



Progress Report

Rebuilding and Protecting Threatened
Ocean Habitat



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Across New England



Five Questions for Max Greene

Talking Trash on Landfills, Backyard
Chickens, and Farm Waste



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CONSERVATION MATTERS

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COVER STORY

COMING CLEAN:

CLF's Clean Water Enforcement Project
Works to Keep Our Waters Healthy



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COMING CLEAN: CLF's Clean Water Enforcement Project Holds Polluters Accountable, One Business at a Time

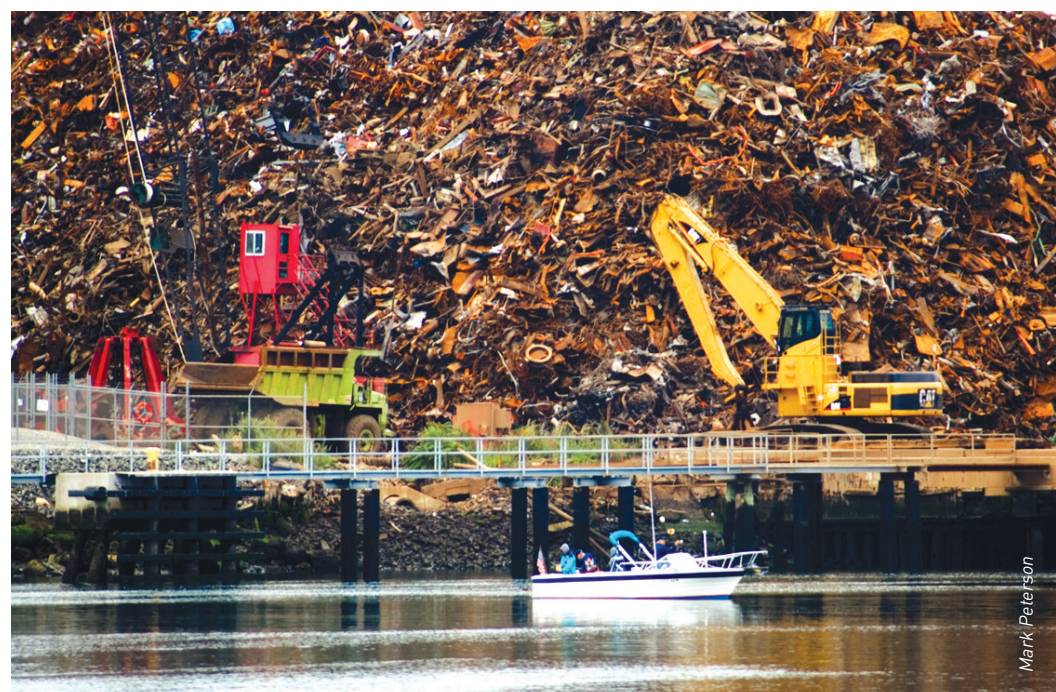
“We can bring these industrial facilities into compliance with the Clean Water Act, and protect our inland and coastal waters.”

— Zak Griefen, CLF Environmental Enforcement Litigator

A boat trip through the Mystic River Watershed – which spans 76 square miles and 22 communities north of Boston – reveals scenery both beautiful and troubling. A great blue heron gracefully taking flight contrasts sharply with hulking freighters offloading cargo. It's the most urbanized watershed in Massachusetts and one of the most polluted. So when a neighborhood group approached CLF in 2010 with concerns about stormwater runoff from a large scrap metal facility, the organization agreed to take a closer look.

“At this facility, there were towering mountains of scrap that were much higher than the privacy fences that surrounded them,” said Zak Griefen, CLF's Environmental Enforcement Litigator. When rain and snow falls on those scrap piles, the runoff drains into the Mystic River, carrying pollutants from those metals with it. This facility, said Griefen, “didn't have and never applied for a permit to discharge pollutants, so it was blatantly in violation of the Clean Water Act. When we looked at similar facilities nearby, we found that none of them had the required permits, either.”

That initial research led to the recognition of a much larger and serious problem all across New England: Thousands of industrial sites, from small boat marinas to sand and gravel pits to junkyards,



Mark Peterson

line the shores of the region's inland and coastal waters. And, while many of them discharge waste into those waters, few hold the permits to do so legally. The pollutants coming from these unregulated facilities – lead, zinc, and phosphorus among them – are some of the most toxic and damaging to our waterways, many of which, like the Mystic, are already severely compromised from industrial pollution and contamination.

The impacts of this unchecked pollution run deeper than the harm to individual waterways, however. “Without permits, these facilities are flying under the radar of the Environmental Protection Agency

(EPA) and state regulators,” said Christopher Kilian, Director of CLF's Clean Water and Healthy Forests program. “These agencies are working to clean up our public waters, and they rely on self-reported information from industry to implement the law. When a large chunk of that community isn't permitted, that creates a gaping hole in the data being used to make decisions about the health of our waters.”

At the same time, the sheer volume of unpermitted polluters makes it difficult for EPA to go after them on its own. “Enforcement officials need all the resources possible to address these violations,” said Kilian. “That's why Congress

Pollution from industrial activity, like large scrap metal sites [left], flows into storm drains, which carry the contaminated runoff into public waterways [below].

created the citizen lawsuit provision of the Clean Water Act,” which allows citizens, and organizations like CLF, to file suits directly against facilities that are violating environmental laws. “Our work is augmenting government enforcement efforts,” said Kilian.

In 2010, CLF filed citizen suits against five of the polluting facilities along the Mystic River. By 2012, those cases had been resolved and CLF, under the auspices of its newly formed Clean Water Enforcement Project, moved on to file complaints against more industrial polluters in Massachusetts. Suits in New Hampshire and Connecticut followed, with approximately 45 cases initiated throughout New England to date.

Most of the suits are resolved through negotiated settlement agreements rather than trial, and CLF is already seeing results from the work. “Within a year or two of a settlement we’re able to see significant reductions in the amount of pollutants being discharged,” said Griefen. Even as the cases are fostering improved water quality, they also serve as a warning to other facilities that are either ignoring or unaware of the requirements of the law. “Many of these facilities have been operating this way for decades,” said Griefen. “Right now, there’s no economic downside to not complying with the law. We want to change that, to create a very significant financial downside to noncompliance that will incentivize other facilities to clean up their act voluntarily.”

A crucial component of the settlements is that the facility owner or operator must make a payment towards a supplemental environmental project, or SEP, which funds environmental and restoration projects run by local nonprofits in the impacted watershed or community. So far, the cases

have generated nearly \$320,000 in payments to support a dozen projects, from Everett and Salem in Massachusetts to Long Island Sound [see sidebar].

With thousands of industrial facilities throughout New England still illegally dumping pollutants into waterways, Kilian and Griefen know that the task ahead is not an easy one. But they are determined to keep at it. “CLF intends to protect New England’s waterways and hold polluters accountable for their rampant violations of environmental regulations,” said Griefen. “We can bring these industrial facilities into compliance with the Clean Water Act, and protect our inland and coastal waters as fishable, swimmable, and drinkable public resources.”



Zak Griefen/CLF



David Mussina

When suits are settled, CLF holds violators financially accountable in a unique way. Instead of paying the government a penalty, businesses can fund a supplemental environmental project, or SEP, which will benefit public health and the environment. The SEP provision has become a key component of CLF’s Enforcement Project.

In the Mystic River Watershed, where the Project began, SEP funds are being used to measure the river’s phosphorus levels – too much phosphorus causes toxic algae blooms, promotes invasive plants such as water chestnut, and chokes oxygen supplies needed by fish and other species.

“We need to reduce the amount of phosphorus being put into the Mystic River,” said Katrina Sukola, watershed scientist for the Mystic River Watershed Association. To do so, the group is developing a calculation, called a total maximum daily load, of how much phosphorus the river can receive and still meet water-quality standards. The responsible parties will be asked to reduce phosphorus in stormwater over a period of time to meet this benchmark. “This will be a legally binding agreement that holds municipalities and industries responsible for reducing pollutants,” said Sukola. “It’s one of the best ways to clean up the river.” Developing the calculation is a multi-year process, but the SEP grant is helping to kick off this costly effort by funding necessary equipment and lab fees.

Learn about SEP grants funded through the Enforcement Project:
www.clf.org/SEP.

PROTECTING OCEAN ECOSYSTEMS

Habitat Protection Under Threat in New England



Atlantic cod depend on protected areas like Cashes Ledge.

“Allowing new bottom trawling on any part of Cashes Ledge would damage critical spawning and nursery areas.”

— Peter Shelley, Senior Counsel for CLF

THE PROBLEM

Atlantic cod were once one of the most well-known and prolific natural resources on the planet, but decades of overfishing and habitat decline have brought their population to an all-time low. So how has the National Marine Fisheries Service (NMFS) – the agency in charge of stewarding America’s fish – responded? By proposing, in early 2013, to open nearly 5,000 square miles of the best protected fish habitat – in the Gulf of Maine, southern New England, and Georges Bank – to destructive bottom trawling.

This proposal was the latest in a decades-long pattern of risky decision making by NMFS, which should be rebuilding and protecting threatened groundfish species, including cod, coastal haddock, and yellowtail flounder – but NMFS seems to be hastening the decline of those species instead.

CLF IN ACTION

CLF has worked for decades to overcome fisheries mismanagement that has depleted these once legendary fish

populations. In May of 2013, CLF filed a lawsuit in federal court to challenge NMFS’s shortsighted and damaging proposal. “These vitally important areas, such as Cashes Ledge, have been protected from the most damaging fishing gear for well over a decade,” said Peter Shelley, Senior Counsel for CLF. “Allowing new bottom trawling on any part of Cashes Ledge would damage critical spawning and nursery areas and eliminate the few large breeding female cod that are needed to restore depleted fish populations.”

PROGRESS

More than 90,000 people weighed in on the proposal during the public comment period – overwhelmingly condemning the plan for new bottom trawling. Scores of marine biologists and recreational and commercial fishermen also objected. In December, NMFS issued its final decision, temporarily reversing most of its ill-advised proposal. For now, NMFS will maintain year-round protected status for vital habitat in the Gulf of Maine and Georges Bank. “This is an important step for sound fisheries management and ocean stewardship,” said Shelley.

NEXT STEPS

This victory, however, may be only temporary. For the new fishing year, which starts on May 1, NMFS is making new access rule decisions that could again place much of Cashes Ledge and other important habitat at risk of new bottom trawling and other harmful fishing practices. Over the longer term, the New England Fisheries Management Council and NMFS are working on the “Omnibus Habitat Amendment,” another fisheries plan that could also target these same areas in 2015. Although scientists agree that removing protections for important fish habitat is exactly the wrong direction to take, CLF and its partners are not optimistic that NMFS will make its decisions based on sound science. CLF Senior Attorney Greg Cunningham said, “Throughout the planning process, NMFS has rejected the majority of the groundfish habitat protections proposed by its science advisors.”

As part of the development of the Omnibus Habitat Amendment, the New England Fisheries Management Council is expected to announce its recommendations for the areas to open and close in late winter. Six months of analysis, including a public comment period, will follow before the final plan is sent to NMFS for approval. CLF will continue to strongly advocate for responsible management actions that follow science-based recommendations to protect and restore New England’s imperiled groundfish.

WHERE CLF STANDS

Climate change is altering ocean temperatures, salinity, acidity, and, potentially, the direction and strength of currents, making life even more difficult for species already stressed by overfishing. CLF will continue to push for science-based decisions on ocean habitat protections, which are needed more than ever with climate change adding to existing pressures.



THANK YOU

Your generous support helped us meet our year-end fundraising goal!

With your gift, you have made a difference for people and communities all across New England — people like Tiffany Mellers and her daughters, who live in the shadow of Connecticut's Bridgeport Harbor Station, a coal- and oil-burning power plant that has been polluting that city for nearly 50 years. With your support, CLF is helping Tiffany stop dangerous air pollution and secure a healthier future for her girls and her community.

That's just one of the ways that your gift to CLF is working to keep New England healthy and thriving, for today and for generations to come.

Didn't have a chance to give yet? Your support is needed year round as we work day-in and day-out to protect New England's environment. You can give today at www.clf.org/give.

Contact us today to learn more about giving to CLF.

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MAX GREENE

Staff Attorney, CLF Rhode Island



MAX GREENE TALKS TRASH: how to dispose of it, how to transform it, and how to reduce its impact on our health and the environment.

Island Superior Court and at Rhode Island Legal Services. While working as a law clerk to the Honorable O. Rogerie Thompson at the United States Court of Appeals for the First Circuit, I handled complex cases involving the Endangered Species Act, the Superfund statute, and the Resource Conservation and Recovery Act.

health. We know that much of the escaping gas is methane, a major driver of climate change. We've also seen very high levels of hydrogen sulfide, which, on its own, can cause respiratory problems or even nervous system damage, and VOCs, or volatile organic compounds, some of which are linked to cancer and other serious health risks.

1 You joined CLF about a year ago. What drew you to environmental law?

For as long as I can remember, I've had an environmental ethic and felt a strong connection with nature. I was a founding member of my high school's environmental club and spent much of my childhood rambling in the woods of Delaware.

But it was a class on natural resources law at Roger Williams University School of Law in Rhode Island that truly captivated me. Ever since, I've been drawn to environmental issues, seeking them out while serving as a law clerk in Rhode

2 I read that you're also somewhat of an expert on chicken ordinances.

Several years ago, the director of Providence's Southside Community Land Trust asked me if I would draft an ordinance allowing Providence residents to keep chickens. I didn't know much about the issue at the time, but after researching it and meeting with residents who were then keeping chickens illegally, it resonated with me. Eliminating local bans on chickens makes sense environmentally, as a matter of food policy, and as a matter of individual rights, especially for the poor and disenfranchised – all issues I care deeply about.

3 You're one of the attorneys for a case that CLF has filed against the owners and operators of Rhode Island's massive Central Landfill. Why is CLF taking on the landfill?

CLF believes the Central Landfill has violated emissions standards by failing to adequately collect landfill gas, which contains pollutants that can be harmful to the environment and to people's

4 What is CLF hoping to accomplish through the suit?

We want the landfill owners and operators to be held accountable for these violations, and we want the facility to be operated correctly – the owners and operators need to properly collect these harmful gases in order to minimize risks to the environment and the health of surrounding communities.

5 What else is on your docket at CLF?

My other work at CLF has been focused on the New England regional food system. I co-authored an upcoming report from CLF that examines New England's food infrastructure and makes recommendations about how it can be improved so that all people in New England have access to fresh food. I examined access to water for farmers and beneficial reuse of organic farm waste. I guess you could fairly say that these days, I'm really focused on trash: how to transform it from the farm and how to lessen the environmental impact of disposing of it.

To learn more about our work in Rhode Island, visit www.clf.org/rhodeisland



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MAINE

- CLF is leading the effort to pass a bill to study the negative effects of ocean acidification – a byproduct of contaminated stormwater runoff and excessive carbon dioxide entering the ocean from the atmosphere – on shellfish populations, including lobster and soft-shell clams. The study will bring together environmental groups, lobstermen, businessmen and others to work proactively to find solutions to the problem before Maine's marine waters are irrevocably changed.

MASSACHUSETTS

- CLF is appealing a siting board decision approving the construction of a natural-gas plant on the Salem waterfront, because the plant's proposed plans do not show how it will meet the standards of the Global Warming Solutions Act. CLF wants to ensure that the decision to build this or any new power plant is made with consideration of the climate and other environmental impacts it will have over its lifespan.

NEW HAMPSHIRE

- CLF won a resounding early victory in its pending lawsuit addressing Clean Air Act violations at PSNH's coal-fired power plant in Bow. The judge denied PSNH's motion to dismiss, agreeing with CLF that the company relied on an incorrect interpretation of which rules applied to their facility. With the ruling, our case can now move forward.
- In an important decision for the Great Bay estuary, the Environmental Appeals Board rejected an appeal of a Clean Water Act permit issued by the Environmental Protection Agency (EPA) to the Town of Newmarket for its sewage treatment plant. The appeal, brought by two Seacoast towns (not Newmarket), challenged the permit's scientific basis. CLF participated in the appeals process, countering many of the towns' arguments and reinforcing the need for nitrogen pollution reductions in Great Bay.

RHODE ISLAND

- In December, CLF filed a citizen lawsuit against the owners and operators of the Central Landfill in Johnston for violations of the Clean Air Act. CLF believes the landfill has violated emissions standards by failing to collect landfill gases, which contain pollutants harmful to public health and the environment. Learn more about the lawsuit in Five Questions on the preceeding page.

VERMONT

- After successfully fighting the Circ Highway, a massive ring-road once planned around Burlington, CLF is now part of unanimous support for the final round of projects that will replace it. The 34 projects include many alternatives CLF and others advanced nearly a decade ago, and will better match transportation outside of Burlington with long-term community needs.

FOLLOW CLF ONLINE

Sign up for email alerts @ www.clf.org

In between quarterly issues of *Conservation Matters*, stay informed about what CLF is doing and how you might be able to get involved. Doing so is easy – just find us at any one of the following websites.

- CLF's blog: clf.org/blog/
- Twitter: @thecclf
- Facebook: facebook.com/TheCLF
- LinkedIn: linkedin.com/company/Conservation-Law-Foundation

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LETTER FROM THE PRESIDENT



For nearly 50 years, CLF has been at the vanguard of legal and policy solutions to New England's most pressing environmental challenges. Last year was no

exception, as we declared victory in two of our long-fought, complex cases: Vermont Yankee, one of the nation's oldest nuclear power plants, and Brayton Point, New England's largest coal-fired power plant, both announced their retirement.

In 2013, we also restored alewives to Maine's St. Croix River, funded public transportation in Massachusetts, gained protections for New Hampshire's Great Bay, and kick-started plans to protect Rhode Island's coast and communities from storms and sea level rise.

We had much to celebrate all across New England. But there is still much more to do.

As you'll read in this issue of *Conservation Matters*, our work often gets done case by case, community by community. By design, however, it all adds up to a

whole greater than the sum of its parts, as we spread local solutions across our region and create transformative change throughout New England.

For example, our pursuit of industrial polluters contaminating our waterways benefits the neighborhoods where for decades these facilities have illegally dumped waste, and also prompts compliance throughout our region. Our suit against Rhode Island's noxious-gas-spewing Central Landfill will help people living in its shadow breathe more easily (literally), but also reinforces the principle that nobody, no matter how large, is above the law.

The collective impact of this work will be cleaner waterways and healthier, more breathable air for people all across New England. We select the right "levers," and then push on them with persistence and passion, to benefit people and places on the ground and to leverage systemic change for our entire region (often creating models for the nation in the process). That's how we help people and communities across New England thrive – today and for decades to come.

Sincerely,

John Kassel

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