

# INDIAN PONDS ASSOCIATION

Mystic Lake, Middle Pond, and Hamblin Pond

April 2002

Newsletter

Vol. 2 No. 1

## DEP DECISION – BAD NEWS AND GOOD NEWS

In a long-awaited response from the Massachusetts Department of Environmental Protection (DEP) to an appeal submitted last July by a number of Indian Ponds area residents, the DEP, in a March 7, 2002 letter to the appellants, indicated that it was approving the July 11, 2001 decision by the Town of Barnstable Conservation Commission (ConCom) to permit the lowering of the Middle Pond herring ladder by 1.6 ft.

The approval by the ConCom of the application by the Town of Barnstable Department of Public Works Engineering Division, Massachusetts Division of Marine Fisheries (MDMF), and Three Bays Preservation, Inc. to lower the Middle Pond herring ladder was vigorously opposed by many residents during a May 22 hearing held at Barnstable Town Hall. Despite the reservations voiced by concerned citizens, the ConCom subsequently approved both the lowering of the ladder and an additional provision to allow the ladder to be left open beyond the previously agreed opening and closing dates if herring (alewives) were observed in the vicinity of the ladder.

In response to the July 11 action by the ConCom, Emory Anderson and thirteen other members of the Indian Ponds Association (IPA) submitted an appeal on July 19 to the DEP to reverse the decision on the grounds that the lowering of the herring ladder and the management plan for the ladder advocated by the ConCom could result in lowering Middle Pond and Mystic Lake below their accepted historical safe levels and causing detrimental impacts to the health of the lakes and their ecosystems.

In announcing their decision, officials from the Southeast Regional Office of the DEP indicated that it followed an in-depth review and was in accordance with Massachusetts General Laws, Chapter 131, Section 40 (which pertains to the removal, filling, dredging or altering of land bordering waters). The decision letter acknowledged that the primary concern of the appellants was the possible impacts to Middle Pond and Mystic Lake of the project (i.e., lowering the ladder) and the prior management of the run, but indicated that the latter worry had been addressed through the development of a management plan by the MDMF for the operation of the run (see article on p. 2 – **NO AGREED MANAGEMENT PLAN FOR HERRING RUN**). The Superseding Order of Conditions that accompanied the March 7 appeal denial issued by the DEP contained a number of conditions that must be met by the Town when it eventually proceeds with the project originally proposed. Among other things, work can be done only during dry periods (owing to the intermittent nature of the run), no work or dredging is to be conducted on the channel between Middle Pond and the cranberry bog inlet structure immediately upstream from the ladder (see article on p. 2 – **WHO'S IN CHARGE?**), and the protocol (i.e., management plan) prepared by the MDMF must be followed in the operation of the run.

It is uncertain when work on lowering the herring ladder will proceed. A legal obstacle, an injunction filed in August by IPA Board member Ed Schwarm and others in Barnstable Superior Court to prevent the lowering of the ladder, still remains in place blocking the work in question. It is hoped that discussions between members of the IPA Board and officials of the Town and MDMF can resolve several contentious issues in the draft management plan prepared by the MDMF and result in a mutually acceptable plan that will render unnecessary the Superior Court injunction.

**LATEST NEWS ON HERRING RUN** — In spite of the low water level in Middle Pond and drought conditions on the entire Cape, the herring ladder was opened on April 11 by staff of the Town's Natural Resources Division, and some herring have been observed running. The dredging of the channel from Middle Pond leading to the ladder/run by Mosquito Control people during the first week of March has allowed a minimal head of water to support flow through the ladder and run and permit fish to move upstream.

The groups that originally submitted the application to lower the herring ladder by 1.6 ft argued that to do so was necessary in order to operate the ladder and run in times of low water levels in Middle Pond. If the dredging of the channel from Middle Pond was sufficient to allow enough water to operate the facility even under the current drought conditions which have lowered Middle Pond and all other Cape lakes to record-low levels, there is, in fact, no justification to further lower the ladder by 1.6 ft.

However, many people would question the wisdom of even opening the run during the current drought conditions. As reported in the August 2001 issue of this newsletter, according to the Cape Cod Commission's Water Resources staff, the aquifer to which Middle Pond and Mystic Lake are directly linked is the Cape's only source of drinking water and has been designated a "sole-source aquifer" by the Federal government. In the spring 2002 newsletter of the Wequaquet Lake Protective Association (WLPA), attention was drawn to the fact that the state issued a "Drought Advisory" on January 2, 2002, which stated that "*Steadily declining precipitation*

since August and an extremely dry November have resulted in dry conditions statewide...Continued dry weather over the winter has led to more serious drought conditions....The most severely affected areas of the state include Cape Cod..." The WLPAs newsletter went on to state that "Having no control over rainfall, it becomes increasingly important that no water resource be wasted or diverted from its natural or historical site." If water rationing is going to be implemented for all citizens of Cape Cod for as long as drought conditions persist, it would appear to make no sense whatsoever to drain precious water out of Middle Pond and Mystic Lake for the sake of moving herring into and eventually out of the lakes. At a time such as this, the question has to be asked: What is the top priority for this water supply? Is it to support a single species of fish or is it to be used for the benefit of everyone and everything that depends on this water for life itself.

**NO AGREED MANAGEMENT PLAN FOR HERRING RUN** — In an attempt to begin a constructive dialogue between the IPA and the parties which had proposed lowering the Middle Pond herring ladder that might lead to a solution agreeable to both sides, IPA Board members Emory Anderson and Ed Schwarm, together with Ed's son Tom, a professional hydrogeologist from Maine, met on November 20 at Barnstable Town Hall with Paul Diodati, Director of the Massachusetts Division of Marine Fisheries (MDMF), Ken Reback, MDMF biologist, and Steve Seymour, Town of Barnstable engineer. The IPA representatives outlined their concerns relative to the proposed lowering of the herring ladder and offered a number of suggestions to resolve the herring ladder problems (e.g., 3-5 year operation of the ladder under Town management to determine whether the existing configuration is adequate, water budget study, line the bottom of the run with an impermeable material to eliminate leakage). A number of counter proposals were voiced by the Town and MDMF. Diodati acknowledged that the satisfactory management of the run, or lack thereof, seemed to be the dominant issue with the IPA and that the MDMF would develop new draft management procedures for the operation of the ladder within the next several months.

In late December, Reback sent a proposed management plan to the IPA representatives and asked for comments. The plan, consisting of background information, a set of protocols for operating the run, and some recommendations for further work to be done on the ladder, run, and channel between Middle Pond and the ladder, specified that the run would be opened only during the periods April 15 – June 14 and October 1 – December 1 to permit the upstream and downstream movement, respectively, of herring. However, the plan also indicated that the run would be opened at additional times if herring (the numbers being unspecified) were observed attempting to leave or enter the lake. The IPA representatives reviewed the plan and, in mid-January, submitted a revised draft containing substantial modifications designed to reflect and address various remaining concerns. One of the biggest concerns was, and still is, the provision to open the run at times in addition to the above-noted periods to accommodate herring observed in the vicinity. The IPA representatives feel that this should happen only in the case of "significant numbers" of herring, not if just some undefined number of herring are observed.

To date, the MDMF has not provided any official response to the revised draft submitted by the IPA representatives. Attempts to meet with Diodati and Reback in late January, late February, and late March to discuss the revised draft were unsuccessful. On February 25, Anderson and Ed Schwarm met briefly with Reback, but there was no resolution of the above concerns. Reback acknowledged that he and Diodati would be meeting with Commonwealth legal experts in early March to seek clarification and interpretation of the laws governing the movement of herring into and out of the lakes. Reback subsequently retired on March 15 and was replaced as the responsible MDMF herring biologist by Phillips Brady. Attempts to date by Anderson to discuss the management plan with Brady or Diodati or to have key questions answered have been unsuccessful. Accordingly, in the eyes of the IPA, there is yet no agreed management plan for the Middle Pond herring run.

**WHO'S IN CHARGE?** — On or about March 5, a backhoe crew, operating under the authority of the Massachusetts Department of Food and Agriculture's Cape Cod Mosquito Control Project and doing what was viewed by some as "routine maintenance", dredged the channel leading from Middle Pond towards the herring ladder for a distance of about 50-60 ft from the lake, depositing the spoils alongside the channel, for the expressed purpose of enhancing water flow from the lake to and through the ladder. In the March 7 letter from the DEP (see article on p. 1 – **DEP DECISION – BAD NEWS AND GOOD NEWS**), officials stipulated that "there is to be no work conducted on the channel between Middle Pond and the existing cranberry bog inlet structure under this filing". Furthermore, the Superseding Order of Conditions accompanying the letter specified that "this project does not call for or permit any dredging of the channel between the existing cranberry bog inlet structure and Middle Pond. Any additional work in this area shall be the subject of a new Notice of Intent." An additional condition states that "any material removed from the fishrun channel shall be disposed of in accordance with all applicable regulations. It is prohibited to dispose of any excavate within a wetland resource area."

At face value, it appears that the dredging done by the Mosquito Control Project was in direct conflict with all of the above conditions dictated by the DEP. To the average person, this suggests that one agency of the Commonwealth performed an action directly in violation of the mandate of another agency of the Common-

wealth. This begs the question: who is in charge? Why isn't there better communication and coordination between the various agencies whose responsibilities and authorities overlap in the case of the Great Ponds? Why do the laws and regulations of the Commonwealth permit different agencies to work at cross purposes to each other? The same can be asked relative to the Massachusetts Division of Marine Fisheries, whose sole objective seems to be only the welfare of the herring and not that of any of the other biological and physical components of the lake ecosystem, and to the Massachusetts Water Management Act, which authorizes the DEP to regulate the quantity of water withdrawn from both surface and groundwater supplies. All such discrepancies or conflicts between the mandates of different regulatory agencies, whether real or perceived, deserve further investigation. Perhaps it's time for the legislature to intervene and either redefine the responsibilities of the various agencies with respect to our freshwater lakes or better yet assign total authority to a single agency with a mandate to manage them using a total ecosystem approach.

**HERRING COMMITTEE** — Six months ago, Gary Blazis brought a group together to discuss and attempt to work out the problems surrounding the Middle Pond herring run. There are representatives from the Indian Ponds Association (Sheila Place and Ed Schwarm), Town Natural Resources Division, DPW, Conservation Commission, Cranberry Growers, and Town Council. Al Baker of the Liberty Hall Club is Chairman. Other interested citizens participate. This has been a positive development, as we are working out the problems, priorities, and management plan in an open and cooperative forum. The committee meets about monthly as the need arises.

**GRANT PROPOSAL** — We have known for some time that the wood-lined herring run, rebuilt 11 years ago, is deteriorating. Pressure-treated wood could not be used, so it is in bad shape. At the February Herring Committee meeting, Doug Kalweit of the Natural Resources Division, brought in a grant announcement from the Gulf of Maine Council on Marine Environment, a quasi-Federal government organization. They were soliciting requests for project grants related to restoration of marine habitat along Nantucket Sound, a direct fit for our herring run repair needs. Ed Schwarm, with outstanding help from the Town DPW and Town Manager's office, prepared and submitted a proposal. This is a bound 32-page document with cost estimates, engineering drawings, and photos of present conditions. The cost estimate is \$48,000 to be used for materials and special machinery rental. Letters of support and commitment from various organizations, including the Mass. Division of Marine Fisheries, Town Manager, Town DPW, Indian Ponds Association, Liberty Hall Club, Trout Unlimited, Acadia Environmental Technology, Inc., and Schwarm Engineering Associates promise the equivalent of over \$100,000 in volunteer labor of the various skills needed to complete the project. It is expected that it will be a few months before we get a decision on this grant request.

**RECENT ACTIVITIES OF IPA BOARD** — Including the upcoming scheduled meeting of the Board of Directors on April 30, 2002, the IPA Board will have met ten times since the August 30, 2001 appeal hearing with Ms. Lenore White (Department of Environmental Protection - DEP) at the Middle Pond herring ladder. In addition to scheduled Board meetings, there have been numerous meetings and telephone conversations between Board members and the Town Natural Resources Division, the Town Manager, the "Herring Committee", the Town Attorney, the Southeast Regional Office of the Department of Environmental Protection (DEP), the Director and some staff of the Mass. Division of Marine Fisheries, to name a few, as well as on-site meetings of the Board to further "view" the problem now exacerbated by drought conditions. The Directors continue to work toward an equitable resolution of the differences with the various Town and Commonwealth officials. Board meetings were held in September (two meetings), October 26, November 25, December 3, January 24, and March 26, with the next meeting to be held on April 30.

**LAKE LEVEL MONITORING** — Two groups of IPA members have been monitoring water levels in the Indian Ponds area during the past year. One group has been recording levels at the Middle Pond herring run on a biweekly basis. Another group has been participating with Dr. Dale Saad of the Town Health Department in taking periodic measurements of Mystic Lake depth, as well as water samples. Plans are also underway to install two additional permanent scales in the lake to permit routine year-round measurements of surface height.

**WHAT YOU CAN DO TO HELP PROTECT THE GREAT PONDS** — As we look forward to another season of enjoyment on the Great Ponds, let's take a moment to focus on what we can do to help ensure the long-term health of these ponds. We who are privileged to live on or near Mystic Lake, Middle Pond, or Hamblin

Ponds have both an opportunity and the responsibility to ensure we are doing everything we can to protect these natural treasures.

Perhaps the most major threat to the quality of the water in our ponds is the high level of nitrogen that travels from septic systems and fertilizers through the groundwater to freshwater ponds and coastal waters. The increased delivery of nitrogen to coastal waters is directly related to changes in land use on coastal watersheds. As coastal development increases, so do the number of septic systems, fertilized gardens and lawns, along with other activities that contribute nitrogen, with subsequent negative effects on the ponds, coastal waters, and most importantly, the sole source aquifer that provides all of our water on Cape Cod. The increase in nitrogen contributed by these activities stimulates the growth of algae. The algae grow rapidly, and after their short life, die and decay which consumes oxygen in the water, drawing it away from native plants, marine and animal life, in a process called eutrophication.

What can we do to limit the effects of this increase in nitrogen? Fortunately, there are a number of things we can do that will help protect not only the Great Ponds, but also the broader Cape Cod community, as we are all connected by the aquifer. Here are a few suggestions:

1. Make sure your septic system is functioning properly, inspected, and pumped regularly. This won't eliminate the movement of nitrogen through the groundwater, but will minimize it.
2. Dispose of wastes properly by not pouring motor oil, gasoline, and paint thinner or pesticides down drains. (Barnstable has an annual hazardous waste disposal day where these items can be safely disposed of.)
3. Composting plant matter and vegetable waste can limit what goes in your garbage disposal, and thereby, your septic system. This can also provide you with a supply of organic fertilizer.
4. Treat your lawn and flowerbeds organically. Most lawn companies offer a four- or five-step program that uses organic instead of chemical fertilizers. Use of organic fertilizer recycles already available nitrogen instead of adding new nitrogen. These systems work every bit as effectively, and are much more environmentally friendly than chemical fertilization programs.
5. Treat our groundwater supply like the precious and limited supply that it is by using it wisely and not wasting it. As the water table decreases, particularly in a drought situation like we're currently in, the concentration of nitrogen increases in groundwater. It is more important than ever that we use our water carefully.
6. Support the preservation of open space. There are numerous conservation areas in the Town of Barnstable, and these acres of open space protect the watershed surrounding the wells that supply our water. Organizations like the Barnstable Land Trust and the Association for the Preservation of Cape Cod are actively working to protect the open space that remains, along with supporting appropriate use of space.
7. Learn more about our water supply and the effects of development on Cape Cod by visiting resources such as the Waquoit Bay Estuarine Research Reserve on Route 28 in the Waquoit section of East Falmouth. The Visitor Center there is a treasure trove of valuable information on the water systems that abound on Cape Cod and how we can better insure their long-term viability.

We're all in this together, so let's work together to make sure the beauty of Cape Cod can be enjoyed for generations to come!

**RIVER DAY** — Sunday May 5 is "River Day" in Marstons Mills. The Marstons Mills Village Association and others will gather at the old Inn at the Mills site for a celebration of the river. Dr. Dale Saad, from the Town Health Dept., will conduct a training session at 1:00 PM for all her volunteer water testers. In addition to a review of our present testing techniques, she will teach about invasive plants which threaten our ponds so that we may better monitor them.

**SUGGESTED READING** — *Sea Change* by Sylvia Earle. In a wide ranging account of her diving explorations, Sylvia Earle, noted marine biologist and former Chief Scientist for NOAA, describes the damage man has done to the oceans of the world. She also offers real suggestions for ensuring the survival of the seas, so crucial to life on this planet. In a book such as this, there surely are lessons for those of us who live surrounded by the ocean and who are committed to the health of our ponds.

**MAKE EVERY DROP COUNT** — The Centerville-Osterville-Marstons Mills Water Department has produced a little educational wheel entitled "Make Every Drop Count. Tips for Saving Water" which is available free of charge in their office at 1138 Main Street, Osterville. It contains a wealth of information and helpful tips on how to conserve water in and around the home. For further information, go to the Water Department's website on the internet at [www.commwater.com](http://www.commwater.com).

**TAKING OF HERRING PROHIBITED FROM LADDER/RUN** — A sign has been posted at the Middle Pond herring run which reads, "***Closed for the taking of herring and alewives per order of the Town Manager***". There have been reports in recent years of large quantities of herring being removed, loaded into barrels, and taken away by trucks which have been seen backed up to the ladder. Anyone seeing this type of activity is encouraged to record the license number and description of any vehicles being used for this purpose and immediately report the incident to the Barnstable Police Department (508-775-0812). A photo would also be helpful.

**HOW TO REGISTER A COMPLAINT** — If you are unhappy with the current situation with the herring ladder or wish to complain about the run operating during the current drought conditions and draining several hundred thousand gallons of water per day from Middle Pond and Mystic Lake, please call and register your concerns with one or all of the following: John Klimm, Town Manager (508-862-4610); Gary Blazis, Town Council President (508-428-5433); Rob Gatewood, Town Conservation Commission (508-862-4093); Doug Kalweit, Town Natural Resources Division (508-790-6272), Paul Diodati, Mass. Division of Marine Fisheries (617-626-1520); Phillips Brady, Mass. Division of Marine Fisheries (508-563-1779); or Demetrius J. Atsalis, State representative (508-771-6825 or 617-722-2692).

**NEW IPA MEMBERS AND DONATIONS NEEDED** — After reading this newsletter, we hope you will recognize that the Indian Ponds Association has been very active in trying to prevent the lowering of the herring run, to ensure better management of the existing run, and to work towards physical improvements to the run through a grant. Countless *pro bono* hours as well as cash have been donated by IPA Board members and others in these efforts. The IPA treasury has incurred heavy expenses during the past year for legal advice and for publishing and mailing this newsletter. If you are not already an IPA member, please join. If you are a member, please encourage your friends and neighbors (see eligibility requirements below) to join. Your dues will help to defray IPA expenses. In addition, donations of any size to the IPA would be greatly appreciated.

## JOIN THE INDIAN PONDS ASSOCIATION

### IPA membership is open to

- all property owners whose land abuts any of the three ponds (Middle Pond, Mystic Lake, and Hamblin Pond)
- or is close enough to be affected by happenings thereon,
- ***but not exceeding one lot depth across the bounding highways from the lake area district (starting at Race Lane east to Route 149, south to Lovells Lane, west to River Road, northwest to Bog Road, north to Old Mill Road, and ending again at Race Lane).***
- To join the IPA, fill out the application form above and send it with a \$10.00 check made out to **Indian Ponds Association, P.O. Box 873, Marstons Mills, MA 02648.**

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## APPLICATION FORM

Name\_\_\_\_\_

IPA Property Address\_\_\_\_\_

Mailing Address\_\_\_\_\_

Telephone Number\_\_\_\_\_E-mail Address\_\_\_\_\_

\_\_\_\_ Please find enclosed check for \$10.00 for a one-year family membership in IPA.

\_\_\_\_ Please find enclosed check for \$\_\_\_\_\_ as an additional donation to the IPA.

Signature\_\_\_\_\_

**INDIAN PONDS ASSOCIATION BOARD MEMBERS: 2001-2002**

President: Kevin Kavanagh

Vice President: Ted Elliott

Secretary-Treasurer: Carolyn Garbutt

Board of Directors: Emory Anderson, Joe Brown, Robert Frazee, John Hansen,  
John Kayajan, Bruce McHenry, Sheila Place, and Edward Schwarm

**CHECK OUR WEBSITE AT:**

<http://www.indianponds.org>

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**Indian Ponds Association**

P.O. Box 873

Marstons Mills, MA 02648

**First Class  
Mail**