeal was withdrawn on August 18, 2020. A new FERC license has not yet been issued.</p>
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### Pending Hydropower Water Quality Certification Applications (As of 12/31/2020)

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	WQC Application Filing Date	Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
August 31, 2021	3777	Rollinsford		March 2020	March 2021	2022	DEP is coordinating study plans with NHDES, who also anticipates filing a WQC, as the Salmon Falls River is a border between the states. A Final License Application filed with FERC in August 2019 was found deficient and a request for more information and an extension issued by FERC in October. A WQC application is anticipated in spring 2020.
December 3, 2021	2368	Scopan (formally known as Squa Pan)		March 2020	March 2021	2022	The applicant filed a Draft License Application in July 2019; DEP filed comments on the DLA in October 2019. A Final License Application was filed in December 2019. DEP anticipates a WQC application in spring 2020.
January 31, 2022	2322	Shawmut		August 28, 2020	August 28, 2021	2022	DEP reviewed and provided comment on the draft license application in December 2018; FERC extended the current license term to January 31, 2022. The applicant filed a final license application in January 2020 and a WQC application in August 2020. The Department expects to issue a decision on or before August 28, 2020.

### Anticipated Hydropower Water Quality Certification Applications in the Next Five Years

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Anticipated WQC Application Filing Date	Anticipated Department WQC Deadline	Anticipated FERC relicense date	Steps to Achieve WQC Deadline
April 30, 2022	4451	Lower Great Falls		April 2021	April 2022	2023	Water quality studies were carried out during the 2018 field season; DEP reviewed and filed comments on the draft and final license application and on FERC's scoping document in 2020. DEP anticipates a WQC application in 2021.
January 31, 2022	12711	Cobscook Bay Tidal Energy Project		June 2021	June 2022	2023	In February 2012 FERC issued an 8-year pilot project license to Ocean Renewable Power Company (ORPC), with a license expiration date of January 31, 2020. In December 2015, FERC approved a request from ORPC to extend the term of the license to January 31, 2022. The applicant intends to re-install a fully optimized device in 2021 and to test alternative turbine devices.
August 31, 2022	4784	Pejepscot		August 2021	August 2022	2023	Water quality studies were carried out during the 2018 field season. Additional studies requested by NMFS and the applicant (CFD modeling and sound study) were approved by FERC in October 2020; DEP anticipates review and comment on the final studies in April 2021 and expects a WQC application in 2021.
November 30, 2022	2530	Hiram		April 2021	April 2022	2023	Water quality studies were carried out during the 2018 field season; DEP reviewed and commented on the final study report and on the draft license application in 2020. A final license application was filed in November 2020, a WQC application is expected in spring 2021.
July 31, 2023	3562	Upper Barker		December 2021	December 2022	2023	Water quality studies were carried out during the 2018 field season, and DEP commented on the Initial Study Report in April 2019. The Department anticipates a Draft License Application will be filed in summer 2021 for agency comment.

September 30, 2023	4293	Lowell Tannery	December 2021	December 2022	2023	The applicant filed a PAD and held a joint agency meeting in early 2019. DEP commented on the PAD and prepared study plan requests; water quality studies were carried out during the 2019 field season. Additional fish studies were requested by the federal fish resource agencies and a study dispute resolution is expected early in 2021. The DEP anticipates a Final License Application to be filed with FERC on September 29, 2021 and a WQC application in December 2021.
March 31, 2024	7189	Green Lake	March 2022	March 2023	2024	The applicant filed a PAD and held a joint agency meeting in fall 2019. DEP review the PAD and prepared study plan requests and comments; Water quality studies were conducted during field season 2020. Awaiting study results, due winter 2020/2021.
May 31, 2024	2600	West Enfield	May 2022	May 2023	2024	The applicant filed a PAD and held a joint agency meeting in fall 2019. DEP reviewed the PAD and prepared study plan requests; quality studies were conducted during field season 2020. Awaiting study results, due April 2021.
August 31, 2024	6398	Hackett Mills	August 2022	August 2023	2024	The applicant filed a PAD and held a joint agency meeting in December 2019. DEP reviewed the PAD and prepared study plan requests and comments; water quality studies were conducted during field season 2020. Awaiting study results, due January 2021.
September 30, 2024	2333	Rumford Falls	September 2022	September 2023	2024	The applicant filed a PAD and held a joint agency meeting in December 2019. DEP reviewed the PAD and prepared study plan requests and comments. Water quality studies were conducted during field season 2020; DEP anticipates review and comments on the initial study report in August 2021. A final license application will be filed by September 30, 2022 and a WQC application is anticipated in March 2023.
March 31, 2025	4202	Aziscohos	March 2023	March 2024	2025	Anticipate applicant will file a PAD and hold a joint agency meeting in 2020. DEP will review the PAD and prepare study plan requests as appropriate.
November 30, 2025	3428	Worumbo	November 2023	November 2024	2025	The applicant filed a PAD on November 23, 2020. DEP will review the PAD and prepare study plan requests as appropriate.

August 31, 2026	2302	Lewiston Falls		August 2024	August 2025	2026	Anticipate applicant will file a PAD and hold a joint agency meeting in 2021. DEP will review the PAD and prepare study plan requests as appropriate.
October 1, 2026	2458	Penobscot Mills	North Twin Dam Millinocket Dolby Dam East Millinocket Millinocket Lake	October 2024	October 2025	2027	Anticipate applicant will file a PAD and hold a joint agency meeting in 2021. DEP will review the PAD and prepare study plan requests as appropriate.
October 1, 2026	2572	Ripogenous		October 2024	October 2025	2027	Anticipate applicant will file a PAD and hold a joint agency meeting in 2021. DEP will review the PAD and prepare study plan requests as appropriate.
November 31.2026	11132	Eustis		November 2024	November 2025	2027	Anticipate applicant will file a PAD and hold a joint agency meeting in 2021. DEP will review the PAD and prepare study plan requests as appropriate.



## Other Water Quality Certification Projects

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Comments
August 29, 2023	3133	Errol	2023	The applicant filed a PAD and held a joint agency meeting in early 2019. DEP commented on the PAD and prepared study plan requests; water quality studies were carried out during the 2019 and 2020 field seasons. The DEP anticipates a Final Study Report in winter 2020/21. DEP is not the certifying agency for Errol Hydro, as the project discharge is entirely in the state of New Hampshire; however, as a portion of the impoundment lies within the state of Maine the Department requested certain water quality study parameters be added to the study requested by NHDES. The Department expects a Final License Application to be filed with FERC on July 31, 2021. A WQC application is not expected to be filed with DEP.
Preliminary Permit	14743	Western Passage		A preliminary permit for the project was granted by FERC in July 2016. The applicant has worked with NMFS to complete a biological assessment, and with the University of Maine to identify further data needs to support licensing, including testing monitoring equipment and methodologies; the applicant is collecting environmental data to prepare an application for a Tidal Power Demonstration Project and WQC.



### FERC License Surrender (no longer requiring Water Quality Certification)

FERC License Expiration Date	FERC #	Project / Dam	Subordinate Dams	Comments
Application rejected by FERC - Surrender Application to be filed by March 31, 2021	14856 and 5362	Lower Mousam	Kesslan Dam Twine Mill Dam Dane Perkins Dam	Current owners of the dams voted to not relicense the Lower Mousam Project (P-5362). America First Hydro (AFH) applied to FERC to take up the license for this project and is proceeding under FERC project number P-14856. In December 2019 FERC suspended its licensing process pending determination that AFH intends to license all project facilities (recent filings by AFH indicated its intention to license just 2 of the 3 Project Dams). Application for a subsequent license was filed with FERC on March 30, 2020; on April 29, 2020 FERC found the license application filed by America First Hydro to be patently deficient and rejected it. On May 1, 2020 America First Hydro LLC withdrew its application to transfer the Lower Mousam Project. Application for WQC is no longer expected. On September 2, 2020, FERC requested the current license holder, Kennebunk Light and Power District, to submit a surrender application. A draft surrender application is expected to be filed for agency review on February 12, 2021.
August 31, 2021	3820 / 15004	Somersworth		Aclara Meters, LLC submitted an application to FERC to surrender its license to operate the project, citing excessive costs to repair the penstock. New Hampshire Renewables applied to assume the Somersworth Hydro license under the federal docket P-15004. On August 20, 2020, New Hampshire Renewables withdrew its application for a new license. A surrender and decommissioning plan is expected in 2021.

\* Currently operating under an annual license.

Section 15(a)(1) of the Federal Power Act requires FERC, at the expiration of a license term, to issue an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the Federal Power Act. If the project's prior license waived the applicability of Section 15 of the Federal Power Act, then, if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

**Abbreviations**

FERC=Federal Energy Regulatory Commission

WQC=Water Quality Certification

DEP=Maine Department of Environmental Protection

PAD=Pre-Application Document

NMFS=National Marine Fisheries Service

PSP=Proposed Study Plan

NHDES=New Hampshire Department of Environmental Services

NOI=Notice of Intent to File (an application)

ILP=Integrated Licensing Process