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What is Past is Prologue: Senator Edmund S. Muskie's Environmental Policymaking Roots as Governor of Maine, 1955-58

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WHAT IS PAST IS PROLOGUE: SENATOR EDMUND S.
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Robert F. Blomquist

I. INTRODUCTION	88
II. GOVERNOR MUSKIE'S FIRST TERM, 1955-56	92
A. <i>The 1954 Platform of the Democratic Party of Maine</i>	92
B. <i>Muskie's 1954 Gubernatorial Campaign</i>	93
C. <i>Governor Muskie's First Inaugural Address:</i> <i>January 1955</i>	95
D. <i>Environmental Policymaking Roots: Gubernatorial</i> <i>Pollution Information and Action</i>	98
1. 1955	98
2. 1956	101
E. <i>Environmental Policymaking Roots: Gubernatorial</i> <i>Natural Resources Information and Action</i>	102
1. 1955	102
2. 1956	106
III. GOVERNOR MUSKIE'S SECOND TERM, 1957-58	110
A. <i>Governor Muskie's Second Inaugural Address:</i> <i>January 1957</i>	110
1. <i>Forests</i>	111
2. <i>Agriculture</i>	112
3. <i>Inland Fisheries and Game</i>	112
4. <i>Sea and Shore Fisheries</i>	113
5. <i>Water Resources</i>	114
6. <i>Parks</i>	115
B. <i>Environmental Policymaking Roots: Gubernatorial</i> <i>Pollution Information and Action</i>	116
1. 1957	116
2. 1958	120
C. <i>Environmental Policy Roots: Gubernatorial Natural</i> <i>Resources Information and Action</i>	121
1. 1957	121
2. 1958	125
IV. THE ONCE AND FUTURE SENATOR: POSSIBLE GUBERNATORIAL EXPERIENTIAL INFLUENCES ON SENATOR MUSKIE'S ENVIRONMENTAL THINKING	127
V. CONCLUSION	128

WHAT IS PAST IS PROLOGUE: SENATOR EDMUND S. MUSKIE'S ENVIRONMENTAL POLICYMAKING ROOTS AS GOVERNOR OF MAINE, 1955-58

*Robert F. Blomquist**

"What is past is prologue."¹

"Who learns and learns yet does not what he knows, is one who plows and plows yet never sows."²

I. INTRODUCTION

Edmund Sixtus Muskie, who died in 1996 just two days short of his eighty-second birthday, will rightly be remembered as "a great environmental legislator"³ during his service as United States Senator from Maine from 1959 through 1980, followed by his appointment as United States Secretary of State by President Jimmy

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1. Inscription on Pennsylvania Avenue entrance to the National Archives of the United States Building in Washington, D.C. See *INSCRIPTIONS OF A NATION* 70 (Clint W. Ensign, ed., 1994) (quotation attributed to William Shakespeare).

2. Inscription on the fireplace in the Maine State Governor's Office in the Maine State Capitol Building in Augusta, Maine, as mentioned in Budget Message Address of Edmund S. Muskie, Governor of Maine, to the Ninety-seventh Legislature, State of Maine, at 10 (January 13, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 229-6).

3. See *Tribute by Senator Ernest F. Hollings of South Carolina* in *UNITED STATES SENATE, EDMUND S. MUSKIE: LATE A SENATOR FROM MAINE—MEMORIAL TRIBUTES*, S. Doc. No. 104-17, at 3 (1996) [hereinafter "MUSKIE'S SENATE TRIBUTES"]. Muskie's official Senate biography details his distinguished public career. It states:

Edmund Sixtus Muskie was born on March 28, 1914 in Rumford [Maine], the second of six children [and died on March 26, 1996]. He was graduated cum laude from Bates College, in Lewiston, [Maine] in 1936, where he was a Phi Beta Kappa and class president. In 1939 he was graduated from Cornell University Law School. He enlisted in the U.S. Navy and served in both the Atlantic and Pacific theaters.

Mr. Muskie was elected to the Maine House of Representatives in 1946, 1948, and 1950 where he served as minority leader during his second and third terms. From 1951-52 he served as the State director of the Office of Price Stabilization and was the Democratic National Committeeman from 1952 to 1956.

Mr. Muskie was elected Governor of Maine in 1954 and served two terms before being elected to the United States Senate in 1958. During his 22 years in the Senate, he served on the Foreign Relations Committee, the Governmental Affairs Committee, the Environment and Public Works Committee, and as Chairman of the Senate Committee on the Budget. In 1968 he was the Democratic nominee for Vice-President. He was the author of the autobiographical book, *Journeys*, published in 1972 and has received over thirty honorary degrees from colleges and universities throughout the country.

Carter.⁴ In large measure, Muskie attained that distinctive status as a result of his intelligent, innovative and entrepreneurial leadership from 1963 until 1980 as Chairman of the Senate Public Works Committee's (later renamed Environment and Public Works) Special Air and Water Pollution Subcommittee (the "Subcommittee").⁵ From this Senate perch, Muskie "had a hand in crafting the majority of the important federal environmental statutes" during the 1960's and the 1970's—the genesis of modern environmental law in the United States—and "gained the informal nickname of 'Mr. Clean' for his advocacy of [federal] environmental issues."⁶

What is less appreciated and understood, however, is that Edmund S. Muskie's roots as an extraordinary federal environmental legislator go back to his two terms as Governor of the State of Maine from 1955 to 1958. It was during this formative period in the late fifties when Governor Muskie—as Maine's Chief Legislator and Chief Executive—learned, in depth, about the pollution and natural resources problems of the Pine Tree State.⁷

Mr. Muskie was sworn in as the 58th Secretary of State on May 8, 1980 and served until January, 1981. He was [at the time of his death] a senior partner with Chadbourne & Parke, an international law firm

He was the Chairman Emeritus of the Institute for the Study of Diplomacy at Georgetown University, Chairman Emeritus of the Center for National Policy, and served on the board of directors of the American Academy of Diplomacy and the Committee for a Responsible Federal Budget. In May of 1981, Mr. Muskie received the Notre Dame Laetare medal and the Distinguished Service Award, from the Association of Former Members of Congress. He also received the Presidential Medal of Freedom in January, 1981.

Mr. Muskie was appointed by President Reagan in December, 1986, to serve on the three-member Special Review Board to investigate the role of the [National Security Council] in the Iran-Contra Affair. The Board's report was released in March of 1987.

Mr. Muskie married the former Jane Gray of Waterville, [Maine] on May 29, 1948.

The Muskies [had] five children . . . as well as seven grandchildren.

Id. at ix-x.

4. *See id.* at ix.

5. *See generally* Robert F. Blomquist, "To Stir Up Public Interest": Edmund S. Muskie and the U.S. Senate Special Subcommittee's Water Pollution Investigations and Legislative Activities, 1963-66—A Case Study In Early Congressional Environmental Policy Development, 22 COLUM. J. ENVTL. L. 1 (1997).

6. *Id.* at 12-13 n. 42. *See generally*, UNITED STATES SENATE, HISTORY OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE, S. DOC. NO. 100-45, at 91-126 (1988).

7. Muskie, of course, gained what I have previously described as the beginning of his "environmental education" simply by being born and raised in the unique and memorable state of Maine: a setting that he described as "a place of great natural beauty" marred by intermittent ugliness. *See* Blomquist, *supra* note 5, at 5 (quoting EDMUND S. MUSKIE, JOURNEYS 79 (1972)). Maine "created a personal context and consciousness for his eventual interest and involvement in American environmental law." *Id.* Interestingly, Muskie wrote in his autobiography:

When I was a boy, we didn't think about "pollution." The word wasn't part of our everyday vocabulary, and it was hardly in the public dialogue. If we thought at all about such matters, what we saw appeared to be a necessary balance between jobs and some pollution of rivers; between wide, open, clean spaces, streams, lakes, forests, mountains, and a few less than lovely factories or plants. The beauties of nature were around us [in Maine] in almost pristine form. What development we had [we thought back then] was the price we paid for the economic benefits, even if it defiled the river some.

EDMUND S. MUSKIE, JOURNEYS 79-80 (1972).

This Article, part of a work-in-progress that I hope will ripen into a book-length environmental biography of the man, provides a foundational study of Senator Muskie's gubernatorial years in Maine by focusing on his leadership while governor in seeking knowledge about, responding to, and managing a host of natural resources and pollution issues facing his state during a time when the environment did not attract much national public attention. It describes how Muskie, as governor of an economically poor but resource rich New England state, shrewdly and methodically learned about and dealt with pollution and resource concerns of his state within a larger framework of environmentally-appropriate economic development and growth.

The remainder of this Article is divided into three principal parts. In Part II, I examine Muskie's first term in office, as Governor of the State of Maine, during 1955-56—the first Democrat in twenty years to hold that post—and the range and depth of pollution and natural resources information that crossed his desk and po-

Moreover, as a young man, Muskie was exposed to "the pollution problem" of the Androscoggin River—a river that not only flows through Rumford, Maine (the town of his birth and boyhood) but also flows through Lewiston, Maine (the home of his college alma mater, Bates College). See Blomquist, *supra* note 5, at 6-7.

In addition, in research that I performed at the Edmund S. Muskie Archives at Bates College during the summer of 1997, I discovered some documents that showed a few additional experiences that influenced his environmental education before he became Governor in 1955. For example, in what appears to be Muskie's first public address after taking office as a member of Maine's House of Representatives in 1947, he gave a talk to the Bates' Alumni Council, describing "the growing complexity of life"—an apt model for his future encounter with environmental problems. In this regard, Muskie spoke of the importance to him, personally, and to society in general, of a liberal arts college education, which involves in his words "the training of the ability to see the problems facing the state, the nation, and the world" through learning that "present[s] to the student the best thought of the past and all fields, by developing [an] ability to think and express himself, by giving him the opportunity in the college community to participate in group activities—the college is training him to be a leader, an educator, and a citizen." Edmund S. Muskie, Talk to Bates College Alumni Council (March 5, 1947) (on file with the Edmund S. Muskie Archives, Bates College, Early Public Service Series, Box PS 1-1). As a young Maine attorney, and Secretary of the Waterville, Maine, Board of Zoning Adjustment from 1948 to 1955, Muskie also encountered cases involving the various health, safety, and public welfare policy rationales for zoning laws. See, e.g., Waterville, Me., Zoning Ordinance (1948) (on file with the Edmund S. Muskie Archives, Bates College, Early Public Services Series, Box PS 4-11). For example, three cases he was involved with entailed what we would call today basic environmental problems: an appeal by neighbors from the granting of a permit to construct a "poultry house," Decision on Appeal of Marie W. Lacombee and Hubert Brooks From Granting of Permit to Henry F. Toluse to Construct a Poultry House, City of Waterville Board of Zoning Adjustment (February 13, 1950) (on file with the Edmund S. Muskie Archives, Bates College, Early Public Service Series, Box PS 4-11); a recommendation by the Zoning Board to the mayor to enforce the Waterville City Ordinances "relating to junk yards, auto dumps, and dealers in junk and second-hand articles," Letter of Edmund S. Muskie to Russell M. Squire, Mayor, Waterville, Me. (May 20, 1948) (on file with the Edmund S. Muskie Archives, Bates College, Early Public Service Series, Box PS 4-11); and opposition to an appeal by a neighbor to build a bakery in a residential zone of Waterville because of an argument that operation of a bakery under such circumstances may be "injurious, noxious, and offensive to the neighborhood by reason of the emission of odor, fumes, dust, smoke, vibration and noise and by the hazards created by commercial and increased traffic and by other causes." Motion of Dr. R.L. Chasse in opposition to Appeal by Onesime J. Bolduc, City of Waterville, Board of Zoning Adjustment (May 25, 1950) (on file with the Edmund S. Muskie Archives, Bates College, Early Public Service Series, Box PS 4-12).

dium during that timeframe.⁸ In Part III, I discuss Muskie's second term as Governor, 1957-58, when his intellectual grasp of these "green" issues continued to season and evolve.⁹ Finally, in Part IV of the Article, I consider, and attempt to intelligently speculate on how Edmund S. Muskie's pollution and natural resources policymaking experiences as Maine's Governor prepared him for his future—and predominant—career as the pre-eminent federal environmental legislator in American history.¹⁰

Furthermore, as a Democratic member of Maine's House of Representatives from 1947 to 1951, part of which time he served as House Minority Leader, Muskie learned the complex intricacies of Maine State Government and discovered that the Legislature had 40 joint legislative committees—some of which dealt with public health and natural resource issues like the committees on Inland Fisheries and Game, Interior Waters, Mines and Mining, Public Health, Sea and Shore Fisheries, and State Lands and Forest Reservations. *See* Maine State House of Representatives, Joint Standing Committees of the 93rd Legislature (1947-48) (on file with the Edmund S. Muskie Archives, Bates College, Maine Legislature Series, Box ML 01); grappled with a proposed bill to create a sewage disposal district "for the health, comfort, and convenience" of the inhabitants, *see* An Act to Create the Waterville Sewerage District (1947) (on file with the Edmund S. Muskie Archives, Bates College, Maine Legislature Series, Box ML 01); learned about "New England's power problem" in trying to economically compete with other regions of the country, while absorbing a proposal for "unified river basin development that will provide flood control, hydroelectric power, water pollution abatement, land conservation and wildlife conservation," Report, New England's Power Problem—A Conference on the Economic Development of the New England States at 4 (March 31, 1949) (on file with the Edmund S. Muskie Archives, Bates College, Maine Legislature Series, Box ML 02); and became aware for the first time as a public official of the hydroelectric power possibilities of using the natural tidal water resources of Passamaquoddy Bay ("Quoddy") to generate hydroelectric power for Maine along the lines of the Tennessee Valley Authority, Hoover Dam, and Boulder Dam. *See* Maine Development Commission, Let's Get All the Facts About Quoddy (June 1950) (on file with the Edmund S. Muskie Archives, Bates College, Maine Legislature Series, Box ML 02).

Finally, Muskie's pre-gubernatorial experience as a Maine Committeeman to the Democratic National Committee also exposed the young man to state environmental and natural resources issues like water pollution, fisheries problems, and forest concerns. *See* Democratic Pre-platform Questionnaire (March 1954) (on file with the Edmund S. Muskie Archives, Bates College, Democratic National Committee Series, Box DN 5-7). In addition, Muskie's service as the Maine State Director, Office of Price Stabilization, during 1951-52, must have given him insights in dealing with ambiguous national laws and mind-bending regulations.

8. *See infra* notes 13-103 and accompanying text.

9. *See infra* notes 104-194 and accompanying text.

10. *See infra* note 195 and accompanying text. Indeed, there is bipartisan consensus that Muskie was the greatest federal environmental legislator in American history. *See, e.g.,* MUSKIE'S SENATE TRIBUTES, *supra* note 3. Democratic Senator Max Baucus of Montana stated:

He . . . was responsible . . . for one of the most positive and profound legislative achievements of postwar America: the passage of the environmental laws of the 1970s, to clean up our Nation's air, water, and waste.

. . . I am reminded of the Latin epitaph on the tomb of Sir Christopher Wren, the architect of St. Paul's Cathedral. It's inside the cathedral, and it says, "If you would see his memorial, look around."

So it is with Ed Muskie. If you wish to see his memorial, look around you: at the air, in our cities; at the Potomac River, or the Cuyahoga; at a cleaner environment from Maine to Montana; at a Nation that is more healthy and more beautiful because of his work.

He was a great environmental statesman, and his passing diminishes us.

Id. at 4-5. Republican Senator Olympia Snowe of Maine said in tribute to Muskie:

You see, growing up in western Maine, Ed had developed a deep appreciation for the environment. Thoroughly committed and visionary, Senator Muskie helped transform the Public Works Committee and went on to become the founding father of

This Article draws extensively on that "treasure trove of yet-to-be-fully-explored environmental policy documents, memoranda, letters, and reports"¹¹ at the Edmund S. Muskie Archives at Bates College in Lewiston, Maine.¹²

II. GOVERNOR MUSKIE'S FIRST TERM, 1955-56

A. *The 1954 Platform of the Democratic Party of Maine*

The party platform that Edmund S. Muskie ran on in his first bid for Governor of Maine included some prominent conservation and environmental themes. In

environmental protection in America by sponsoring both the Clean Air Act and the Clean Water Act of 1972. These two landmark pieces of legislation have both produced enormous benefits to the health and well-being of our Nation and its people. It is his unwavering commitment to environmental protection that is, perhaps, Ed Muskie's single greatest legacy to the American people. He was indeed Mr. Clean.

Id. at 7. Republican Senator Peter Domenici of New Mexico stated:

No one can deny that Senator Muskie is the chief architect of environmental cleanup of our air and water in the United States. Some would argue about its regulatory processes, but there can be no question that hundreds of rivers across America are clean today because of Ed Muskie. There can be no doubt that our air is cleaner and safer and healthier because of his leadership.

Id. at 9. Democratic Senator Tom Daschle of South Dakota said:

Ed Muskie believed that we have an obligation to be good stewards of this fragile planet.

He was an expert on air and water pollution, and he served as floor manager of two of the most important environmental laws ever—the Clean Air Act of 1963 and the Water Quality Act of 1965.

Id. at 12. Democratic Senator Barbara Mikulski of Maryland said: "He was the father of the Clean Air Act and the Clean Water Act. The air we breathe is cleaner and the water we drink more pure because of Senator Muskie's dedication to environmental protection." *Id.* at 14.

Democratic Senator Christopher Dodd of Connecticut said:

Throughout his more than two decades of public service Ed Muskie was ahead of his time in his efforts to keep our environment clean

He earned the apt nickname "Mr. Clean" for his pioneering work on the Clean Air Act and Clean Water Act, both of which he shepherded through the Senate. Generations from now, when Americans are enjoying our safe and healthy air and water, they should thank Edmund Muskie for having the foresight and vision to place a clean environment on top of the political agenda.

Id. at 16. Democratic Senator Paul Sarbanes of Maryland stated:

Throughout his career in public service Senator Muskie exhibited a rare and remarkable gift; his extraordinary ability to see opportunities where others could not and to translate those opportunities into positive changes for the people of Maine and the Nation.

. . . .

. . . These traits enabled him to make the Environment and Public Works Committee the forum which produced this Nation's landmark environmental protection legislation, the Clean Air Act and the Water Quality Act. These critical environmental statutes changed the way Americans view our precious natural resources and his work provided the foundation upon which all subsequent environmental protection statutes have been built.

Id. at 21-22.

11. See Blomquist, *supra* note 5, at 13 n.42.

12. See generally UNITED STATES SENATE HISTORICAL OFFICE, GUIDE TO RESEARCH COLLECTIONS OF FORMER UNITED STATES SENATORS, 1789-1982 (Supp. II 1987).

general, the document called for greater "trusteeship" by state government "in developing and preserving the human and natural resources of the states."¹³ Specifically, the party platform proposed two reforms. First, the platform sought reorganization of conservation functions in state government by the "[c]reation of [an adequately staffed] Department of Conservation to have jurisdiction of forestry, inland fish and game, sea and shore fisheries, mineral, water, and other natural resources" while also "administer[ing] [the state's] anti-pollution program."¹⁴ Second, the platform specifically proposed three environmental-conservation changes in Maine law: (1) passage of an "anti-pollution law, tested by experience elsewhere, together with necessary positive legislation to combat problems of industrial and sewage pollution"; (2) "[l]egislation to insure adequate fishways"; and (3) "[r]egulations to stimulate intelligent cutting practices and reforestation."¹⁵

B. Muskie's 1954 Gubernatorial Campaign

Commencing with an announcement of his candidacy for Governor of the State of Maine on April 8, 1954, Edmund S. Muskie¹⁶ quickly developed his stump speech for the campaign, which stressed the following key "reasons to vote Democratic" in the coming election: (1) the need for a "two-party system" in Maine politics; (2) the responsibility of the Republican Party for the "deplorable conditions in Maine"; (3) the declining "industrial situation" in the state with the "great potential" for the Maine economy given abundant "natural resources, power supplies, harbors, [a] skilled labor pool [and] comparative industrial peace," juxtaposed with the lack of "vision" in administering these resources; (4) the "[g]eneral deterioration of farming in Maine because of [a] lack of vision and initiative, and [a] positive agricultural policy" in such areas as potatoes, dairy, cattle, sheep and tree farming; (5) a "complete lack of imagination and initiative in boosting" the "vacation trade"; (6) poor state stewardship of Maine's forestry resources with "timber resources recklessly cut down" and no "organized and directed effort towards reforestation and use of abandoned lands"; (7) comparatively meager power production rates in Maine and lagging rural electrification efforts; and (8) Maine's "poor showing" in comparative educational accomplishments due to a lack of governmental "imagination and initiative."¹⁷

In August 1954, with a month to go before the Maine September elections, Muskie broadened his concern about the state government's poor management of

13. The Democratic Party of Maine, 1954 Platform of the Democratic party of Maine (1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 1-2).

14. *Id.* at 3.

15. *Id.* (original emphasis omitted). Other "planks" in the 1954 Maine Democratic Party Platform included "Constitution," "Jobs and Payrolls," "Highways," "Health and Welfare," "Labor Public Utilities," "Education," "Lobbying," "Administration of Justice," "Taxation," and "Economy in Government." See *id.* at 205.

16. See TESTIMONIAL PROGRAM, SENATOR EDMUND S. MUSKIE TESTIMONIAL DINNER, Eastland Motor Hotel, Portland, Maine (April 29, 1964) at 5.

17. See Edmund S. Muskie, Reasons to Vote Democratic Speech (undated) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-14). A handwritten page compilation of "state issues" in the Muskie Gubernatorial Papers for the 1954 election listed the "pollution issue" as twelfth on a list of seventeen potential issues. See State Issues (undated) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-14).

various natural resources within the state. In this regard, in a speech on August 4 in Strong, Maine, Muskie called for a detailed survey of Maine's natural and human resources as a "first step needed to revitalize Maine economically."¹⁸ Muskie described the Republican-led administration of Governor Cross as being responsible for "a deplorable lack of precise knowledge on the part of our state government as to what we have and what we are best fitted for."¹⁹

The "pollution issue," initially identified in the Muskie campaign as one of seventeen key issues facing Maine in 1954,²⁰ was largely subsumed by Muskie's campaign rhetoric regarding the need for better management of the state's natural resources as part of an overall strategy of improving Maine's economy. Muskie's rhetorical framing of conservation-pollution issues may have been affected by pragmatic Yankee advice like that received from a campaign supporter and strategist, Betty Stevens of Franklin County, Maine, in an informal "memo" that she mailed to Muskie during the summer of the gubernatorial campaign in 1954. Mrs. Stevens advised Candidate Muskie as follows:

[A]nti-pollution is a dangerous subject in Franklin County. The northern part of the county is vitally concerned because of the hunting and fishing business. The lower half of the county—especially around International Paper Co. at Chisholm, which employs 1,000 voters, is violently opposed to measures in that direction. Our candidate for State Senate, Rod Perry, is the President of the Union at International [Paper] and says it is a political hot potato. Thought this subject might be of interest to you before you stick your neck out either way. Conservation is a lot safer. According to Perry, [International Paper] would probably move elsewhere if forced too much on anti-pollution. [I] thought I'd pass this thought on to you.²¹

In September 1954, Edmund S. Muskie "startled the entire nation with his decisive victory over the incumbent Republican Governor of Maine, Burton M. Cross."²² Since Maine's election, at the time, was held two months earlier than most other states (largely because of concerns about harsh November weather in Maine and the practical problem of getting people to the polls), Muskie was asked by Democrats in other states to make campaign appearances on their behalf.²³ On

18. *Cross Replies to Rally Speech by Opponent*, Bangor Daily News, August 5, 1954 at 4 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-14).

19. *Id.* In a separate news article on the same day as the substantive campaign article, mentioned above, the winds of political change were seemingly anticipated in an article describing "[u]nofficial balloting at the Bangor Fair" that found Edmund S. Muskie out-polling Governor Burton M. Cross by 615 to 355 votes. *See Balloting at Fair Finds Democrats Leading Rivals*, Bangor Daily News, August 5, 1954 at 4 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-14).

20. *See supra* State Issues, note 17.

21. Memorandum from Elizabeth M. Stevens to Edmund Muskie (June 25, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-10). Muskie replied to Stevens thanking her for the "informative memo" and indicating that he thought it would "be most helpful to an understanding of the situation in Franklin County." Letter from Edmund S. Muskie to Elizabeth M. Stevens (June 25, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 2-10).

22. TESTIMONIAL PROGRAM, *supra* note 16, at 6.

23. *See Governor Muskie Surprised He Is Still Remembered*, MILWAUKEE JOURNAL, April 28, 1955, at 8 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1).

January 6, 1955, the newly sworn-in Governor Muskie gave his first inaugural address.²⁴

C. Governor Muskie's First Inaugural Address: January 1955

Reflecting continued intellectual refinement and political maturity over the course of the previous year's campaign and his sudden prominence as a new, leading Democratic politician in the national spotlight, Governor Muskie articulated a visionary, but practical, agenda that he intended to pursue in Maine during his first two-year term from 1955 to 1956. To start off his speech, he quoted Thomas Jefferson in support of the virtues of self-government: "A government, so modelled as to rest continually on the will of the whole society, is a practicable government."²⁵ Muskie went on to provide the Legislature with a metaphor of "roads"—a comparison calculated to resonate with Maine's devotion and dependence on roads to move about through the Downeastern landscape. He said:

What, then, are the roads which we should travel? There are, broadly viewed, three such roads. One lies in the direction of *developing our natural and industrial resources*, on which the social and economic well-being of our citizens must rest. The second road is that of *development and conservation of our human resources*, whether they be children in our school system, the aged in need of understanding care, or the inmates of our institutions who possess the rights not only of intelligent care but of rehabilitation and, if practicable, return to society. The third avenue which must be traveled if we are to live up to our responsibilities is that of *improvement of the processes of government* itself. To these three major ends of good State Government let us here dedicate ourselves.²⁶

Muskie, in essence, conceptualized the work of his new administration as making the most out of Maine's natural, human, and governmental resources. Interestingly, he viewed the natural resource imperative as primary, but clearly linked it to the instrumentalist imperative that he saw to "do what we can to expand our capacity to produce a better life for ourselves and for our children."²⁷ In other words, for Governor Muskie, wise stewardship of Maine's natural resources was the key to Maine's future. Thus, he called for "the progressive development and sound conservation of those God-given land and water resources which are available for our use," noting:

It is not a task for government alone. It is a task for government and free enterprise working in partnership to create an economic climate in which creative men can take risks and reap rewards. Such a partnership, working effectively, can produce that continuous flow of new ideas and new leadership which we must have to achieve increased employment and economic prosperity. Our progress in this direction will in large measure affect our capacity to expand our educational facilities, to improve our State institutions, to provide for the needy and unfortunate, to construct an adequate highway system, and, in general, to make government a more effective instrument for service to our people.²⁸

24. Edmund S. Muskie, Governor of Maine, Inaugural Address to the Ninety-seventh Legislature, State of Maine (January 6, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 229-6).

25. *Id.* at 1.

26. *Id.* at 2 (emphasis added).

27. *Id.*

28. *Id.*

In follow-up remarks to his Inaugural Address, Governor Muskie provided more specific details of his resource-driven vision. In his discussion of the policy imperative of "industrial development," for example, Muskie linked "the process of creating new job opportunities" in the state with the work of his proposed "Department of Industry and Commerce," which would conduct research, planning and development to attract new business to the state.²⁹ He emphasized that "[o]ne of the most important areas of research should be in the field of geology," as suggested by what he described as "new discoveries of our own manganese deposits in Aroostook County and those immediately across the New Brunswick border and the hopes held for their commercial development."³⁰ Moreover, three aspects of water resources were discussed by the new Governor as part of his overarching plans for the Maine economy: "Port development," "stream improvement" and "water power development and utility rates."³¹ Muskie recommended, in this regard, more funding for the Maine Port Authority to develop shipping and commerce in "all Maine ports" to respond to the reality that "the deep-water ports of our matchless coast-line are a State resource with an undeveloped potential important to our entire economy."³² He also urged "the influence of [Maine] State government and our congressional delegation" to bring to fruition feasibility studies of whether hydroelectric power at Passamaquoddy Bay and on the St. John River was achievable, while also suggesting that Maine law be changed to allow efficient hydroelectric energy use by integrating Maine's "power system with those of our neighbor[ing] [states and Canadian provinces to] enable us to export surplus power in periods of good water flow and to draw on [neighboring states' and provinces'] systems when [Maine is] confronted with a deficiency."³³ Governor Muskie's "stream improvement" proposal, however, was clearly the most innovative water resource idea in his first Inaugural Address. He told the people of Maine in prescient prose:

No discussion of industrial development would be complete without reference to the problem of stream improvement. In the first place, solution of the problem has serious economic implications for existing industries In the second place, an abundant supply of clean water has undoubted advantages as an inducement for new industries [sic] to locate in this State. These advantages will increase as the problem of water supply becomes more acute in other parts of the country; and we should improve our position in this respect as quickly as possible. The need for action becomes even clearer when we consider the subject of clean streams as a conservation measure important to our recreation industry and our shellfish industry.³⁴

Governor Muskie, therefore, proposed a four-part action program to improve Maine's stream quality along the following lines:

1. Completion of the work of classification of waters [for water usage] within two years and appropriation of the necessary funds [for undertaking this water quality improvement measure].

29. *Id.* at 3.

30. *Id.* at 4.

31. *Id.* at 4-8.

32. *Id.* at 4-5.

33. *Id.* at 6-7.

34. *Id.* at 5.

2. A tightening of the third highest classification, class "C", which, under present law, is too broad.
3. Reorganization of the Water Improvement Commission to give increased representation to "public" members having no direct connection with industry.
4. In addition, the [Water Improvement] Commission should be required to explore the possibilities of pollution abatement and to report its findings in two years, together with its recommendations relative to methods, costs, and the setting of a time limit for compliance. For this purpose, it should draw upon the experience of other states insofar as such experience is applicable to the pollution problems which the Commission's classification work discloses.

It is essential that our policy in this field be firm and progressive while avoiding damage to our industrial structure. Industry has a responsibility to press constantly forward to a solution. The attack should be aimed at both industrial waste and municipal sewage, but progress against the one need not be made contingent upon progress against the other. A sober, objective approach, based on a solid foundation of fact and experience, is the key to a final and satisfactory solution.³⁵

Turning to other natural resources ideas, Governor Muskie, in a section of his address specifically headed "Conservation," offered various remarks about four additional resource questions: inland fisheries and game, sea and shore fisheries, forestry, and agriculture.³⁶ Among his numerous proposals for reform in these areas, Muskie suggested an expansion of the warden force "for a more adequate enforcement of the conservation laws";³⁷ strengthening the "role of the Fish and Game Advisory Council" in making natural resource policy;³⁸ better "stream management, the construction and maintenance of fishways, and the protection of spawning beds";³⁹ "revision of [Maine's] fish and game laws to provide simplified and uniform rules for the sportsman to follow";⁴⁰ implementation of a "shell-fish management program";⁴¹ continued and intensified research in pursuing new markets and better processing methods for Maine's fish and fish products;⁴² better "[f]orest management, involving intelligent cutting practices, reforestation and the control and eradication of [tree] disease," combined with investigation and control of "the exploitation and stripping of the forest lands";⁴³ and, continued government-sponsored soil conservation programs involving the "intelligent use of the soil and its maximum utilization for the growing of crops."⁴⁴

In a section of his Address labeled "State Parks," Muskie urged an expansion of the rather modest state park system in a way that would, eventually, allow the parks—as revenue producers—to "pay much of their own way."⁴⁵ He justified this recommendation on the following grounds: "Not only are the parks visible

35. *Id.* at 5-6.

36. *See id.* at 9-11.

37. *Id.* at 9.

38. *See id.*

39. *See id.*

40. *Id.*

41. *Id.* at 10.

42. *See id.*

43. *Id.*

44. *Id.*

45. *Id.* at 11.

and tangible evidence of [Maine's] hospitality to out-of-state visitors, but they also create opportunities for many of our own people to enjoy the clean, Maine out-of-doors in pleasant surroundings."⁴⁶

In one of the concluding portions of his speech, Governor Muskie focused on improving "the machinery of government itself"; to do this he urged the legislature to authorize a comprehensive "survey of state government" in order to assess the structure of Maine government "in the light of modern laws and practices and the experience" of other states in the nation.⁴⁷ "The survey should include," Muskie opined, "an inquiry into the advisability of consolidating the [various] conservation departments [of Maine State Government]"—inland fisheries and game, sea and shore fisheries, and forestry⁴⁸—into a "new Department of Conservation."⁴⁹

With grand eloquence, Governor Muskie completed his first Inaugural Address with a rhetorical flourish, returning again to his "road" metaphor by stating:

Progress and constructive achievement are possible only if we set our sights on high-minded objectives and work constantly toward them. I am sure we can agree that the people of Maine do not want to stand still while the rest of the country forges ahead. Someone has said, "The road that stretches before the feet of a man is a challenge to his heart long before it tests the strength of his legs."⁵⁰

D. Environmental Policymaking Roots: Gubernatorial Pollution Information and Action

1. 1955

Part of the background information available to Governor Muskie, shortly after he took office in January of 1955, consisted of a comprehensive 1951 report by the United States Public Health Service's Division of Water Pollution Control entitled *New England Drainage Basins: A Cooperative State-Federal Report on Water Pollution*,⁵¹ sent by an attorney-supporter of Muskie, Jerome G. Daviau.⁵²

46. *Id.*

47. *Id.* at 17-18.

48. *Id.* at 18.

49. *Id.* at 10.

50. *Id.* at 20.

51. FED. SEC. AGENCY, U.S. PUB. HEALTH SERV., *NEW ENGLAND DRAINAGE BASINS: A COOPERATIVE STATE-FEDERAL REPORT ON WATER POLLUTION* (1951).

52. Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie (Feb. 3, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3). Daviau was apparently an ardent anti-pollution and conservation advocate, as well as a personal and political acquaintance of Muskie. Indeed, the archival record is full of an extensive correspondence between Daviau and Muskie, beginning in 1954, shortly after Muskie's election. In the course of this correspondence, Daviau urged Muskie to take vigorous action to support strong anti-pollution legislation in Maine. *See, e.g.*, Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie (Sept. 30, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie (Nov. 2, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie (Jan. 18, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie

This report provided Muskie with exhaustive information regarding New England's water pollution problems including specific "pollution data" for each major "sub-river basin." The report discussed the following Maine sub-basins: Piscataqua and Hampton River, South Maine Coastal Streams, Saco River, Presumpscot River and Casco Bay, Androscoggin River, Kennebec and Sheepscot Rivers, Penobscot River and Coastal Stream, North Main Coastal Streams, St. Croix River, and St. John River.⁵³ Within each river sub-basin section, the report provided information and assessment of the following parameters: physical description, economic activity within the area, uses of the water resources, damages to water resources from pollution, sources of municipal and industrial pollution, existing municipal and industrial treatment facilities, progress and pollution abatement and status of present and required treatment facilities, and municipalities and industries requiring improvements to abate pollution.

Even a quick perusal of the 1951 New England Drainage Basins Report would have provided Governor Muskie with a big picture view of the major sources and problems of water pollution in Maine waters at the start of the 1950s. He would have read statistical confirmation of his own personal knowledge from growing up in Maine—of papermills, canneries, textile mills, tanneries, and metal fabricators discharging their pollutants into the water with little, if any, treatment; of woefully

(Jan. 27, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Governor Edmund S. Muskie to Jerome G. Daviau, Attorney (Jan. 31, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3) ("I can see no objection to my recommending that the Legislature consider any and all pollution bills. I will, of course, have to give some thought to the form that that recommendation may take."); Letter from Jerome G. Daviau, Attorney, to Governor Edmund S. Muskie (Feb. 3, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3) ("I'm thoroughly convinced that the people who have had the ear of all past governors have been interested in expounding the views of industries and not of the suffering public [regarding water pollution]."). See also Letter from Governor Edmund S. Muskie to Jerome G. Daviau, Attorney (Feb. 7, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3) where Governor Muskie replied, in full, as follows:

Dear Jerome,

Thank you for your letter of February 3 and the enclosed Report on Water Pollution.

I appreciate your interest in my personal position and hope that you will continue to offer suggestions. You can appreciate that it is not a simple matter to become an expert in all of the hundreds of fields with which so many people expect the Governor to be well informed, and it is almost necessary that I be an expert in order to make the right decisions.

In connection with pollution, you may be interested to know that since my election I have spent no more than ten minutes in conversation with any industry representatives, and that was over the telephone. There has been no pressure from that direction whatsoever. *My only concern—and it is a real one—is that we do nothing to jeopardize our present industrial structure. Without intending any criticism, it is one thing to propose solutions from the outside, and it is quite another to consider them when it is your decision which may put them into effect.*

With kindest personal regards, I am,

Sincerely yours,
Edmund S. Muskie

Id. (emphasis added).

53. See FED. SEC. AGENCY, *supra* note 51, at 86-138.

inadequate municipal facilities discharging sewage into the waterways; and of very little progress in pollution abatement made during the years preceding his occupancy of the Governor's Chair. He would have read that "[c]onsidering the [New England] region as a whole[,] damages to the water resources from pollution have been extensive. Damages have been greatest to industrial process water uses and recreational uses, particularly those of bathing and game fishing."⁵⁴ He would also have read that "[a]ll of the States in the New England Drainage Basins have adequate [anti-water pollution] legislation in effect *except Maine*. . . . In Maine the water pollution control law [as of 1951] provides for limited licensing powers and provides for little or no control over pollution existing prior to 1945."⁵⁵

Further background information available to Governor Muskie in early 1955 was the 1952 *Fifth Annual Report of the New England Interstate Water Pollution Commission*.⁵⁶ This report also contained embarrassing historical information about Maine's lag in joining other New England states in attempting to redress water pollution in the region,⁵⁷ although some notes of progress were also apparent:

(1) [t]he Act of the 1951 Legislature establishing the Maine Water Improvement Commission authorizes that Commission to present [water use] classifications to the Legislature for adoption and (2) [t]he water quality standards of the New England Interstate Water Pollution Control Commission were adopted for use in the [Maine] classification program.⁵⁸

During 1955—a year when Governor Muskie received and responded to a torrent of mail from constituents and government officials alike in support of more vigorous water pollution control measures by the State of Maine⁵⁹—the Maine

54. *Id.* at viii.

55. *Id.* at x (emphasis added).

56. See New England Interstate Water Pollution Commission, *Fifth Annual Report* (1952) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 222-4).

57. See *id.* at 3 (Maine's Governor was conspicuously absent from the addressee listing of the other five New England governors in the report's September 1, 1952 letter of transmittal). "Compact Legislation [authorizing the State of Maine to join the New England Interstate Water Pollution Control Commission] failed of enactment in Maine in 1951" *Id.* at 5. The New England Interstate Water Pollution Control Compact, included, among other things, Article V, which empowered the Commission to "establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use." *Id.* at 29.

58. *Id.* at 11.

59. See, e.g., Letter from Roger L. Putnam, Chairman of New England Water Pollution Commission to Governor Edmund S. Muskie (Feb. 8, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Governor Edmund S. Muskie to Roger L. Putnam (Feb. 14, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Hugh Gregg of New Hampshire to Governor Edmund S. Muskie (Dec. 24, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Governor Edmund S. Muskie to Governor Hugh Gregg (Jan. 5, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter U.S. Secretary of Health, Education and Welfare, Oveta Culp Hobby to Governor Edmund S. Muskie (Jan. 31, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Kennebec Water District Superintendent J. Elliott Hale to Governor Edmund S. Muskie (Feb. 28, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Governor Edmund S. Muskie to J. Elliott Hale (Mar. 1, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor

Legislature passed enabling legislation authorizing Governor Muskie to sign the New England Interstate Water Pollution Control Compact. Muskie signed the Compact on August 31, 1955.⁶⁰ Muskie also kept apprised of the work of the Maine Water Improvement Commission during 1955 in conducting water use classification hearings, hearings for discharge licenses by sanitary sewers and industrial firms, and special waste pollution investigations.⁶¹

2. 1956

During 1956, among other related activities, Governor Muskie (1) received a carbon copy of a dunning letter from the New England Interstate Water Pollution Commission imploring Maine to pay its first annual dues allotment;⁶² (2) responded to an inquiry by a Chamber of Commerce official by writing him a letter that, as of 1956, air pollution control "has not reached the point in the State of Maine where the State has undertaken any activity in the field," and, therefore, Maine has "no legislation or experience which would be useful [to the Chamber of Commerce official]";⁶³ (3) received technical reports about water pollution abatement efforts from a key state government advisor on the Water Improvement Commission;⁶⁴ (4) corresponded with federal officials regarding 1956 water pollution legislation

Series, Box 27-3); Letter from Governor Christian A. Herter of Massachusetts to Governor Edmund S. Muskie (June 14, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Governor Edmund S. Muskie to Governor Christian A. Herter (June 17, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3); Letter from Elliott C. Farewell to Governor Edmund S. Muskie (Nov. 12, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 32-6).

60. See Execution of New England Interstate Water Pollution Control Compact by Governor Edmund S. Muskie, August 31, 1955, pursuant to Chapter 450 of the Public Laws of Maine (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 27-3).

61. See State of Maine Water Improvement Commission, Fifth Annual Report of the Water Improvement Commission 1955-1956 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 144-8). During 1955, Chapter 425, Laws of 1955, amended Maine's water pollution laws. Pursuant to this legislation, the Water Improvement Commission was instructed to make recommendations to the Legislature for raising the classifications of Maine water with respect to pollution abatement to the highest use classification economically feasible. The Water Improvement Commission was also, pursuant to this legislation, designated as the Maine public agency for the purpose of accepting federal funds in relation to water pollution control and water resources. See The Council of State Governments, *State Water Legislation*, 1955 at 9 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-6).

62. See Letter Joseph C. Knox, Secretary of New England Interstate Water Pollution Control Commission, to Dean Fisher, M.D., Secretary, Maine Commissioner of the New England Interstate Water Pollution Control Commission (Jan. 31, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1).

63. Letter from Walter W. Matthews, Director, Industrial Department of Chamber of Commerce of Greater Philadelphia, to Governor Edmund S. Muskie (Mar. 30, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1); Letter from Governor Edmund S. Muskie to Walter W. Matthews (Apr. 4, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1).

64. See Letter from Walter A. Lawrence to Governor Edmund S. Muskie (Apr. 16, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1).

under consideration by Congress;⁶⁵ and (5) corresponded with a manager of a Maine feldspar purification plant about water quality and competing water uses.⁶⁶

E. Environmental Policymaking Roots: Gubernatorial Natural Resources Information and Action

1. 1955

During his first year in office in 1955—and even in the post-election period of 1954, before he was inaugurated as Governor—Edmund S. Muskie received a variety of communications and reports on Maine natural resources issues from citizens as well as public officials. As was his habit, Muskie graciously answered most of those communications with personal thanks and thoughtful replies.⁶⁷

Reaction to His Inaugural Proposal for a Possible New Conservation Department

Governor Muskie heard a positive response to the idea of a new State Department of Conservation from the Garden Club Federation of Maine, which had passed a resolution in favor of the concept.⁶⁸ The Garden Federation's Legislative Chair urged the new governor to work for an "increased appropriation for the maintenance and upkeep of the [Capitol] State Park in Augusta" and also enclosed a "check list of the forest trees of Maine" maintained in that park.⁶⁹ Muskie judiciously answered the Garden Federation by noting that "[u]nder the survey of state government which I proposed, groups such as yours would have an opportunity to be heard for the purpose of presenting suggestions" dealing with "changes in our [Maine state] governmental structure."⁷⁰

65. See, e.g., Letter from Congressman Ed Edmondson to Governor Edmund S. Muskie (June 18, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1); Letter from Governor Edmund S. Muskie to Congressman Ed Edmondson (June 29, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1); Letter from Acting U.S. Secretary of Health, Education and Welfare Harold C. Hunt to Governor Muskie (Aug. 8, 1956) (with enclosure, Public Law 660, 84th Cong., The Federal Water Pollution Control Act of 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1); Letter from Governor Edmund S. Muskie to Acting U.S. Secretary of Health, Education and Welfare, Harold C. Hunt (Aug. 20, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 77-1).

66. Letter from Donald H. Dizenzo, Manager, Topsham Feldspar Company, to Governor Edmund S. Muskie (Jan. 12, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 83-9); Letter from Governor Edmund S. Muskie to Donald H. Dizenzo, Manager, Topsham Feldspar Company (Feb. 1, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 83-9).

67. Indeed, in early 1955, Governor Muskie was reported to be personally answering some "40 to 50 letters a day" even though about 90% of his mail was "screened out." See *Governor Muskie Surprised He Is Still Remembered*, *supra* note 23, at 8.

68. Letter and Supplement from Mrs. Edmund M. Socec, Legislative Chairman, The Garden Club Federation of Maine, to Governor Edmund S. Muskie (Jan. 12, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1).

69. *Id.* Forty-eight "native trees of Maine" were listed on the checklist ranging from coniferous trees like the White Pine and Eastern Hemlock, to deciduous trees like the Butternut and Sugar Maple. See *Resolution*, Garden Club Federation of Maine (Nov. 4, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1).

70. Letter from Governor Edmund S. Muskie to Mrs. Edmund M. Socec, Legislative Chairman, The Garden Club Federation of Maine (Jan. 20, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1).

Muskie received negative communications, however, regarding the notion of a reconstituted Maine Department of Conservation from two other individuals with special interests—one a manufacturer of forestry products,⁷¹ the other an owner of a recreational “country store” near Moosehead Lake.⁷² These individuals wanted Muskie to keep the status quo of fragmented natural resources agencies in place.

Fisheries

Governor Muskie learned about the multi-faceted problem of fisheries conservation in Maine from a number of different sources during 1955. Regarding Atlantic salmon, for instance, Muskie received a communication from the Maine Atlantic Sea Run Salmon Commission that indicated that Atlantic salmon were present in the estuarine Sheepscot River and that the Saco River estuary, also, presented opportunities for a salmon restoration program, but that obstructions, like dams and pollutions near the rivers, prevented predictable salmon migration.⁷³ Governor Muskie also received a report from the Maine Department of Inland Fisheries and Game in conjunction with the Atlantic Salmon Commission on similar salmon restoration problems on the Penobscot River.⁷⁴ Moreover, by way of illustration, Muskie heard from an out-of-state sportsman who wrote to him about obstacles to freshwater fish migration in ponds and lakes of Maine and suggested that fish ladders and screens be used by the state to assist this migration effort.⁷⁵ In the course of personally answering the man’s letters, Governor Muskie communicated with various state officials of the Department of Inland Fisheries and Game regarding current measures being taken by Maine to assist freshwater fish migration.⁷⁶

71. See Letter from Owen L. Hancock of M.S. Hancock, Inc. to Governor-elect Edmund S. Muskie (Nov. 12, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1); Letter from Governor-elect Edmund S. Muskie to Owen L. Hancock (Nov. 29, 1954) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1) (“Our platform, this year, did recommend establishment of a Department of Conservation. However, we recognize that it is a step which cannot be taken easily and should be taken, if at all, only after the most thorough kind of study and research.”).

72. Letter from Harry A. Sanders, Jr. of D.T. Sanders & Son to Governor Edmund S. Muskie (Jan. 14, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1); Letter from Governor Edmund S. Muskie to Harry A. Sanders, Jr. (Jan. 25, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-1).

I did nothing more than recommend that the idea [of a State Department of Conservation] be considered in connection with the proposed survey of State Government. There will be no legislation introduced at this session to create such a department. If the survey is authorized, there will be an opportunity for all interested citizens to present their ideas and their thinking on this subject and on many others.

Id.

73. See Letter from Horace P. Bond, Chairman, Maine Atlantic Sea Run Salmon Commission, to Governor Edmund S. Muskie (Mar. 5, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 8-16).

74. See MAINE ATLANTIC SALMON COMMISSION AND DEPARTMENT OF INLAND FISHERIES AND GAME, Penobscot River: Salmon Restoration (1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 8-16).

75. See Letter from Millard Merz, Jr. to Governor Edmund S. Muskie (Dec. 17, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 16-10).

76. See Letter from Governor Edmund S. Muskie to Millard Merz, Jr. (Dec. 27, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 16-10); Memorandum from Governor Edmund S. Muskie to Roland H. Cobb, Commissioner, Maine Department

Parks

A number of encouraging developments regarding Maine's parks passed across Governor Muskie's desk during 1955. First, and foremost, in March, former Governor Percival P. Baxter—who had previously donated some personal land holdings in upper central Maine to constitute Baxter State Park—offered an additional 3,569 acres of his land to the State of Maine for expansion of Baxter State Park. Former Governor Baxter ended his letter of intent to Governor Muskie with the following eloquent thoughts concerning conservation in Maine:

Man is born to die

His works are short-lived

Buildings crumble, monuments decay, wealth vanishes

But Katahdin in all of its glory

Forever shall remain the mountain of the people of Maine.⁷⁷

In notifying the Maine Legislature of Baxter's proposed gift, Muskie noted that he was "especially happy that Mr. Baxter has pointed out that this new grant will be available for scientific forestry management experiments" and that such policy would allow Maine's "historic forest wealth [to] best be conserved by thorough study of intelligent cutting practices and reforestation."⁷⁸

Second, Muskie got involved in initiating the purchase by the State of Maine of 40 acres of land at Cape Elizabeth from the U.S. General Services Administration for \$28,000—half of its assessed value.⁷⁹ While this was a coup of sorts for the state, it was not without communication of local opposition to the Governor by a local official, concerned about increased traffic flow through the area.⁸⁰

Third, Governor Muskie arrived at an understanding with the U.S. Geological Survey regarding federal assistance in preparing updated, and more complete, maps of two key Maine state park areas: Moosehead Lake and Baxter State Park.⁸¹

of Inland Fisheries and Game (Dec. 27, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 16-10); Memorandum from George W. Bucknam, Deputy Commissioner, Maine Department of Inland Fisheries and Game to Governor Edmund S. Muskie (Dec. 28, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 16-10); Letter from Governor Edmund S. Muskie to Millard Merz, Jr. (Dec. 29, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series Box 16-10).

77. Letter from Percival Proctor Baxter to Governor Edmund S. Muskie (Mar. 17, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 16-10).

78. Letter from Governor Edmund S. Muskie to the Maine State President and Speaker of the House (Mar. 23, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

79. See Memorandum from Frank Coffin to Governor Edmund S. Muskie (Dec. 2, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

80. See Letter from Carl Beyer, Cape Elizabeth Selectman, to Governor Edmund S. Muskie (Dec. 9, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

81. See Letter from Acting Director, U.S. Geological Survey, to Governor Edmund S. Muskie (Oct. 18, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7); Letter from Governor Edmund S. Muskie to Thomas B. Nolan (Nov. 28, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

Forestry

Governor Muskie was introduced to the forestry issues of Maine through a unique piece of correspondence he received from an out-of-state Maine vacationer who wrote about a tale of woe allegedly happening in northern Maine's Washington County, brought about by alleged massive clearcutting operations by a major pulpwood company.⁸² In a copy he received of a detailed four page informational return letter, sent to the out-of-state vacationer by Albert Nutting, Maine's Forest Commissioner, which justified the timber company's harvesting techniques on its own land, Governor Muskie learned the following facts, among others, about forestry practices in Maine: The harvesting and manufacturing of timber into useable products has always been basic to the economy of Maine from the time ship masts were obtained for the British Navy to supplying pulpwood for [Maine's] largest state industry—pulp and paper manufacture."⁸³ Maine had, as of 1955, 17 million acres of forest land, of which 3 1/2 million cords of wood are harvested yearly. "This raw material keeps 800 wood-working plants in production, varying in size from small turnery mills to the largest newsprint mill in the country."⁸⁴ The Wood Industry employs about 33% of all workers in Maine; the total income from manufactured forest products in the State was five hundred million dollars annually.

Some of our timber species in Maine are comparatively short-lived. Harvest at the time trees reach maturity is beneficial and may avoid serious forest disaster which may occur from over-mature timber. Past problems which have been serious, due in part at least to over-mature trees, are the spruce budworm epidemic of 1920 which killed 25,000,000 to 30,000,000 cords of spruce and fir and left many areas in a very hazardous forest fire situation. Birch die-back between 1940 and 1950 killed 70% of [Maine's] birch [trees]. Beech scale and Negtria Disease has gradually killed a large percentage of our beech. The hurricane of 1938 destroyed millions of board feet of white pine in southwestern Maine. Harvesting of timber as it became mature would have greatly lessened these disasters.⁸⁵

Water Resources

Edmund S. Muskie began to receive a systematic education on water resources issues during 1955. One source of comprehensive national information that he received was the Council of State Government's *State Water Legislation, 1955* report.⁸⁶ This document surveyed comparative innovative measures being taken by states throughout the country regarding comprehensive water use and water law studies, new state administrative bodies to govern water resources, state ratification of interstate compacts affecting water resources, new state watershed pro-

82. Letter from Raymond R. Bowers, Esq. of Coventry, Connecticut to Governor Edmund S. Muskie (Nov. 17, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

83. Letter from A.D. Nutting, Maine State Forest Commissioner, to Raymond R. Bowers (Dec. 1, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7); Memorandum from A.D. Nutting to Governor Edmund S. Muskie (Dec. 2, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 26-7).

84. *Id.*

85. *Id.*

86. See The Council of State Governments, *State Water Legislation, 1955* (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-6).

tection and flood prevention laws, well drilling law innovations, and laws designed to assist local water supply, sewage and drainage facilities.⁸⁷

Governor Muskie also started to learn about the intricacies of international legal jurisdiction over the St. Croix River—a northeastern border river, which Maine shares with the Canadian province of New Brunswick. In this regard, Muskie received written notification from the International Joint Commission (IJC), between the United States and Canada, of a “reference” involving a “study of the water uses of the St. Croix” including “hydroelectric power, water levels in certain lakes and in the river, and fisheries.”⁸⁸

Atomic Energy

Atomic energy safety concerns were conveyed to Governor Muskie and the governors of the other forty-seven states in the February 1955 *Report by the United States Atomic Energy Commission on the Effects of High-Yield Nuclear Explosions*.⁸⁹ Moreover, in May of that year, the governors received an invitation from the AEC’s Acting Chairman to a Washington, D.C. conference on the health and safety aspects of AEC’s regulations.⁹⁰ Muskie designated a Maine Deputy Attorney General to go in his stead. Muskie, subsequently, received a report from this young lawyer regarding the federal government’s strategy in licensing the private use of atomic power to electrical utilities.⁹¹

2. 1956

During Muskie’s second year in office as Governor, he continued to seek and to receive a vast amount of information regarding Maine’s natural resources problems and opportunities. A selective sample of some significant communications follows.

Fisheries

In December, Governor Muskie received from Commissioner Stanley R. Tupper the biennial report for 1954-56 of the Maine Department of Sea and Shore Fisheries. Through this document, Muskie learned about the Department’s Clam Man-

87. *Id.* at 1-3.

88. Letter from Carter Page, Chairman, United States Section, International St. Croix River Engineering Board, to Governor Edmund S. Muskie (Dec. 9, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-2). *See also* Letter from Len Jordan, Chairman, United States Section, International Joint Commission, to Governor Edmund S. Muskie (Dec. 8, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 10-2).

89. United States Atomic Energy Commission, *Report on Effects of High-yield Nuclear Explosions* (1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 8-17).

90. *See* Letter from Dr. Willard F. Libby, Acting Chairman, United States Atomic Energy Commission to Governor Edmund S. Muskie (May 19, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 8-17).

91. *See* Memorandum from James Glynn Frost, Deputy Attorney General, to Governor Edmund S. Muskie (Jul. 22, 1955) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 8-17).

agement Program, Seed Lobster Program, law enforcement of Maine's fisheries regulations, and marine research activities.⁹² On the practical level, Governor Muskie corresponded with a Winter Harbor, Maine lobsterman, who wrote to complain about the loss of lobster traps and rope because of the maritime course taken by the ferryboat Blue Nose,⁹³ and thanked a Rockport, Maine citizen for providing facts relative to exploitive scallop harvesting techniques.⁹⁴

In October, Governor Muskie received two reports from the Chairman of Maine's Atlantic Sea Run Commission. One report provided a progress assessment for the year regarding the implementation during 1956 of ten river management programs in Maine that were formulated with the cooperation of the Maine Inland Fisheries and Game Department to remove obstructions to salmon migration.⁹⁵ Another report provided a thoughtful and comprehensive review of poor conservation practices which had, in the past, negatively affected migration of Atlantic Salmon on Maine's Aroostook River. Some of these poor conservation practices included a lack of adequate concrete fishways over dams, bulldozing of streams and timber clearcutting which caused siltation and loss of fish habitat, and pockets of industrial pollution.⁹⁶ Earlier in the year, Governor Muskie had received a report on fisheries management on the Saco River pointing out dam obstructions and pollution as the most serious fisheries conservation concerns on this water body.⁹⁷

Parks

Among other information that Governor Muskie received during 1956 about Maine State Parks, a communication with a state resident, regarding his request to

92. See 1954-56 Me. Dep't Sea & Shore Fisheries Biennial Rep. (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-8); Letter from Commissioner Stanley R. Tupper to Governor Edmund S. Muskie (Dec. 3, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-8).

93. See Letter from Kendall G. Bickford to Governor Edmund S. Muskie (Nov. 12, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-8); Letter from Governor Edmund S. Muskie to Kendall G. Bickford (Dec. 27, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-8).

94. See Letter from Mrs. Jennie A. Hoche to Governor Edmund S. Muskie (Sept. 14, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-9); Letter from Governor Edmund S. Muskie to Mrs. Jennie A. Hoche (Sept. 24, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-9) (indicating that "[a]s a result of other similar contacts" regarding the "scallop situation," Governor Muskie had "arranged a meeting in [his] office with interested people and representatives of the Department of Sea and Shore Fisheries").

95. See Atlantic Sea Run Commission, Summary of Progress prepared for the Atlantic States Marine Fisheries Commission (Sept. 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 56-2).

96. See ME. DEPT. OF INLAND FISHERIES AND GAME AND ATLANTIC SALMON COMMISSION, BULLETIN NO. 4, AROOSTOOK RIVER SALMON RESTORATION AND FISHERIES MANAGEMENT (Kendall Warner ed. 1956).

97. See Letter from Horace P. Bond, Chairman, Atlantic Sea Run Salmon Commission, to Governor Edmund S. Muskie (Mar. 9, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 56-2) (enclosing Saco River Management Report). See also Letter from Governor Edmund S. Muskie to Horace P. Bond, Chairman, Atlantic Sea Run Salmon Commission (Mar. 13, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 56-2) ("I have skimmed through [the report] briefly and have read thoroughly your Summary and Recommendations.").

lease a small island near his camp on Little Sebago Lake for purposes of a private park, is interesting and revealing because of the level of detail addressed by Muskie on natural resource issues during his governorship. The Governor's responsive letter to the constituent stated in pertinent part:

This will acknowledge your letter of recent date.

I can fully appreciate your interest in making the small island near your camp on Little Sebago Lake a beauty spot. However, a sale or lease by the Governor and Council is not possible. The law is as follows:

"The title to all islands located in Great Ponds within the state, except such as have been previously granted away by the state or are now held in private ownership, shall remain in the state and be reserved for public use."

The Attorney General's Department has made a ruling that leasing of islands is not possible, as the present law is, that they shall be for public use. The legislature follows the objectives of the law and does not permit permission to sell or lease. However, there have been exceptions and you might want to consider trying the legislative approach

. . . .

With all good wishes, I am

Sincerely yours,

Edmund S. Muskie.⁹⁸

Forestry

Among the information Governor Muskie received during 1956 on forestry issues, his files indicate that United States Senator [and future Vice President] Hubert H. Humphrey of Minnesota wrote to Muskie during the summer, enclosing a copy of extensive remarks Humphrey had made on the floor of the Senate on "Wilderness Preservation" as part of a bill to establish a National Wilderness Preservation System.⁹⁹

Water Resources

During 1956, Muskie received an assortment of information regarding water resources policy including a report from the Presidential Advisory Committee on Water Resources Policy from the Chairman of the Committee, U.S. Secretary of Interior, Douglas McKay;¹⁰⁰ a report from the Chamber of Commerce of the United

98. Letter from Governor Edmund S. Muskie to Earle P. Shaw (Aug. 31, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 62-6).

99. See Letter from Senator Hubert H. Humphrey to Governor Edmund S. Muskie (undated) (enclosing copy of Congressional Record Speech in the Senate of the United States on June 7, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 62-6).

100. See Letter from Douglas McKay, U.S. Secretary of Interior, to Governor Edmund S. Muskie (Jan. 25, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 83-8); Letter from Governor Edmund S. Muskie to Douglas McKay, U.S. Secretary of Interior (Jan. 25, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 83-8).

States entitled "National Water and Power Policy";¹⁰¹ various communications regarding the St. Croix River Committee, part of the State of Maine's input to the study of that river being undertaken by the International Joint Commission;¹⁰² and written notification of another IJC reference regarding "the estimated cost of developing the international tidal power potential of Passamaquoddy Bay in the State of Maine and the Province of New Brunswick, and . . . whether such cost would allow hydroelectric power to be produced at a price which is economically feasible."¹⁰³ Muskie also received a particularly informative report on water policy from the Council of State Governments which provided an insightful framework for understanding the problem.¹⁰⁴ Pertinent language in the Council of State Governments report stated:

Traditionally, outside the West, state activities relating to water resources have been rather limited. The states have collected information about water supplies, carried on pollution prevention and abatement programs, and, from time to time, made special studies of water resource problems In general . . . the area of water resources has not been regarded as a major or important function of state government.

Within the past few years, however, a combination of effects of several long-term developments, including population growth, industrial expansion and changes in agricultural methods, have made the matter of water supply a major problem in many states Moreover, the per capita consumption of water is increasing due to the use of such devices as automatic washers, air-conditioning units and other changes in our homes. The expansion of industrial facilities and the use of new industrial processes requiring large quantities of water likewise has added significantly to the demand for water. Relocation of industries has made this aspect of the problem particularly important in some areas. Agricultural demand for water also has increased sharply as farmers have learned that supplemental irrigation can improve the quality and increase the quantity of their crops.

All of these factors have contributed to a continually rising demand for water. It is estimated that per capita use of water from public water supplies is now 145 gallons per day, and that this will increase to 175 gallons per day by 1975. Considering all uses of water, it is now estimated that the nation is using 200 billion gallons of water per day, and that this will increase to 350 billion gallons per day by 1975.¹⁰⁵

101. See Letter from Richard W. Smith, Manager, Natural Resources Department, Chamber of Commerce of the United States, to Governor Edmund S. Muskie (May 18, 1956) (discussing flood control, navigation, reclamation and power) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 83-8).

102. See, e.g., Letter from Carter Page, Chairman, United States Section of International St. Croix River Engineering Board, to Governor Edmund S. Muskie (Jan. 9, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-5); Letter from Roland H. Cobb, Commissioner, Maine Department of Inland Fisheries and Game, to Governor Edmund S. Muskie, (Jan. 11, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 80-5).

103. Herbert Hoover, Acting Secretary of State, Department of State, Press Release (Aug. 2, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 67-6).

104. See Letter from Frank Bane, Executive Director, the Council of State Governments, to "All Governors," with attached Recommendations Concerning Some Water Resource Problems Confronting the States (Apr. 25, 1956) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 58-4) [hereinafter "Recommendations"].

105. *Id.* at 1-2.

III. GOVERNOR MUSKIE'S SECOND TERM, 1957-58

A. Governor Muskie's Second Inaugural Address: January 1957

Choosing a different metaphor to begin his Second Inaugural Address, Governor Muskie, in making a quotation from an anonymous source, spoke of laws crafted by state government as a "road-map to happiness."¹⁰⁶ "Law," in Maine, he said,

maps out the direction human acts must take if they are to reach their proper goal. But maps are the products of minds. They are a work of intelligence, a work of reason. Before a map can exist there must be a mind capable of recognizing destinations and the road or roads that lead to them. So it is with the map of human life. There must be a mind capable of recognizing the true goals of human life and the roads that lead to those goals. Law then is always a command or a direction of reason ordering a human act to its proper goal. The goal of all human acts is happiness.¹⁰⁷

Applying the metaphor to the task at hand, Governor Muskie went on to state:

During the . . . months which lie ahead of us, we shall be fashioning a map for the guidance of our State in the years to come. To that task we should summon all of the intelligence which we can muster in order that we may clearly recognize our proper destinations and firmly direct our actions toward them.¹⁰⁸

Muskie contended that the "destinations or objectives" of Maine State Government had "not changed in the past two years,"¹⁰⁹ during his first term as governor. Using the economy as the overarching concern of state government, "in partnership with private initiative and enterprise," Muskie ticked off "conservation and intelligent use of our natural resources" involving "enlightened measures designed to preserve them for the long years and generations ahead" as first, among a list of other objectives, instrumental in improving Maine.¹¹⁰ Other important objectives articulated by Governor Muskie included the following: providing "education and training" for the young, assisting the institutionalized, and improving efficiency in the "machinery of government."¹¹¹

In terms of economic development, Governor Muskie trumpeted his "creation of the [new] Department of Development of Industry and Commerce."¹¹² He praised its early work in "evaluat[ing] [Maine's] resources in every area of the State in order to direct our efforts most productively toward those industries whose needs we can hope to meet," as well as in "[c]ontinuing [the] unflagging promotion of [Maine's] vacationland resources and of the products of the soil and sea, all of which should be increasingly identified with Maine and quality across the country."¹¹³

106. See Governor Edmund S. Muskie, Second Inaugural Address to the Ninety-eighth Legislature of the State of Maine 5 (Jan. 3, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 229-6) (transcript available in Archives, Bates College, Governor Series, Box 229-6).

107. *Id.* (internal quotation marks omitted).

108. *Id.*

109. *Id.* at 6.

110. See *id.*

111. See *id.*

112. See *id.* at 7.

113. *Id.*

Governor Muskie made special reference to coastal Maine in discussing the importance of natural resource development and economic prosperity. He said:

No discussion of economic development in Maine would be complete without reference to our coastline and the work of the Maine Port Authority. We have some of the finest natural harbors on the Atlantic seaboard. The Federal government has spent and is spending millions of dollars on dredging so that these ports can be used by the most modern ships. Private capital has spent large sums in developing port facilities. The Maine Port Authority has demonstrated that water-borne commerce can be increased with an active port solicitation and promotion program.¹¹⁴

Turning next to more traditional topics of natural resources and anti-pollution policy, Governor Muskie discussed the following six concerns: (1) forests, (2) agriculture, (3) inland fisheries and game, (4) sea and shore fisheries, (5) water resources, and (6) parks.

Introducing the general discussion of these specific areas of natural resources policy, Muskie observed that "[t]he intelligent utilization and conservation of our natural resources are as much a part of our economic development program as the essentially promotional activities which I have just discussed."¹¹⁵ Moreover, according to the Governor, "unless [Maine's natural resources] are carefully husbanded to assure a continuing supply of the products which they yield, there is little sense to talk of an expanded industrial base."¹¹⁶

I. Forests

Reflecting on some of the information and communications he had received during his first two years in office, Governor Muskie asserted that

[p]robably our greatest natural resource is our forests. Their importance is highlighted by the fact that the industries using wood employ about one-third of our people. The extent of our supply is indicated by the fact that we have the largest amount of commercial forest land per capita in the country.¹¹⁷

Turning from reflection to policy prescription, Muskie emphatically told the Maine Legislature:

In industry, in recreation, for water storage [Maine's forests] are an indispensable, yet often taken-for-granted, asset which can be wasted overnight, but replenished only with the passage of years. We must continue and strengthen our programs to protect them from fire, insects, disease, and improper use. Your attention is particularly called to the following recommendations:

- a. The need to improve forest practices on small wood-lots, considered a major problem.
- b. Expansion of the state forest nursery, particularly in cooperation with the Federal Soil Bank Nursery Program, which aims at production of ten million trees per year to be used on soil bank acreage.
- c. Completion of the aerial survey of our forest lands, considered important as a basis to determine policies of expansion, or new uses and locations for industries using wood.¹¹⁸

114. *Id.* at 9.

115. *See id.*

116. *Id.* at 9-10.

117. *Id.* at 10.

118. *Id.*

2. Agriculture

Governor Muskie next addressed the problems and prospects of agriculture as one of Maine's most important natural resources. Initially, he pointed out the disturbing trend that "[t]he number of our farms has been dwindling at an alarming rate."¹¹⁹ Yet, according to Muskie, although "[t]his trend has been influenced . . . by market conditions nationally or regionally which are beyond the control of a single state," it was vital that Maine government officials "not overlook possible improvements of those services which can contribute to the well-being of [Maine's] farm economy."¹²⁰ Muskie proposed specific state government programs and laws to help eradicate Maine poultry diseases,¹²¹ better market Maine's potato crop,¹²² eliminate retail price controls on milk,¹²³ and more vigorously promote Maine's agricultural products.¹²⁴

3. Inland Fisheries and Game

Pausing to extoll the munificence of Maine's water and woodland resources, Governor Muskie opined that Maine's "incomparable lakes, streams, and forests

119. *See id.*

120. *See id.*

121. *See id.*

One of the brightest spots in the farm picture in Maine is the poultry industry which has experienced a tremendous growth. The incidence of poultry disease in our flocks has inevitably increased in proportion to the numbers of poultry on our farms. The investigation, control, and eradication of these diseases is probably a function of state government; and our services in this connection [both in the Agriculture] Department and at the University of Maine, should be expanded commensurate with the needs of this growing industry.

Id. at 10-11.

122. *See id.* at 11.

We are requested to assume one-half of the costs of maintaining a Federal-State Market News Office in Presque Isle [Maine]. This office is the only source of impartial and accurate daily market information for Maine potato producers and shippers, and is an invaluable aid to intelligent marketing of the Maine potato crop. I recommend that we assume these costs.

Id.

123. *See id.*

You will be asked to consider again the advisability of continuing milk price controls. All are agreed that we need policies which will expand the market for milk produced on Maine farms at prices which will bring a fair return to the producer. There is disagreement as to what these policies should be. There is merit to the suggestion that elimination of retail price controls, or, at the very least, more liberal resale pricing policies, will accomplish the results desired.

Id.

124. *See id.*

The marketing and promotional efforts of several segments of Maine agriculture have been stepped up in recent years. Illustrative is the work of the Maine Dairy Council Committee and the Maine Potato Commission which operate with the proceeds of special industry taxes. It is understood that the poultry industry is considering a similar program. Our policy should be to cooperate with the indicated wishes of the industry in each instance, and, once such a program is enacted into law, to safeguard its source of revenue. These are constructive and productive efforts and should be encouraged.

Id.

constitute the habitat for a profusion of fish and wildlife which serve as a major attraction for our thousands of visitors as well as wholesome recreation and sport for our citizens.”¹²⁵ Accordingly, Muskie asserted that “[i]t is the responsibility of the department to so manage these resources as to ensure a continuing annual harvest of fish and game, sufficient to maintain, and if possible, raise the level of returns to the sportsmen” even though “[t]his task is made more difficult by the growth in population nationwide, the increasing number of those who wish to fish and hunt, the decentralization of industry, and factors tending to reduce the extent of land and water areas which will support the production of fish and game.”¹²⁶

Implicitly concerned about the proliferation and haphazardness of Maine’s fish and game laws, Governor Muskie suggested that the Legislature, in a legal codification exercise, “study methods which could materially reduce the numbers of special laws now on the books, giving due consideration . . . to the dictates of sound conservation.”¹²⁷ Drawing upon his experience and communications during the two previous years, Muskie also suggested that the Legislature “consider giving the department more specific authority over dams, fishways, screens, and water level controls” because these “obstructions in our streams, unless removed or by-passed, are a serious detriment to any program designed to encourage the natural reproduction of fish.”¹²⁸

4. *Sea and Shore Fisheries*

Governor Muskie detailed the importance of Maine’s commercial fishing industry, which in 1957 “produce[d] nearly 300,000,000 pounds of seafood products valued at \$75,000,000” and therefore, “establish[ed] it as an important segment of the State’s economy calling for wise management to insure its source of supply.”¹²⁹ Muskie called, therefore, for a strengthening of the Department of Sea and Shore Fisheries program, consisting of enforcement, research, and promotion activities along the following lines:

- a. Intensification of the seed lobster program with appropriation of sufficient funds to stimulate the impounding of female lobsters.
- b. Utilization of laboratory facilities at Boothbay Harbor to study lobster diseases and to develop methods of reducing the adverse influences of these diseases on the industry.
- c. A resumption of scallop research to develop life history studies and technologies to predict scallop abundance.
- d. Continuation of the program to survey closed clam areas for the purpose of salvaging shellfish from these areas; and the addition of a program to carry on bacteriological surveys of the open areas in order that the public’s health may be more adequately safeguarded and to meet the requirements of the U.S. Public Health Service.¹³⁰

125. *Id.*

126. *Id.* at 11-12.

127. *See id.* at 12.

128. *See id.*

129. *See id.*

130. *See id.*

5. Water Resources

Of all resource areas discussed by Governor Muskie in the course of his second inaugural address, he devoted most attention to water resources, with particular emphasis on emerging problems of water pollution in Maine. He framed the policy problem as follows: "The pollution of . . . clam flats is a part of the broader problem of water pollution which touches almost every area of the State, and which must find a solution within reasonable time limits if we are to derive maximum benefits from our water resources."¹³¹ Providing a general context to the issue, Muskie reasoned:

Surely it is beyond argument that an abundant supply of clean water is essential to our industrial growth, to meet our domestic needs, to encourage the natural reproduction of fish in our streams, and to our coastal economy. We are relatively favored as among the forty-eight states in our possession of this resource, but we should improve our position as rapidly as we can.

This imposes responsibilities upon industry and upon our communities. Each must make progress to the maximum extent possible in the light of technological advances and reasonable financial requirements. We cannot afford to be rigid, nor can we afford to be lax.¹³²

Focusing on the specific facts of policy formulation that he had become aware of during his first term, Governor Muskie implored the Legislature to "face up to" this issue and to consider the following details on the state level and on the federal level:

The [Maine] Water Improvement Commission reports that approximately 15,000 miles of streams will have been studied, covered in public hearings, and prepared for submission to [the Legislature] in its recommendations for classification. If you should adopt these recommendations, the extension of classification then authorized will present problems to nearly every community. Thus, you will be confronted with a sobering responsibility.

With respect to the community problem, the Congress of the United States has enacted [clean water] legislation [in 1956] appropriating funds to assist municipalities in the construction of sewage treatment works. Under the Act grants are limited to 30 percent of the estimated cost of the works or \$250,000, whichever is the smaller. Maine's allotment for the current fiscal year is \$627,125. In addition, we are allotted \$19,331 in the current fiscal year to assist us in meeting the costs of our program for pollution control. Each project seeking to qualify for the federal funds must be approved by the Water Improvement Commission and must be part of a comprehensive State water pollution control plan.¹³³

With considerable acumen and nuance, Governor Muskie laid out various financial alternatives for the Legislature in deciding how to best help Maine's municipal governments acquire and pay for sewage treatment works. These alternatives ranged from providing state matching funds "to the extent of two-thirds of the federal grant," to creation of "a revolving fund from which municipalities could

131. *Id.* at 12-13.

132. *Id.* at 13.

133. *See id.*

borrow, interest free, funds necessary to construct, not only sewage treatment plants, but also other sewage works.”¹³⁴

Two final recommendations regarding water resources policy were made by Governor Muskie in the course of his second inaugural address. First, with regard to “water supply,” Muskie lectured how water “supply and its management are important to industry, to the generation of hydro-electric power, to the control of pollution, to agriculture, to the breeding and feeding of fish life, and to our domestic needs.”¹³⁵ Therefore, Muskie recommended, as a means of “obtain[ing] more of the facts” on this matter, “that [Maine] establish a ground waters survey program to be conducted by [Maine’s] Department of Development of Industry and Commerce in cooperation with the United States Geological Survey.”¹³⁶ Second, with regard to “[t]he question of utility rates,” relating to some Maine utilities relying on hydroelectric power, Governor Muskie recommended “that the rate statute be amended to provide an exact accounting rate base” predicated on “actual investment” in plant and equipment by the utility rather than their “current value” which “tends to permit a utility [in recurring times of inflation] to obtain a return on money not actually invested.”¹³⁷

6. Parks

Regarding parks in Maine, Governor Muskie enthusiastically reported as follows:

Over the [years 1952-56], visitor attendance at all State and Federal parks and recreation areas in Maine has increased by more than thirty percent. This is a reflection of the great demand for outdoor recreation facilities, which nature has equipped Maine to provide in such abundance. The increasing visitor use, which we welcome, is overcrowding our existing park facilities.

The expansion of our parks and recreation areas should have the enthusiastic endorsement of all who are conscious of the economic value of our vacationland resources. The Maine State Park Commission has prepared a long range program for expansion which, in its basic outlines, should be implemented as rapidly as available funds permit. As is the case with other demands for capital funds, our progress will depend upon our approach to the financial problem involved

The State parks are showcases of Maine’s physical beauties and of our hospitality. In the same category should be included various State memorials, the im-

134. See *id.* at 13-14. Muskie also pointed out to the Legislature that:

Another suggestion of considerable merit has been advanced. Briefly, it proposes that enabling legislation be adopted providing for the creation of municipal sewage districts under model charters spelled out in the law. Implementation of this suggestion will require considerable study and research, for which appropriate provision should be made. Such legislation would provide a more flexible and ready tool for financing municipal sewage projects.

Id.

135. *Id.*

136. *Id.*

137. See *id.* at 14-15.

provement and maintenance of State buildings and grounds here in Augusta, and restoration of a State museum. All of them should receive our attention.¹³⁸

B. Environmental Policymaking Roots: Gubernatorial Pollution Information and Action

1. 1957

During 1957, Governor Muskie continued to receive a wide variety of pollution-related reports and documents from a number of different sources and took action on some of this information. For example, Muskie participated in the 1957 Governors' Conference in Williamsburg, Virginia, in voting to adopt the following resolution on air pollution:

The Governors' Conference recognizes the great importance of air pollution control, particularly in metropolitan areas, and the need for a more intensive attack to be made on this problem.

Many air pollution problems affect large regions and they are often by their nature interstate in character. This does not mean that the federal government should assume jurisdiction, but rather that the states should by interstate action accomplish effective controls with the assistance of the federal government.

The Forty-Ninth Annual Meeting of the Governors' Conference, therefore, requests that a committee be appointed to study the problem of air pollution, with the assistance of the staff of the Council of State Governments, and to report its conclusions to the states as to ways and means of developing an effective program on an interstate basis.¹³⁹

Moreover, a position paper on Municipal Waste Treatment Construction Grants was distributed to Muskie and his fellow governors by the Governors' Conference Joint Federal-State Action Committee following the 1957 Governors' Conference.¹⁴⁰ The paper went against the policy grain, proposing that "the States assume responsibility for any necessary financial assistance to municipalities in the construction of waste treatment facilities and that the Federal Government discontinue grants for this purpose";¹⁴¹ in large measure, this proposal was in reaction to

138. *Id.* at 15-16. Governor Muskie also addressed specific efficiency recommendations in the machinery of Maine state government, drawing upon observations he had made over the previous two years, including

the adoption of a four-year term for the governor, the appointment of department heads by the governor for terms coincident with his own, elimination of the executive council, a reduction in the number of plural bodies which administer the day-to-day affairs of departments, and consolidation of the 29 major operating agencies and the more than 80 other agencies of state government into a reasonable number of departments.

Id. at 24.

139. Forty-Ninth Governors Conference, Resolution III (July 26, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 125-1).

140. See Governors' Conference Joint Federal-State Action Committee, Position Paper on Municipal Waste Treatment Construction Grants (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 125-2).

141. *Id.* at 1.

the Federal Water Pollution Control Act of 1956, passed by Congress. The rationale for the proposal was that "local waste treatment facilities are primarily a local concern and their construction should be primarily a local or State financial responsibility."¹⁴² Governor Muskie read this proposal and the October 1957 summary of the Governors' Conference Special Committee on Federal-State Relations that agreed with the position paper; the proposal concluded "that the financing of municipal waste treatment plants is a State-local responsibility and that Federal grants for the construction of such plants should cease."¹⁴³ Muskie, in response, wrote a letter to Frank Bane, the Secretary of the Governors' Conference, objecting to the thrust of these proposals. The pertinent language of his communication, presaging Muskie's concern for intergovernmental relations that he would later pursue as United States Senator,¹⁴⁴ stated:

I appreciate the fact that the report is only a summary and that it does not include data which the Committee studied. However, I am disturbed that the summary places emphasis upon the withdrawal of the federal government from various areas of service and gives only incidental attention to the problem of the ability of the states to pick up the load which would be dumped by the federal government. Before commenting finally, I would want more specific information as to the gap between the additional revenues which would be made available to the states and the cost of the additional burdens. The states which supply the markets for more highly industrialized states are not in a position to reach sources of revenue which are available to the federal government and which reflect the greater prosperity of the latter states.

I would like to make particular reference to the proposal that the financing of municipal waste treatment plants be returned to the states wholly.¹⁴⁵

Governor Muskie was well aware, in making the above criticism regarding municipal sewage grants, of the Maine state government's burdens in meeting its responsibilities under the then recently promulgated state program for assisting "localities in meeting local costs of projects eligible for construction grants under the Federal Water Pollution Control Act of 1956."¹⁴⁶

Governor Muskie also received various informal reports and communications about Maine's pollution problems during 1957. Muskie consistently made it a practice to write back and answer the sender. By way of illustration, Muskie was told by an out-of-state citizen with an interest in Maine's pollution problems that Muskie was "in an ideal position to use the power and influence of [his] office to start a thorough clean-up of the rivers, shores and lakes for the good of [Maine's]

142. *Id.* at 3.

143. See Governors' Conference Joint Federal-State Action Committee, Summary of Chicago Meeting of the Joint Federal-State Action Committee (Oct. 3-4, 1957) at 1 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 125-3).

144. See generally Blomquist, *supra* note 5, at 11 (describing Senator Muskie's interest in intergovernmental issues).

145. Letter from Governor Edmund S. Muskie to Frank Bane, Secretary, Governor's Conference (Nov. 4, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 125-3).

146. See COUNCIL OF STATE GOVERNMENTS, STATE WATER LEGISLATION 1956 AND 1957 at 3 (Feb. 1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 172-11).

home folks as well as greater attractiveness to vacationers and sportsmen from many other areas";¹⁴⁷ informed by a Michigan businessman with a Maine resort property that the water pollution near his property in Brunswick, Maine was "horrible";¹⁴⁸ told by a constituent of Gardiner, Maine that "it took . . . [three] days to get rid of the offensive odor" after he took his boat out of the Kennebec River;¹⁴⁹ informed by the Conservation Director of the Izaak Walton League of America that the federal Water Pollution Control Act of 1956 grants-in-aid program for water sewage facilities was "a splendid example of the quick progress possible under a voluntary and cooperative venture between local communities, the States and the Federal government" with Maine having had three projects approved during 1956 with total costs of "\$980,230 with a Federal contribution of \$294,069";¹⁵⁰ and provided with a memorandum from the Water Resources Council, Inc. about its "National Clean Streams Program," which purported to be "an incentive award program which will bring about stream pollution abatement voluntarily."¹⁵¹

Governor Muskie gleaned much interesting factual information during 1957 from the *Sixth Annual Report of the Maine Water Improvement Commission*,¹⁵² including the following:

Technical personnel of the Commission had, during the survey period, conducted tidewater surveys along the coast of Maine and inland waterway surveys on tributaries of the Lower Androscoggin River, portions of the Upper Kennebec Basin, the Aroostook River Basin, tributaries of the St. John River, the Piscataquis River Basin, and certain portions of the Penobscot River tributaries;¹⁵³

147. See Letter from Gordon F. Holland to Governor Edmund S. Muskie (Feb. 12, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11). Muskie's response indicated that water pollution was "a problem which [was] . . . before the Legislature in a controversial way" and that it was "impossible to predict at the moment what action will be taken." Letter from Governor Edmund S. Muskie to Gordon F. Holland (Feb. 26, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11).

148. See Letter from W. N. Mayo to Governor Edmund S. Muskie (May 21, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11). Muskie replied:

With respect to pollution, only a small percentage of our waters are in the condition in which you observed in Brunswick. Nevertheless, we are conscious of the fact that we must make progress toward cleaning up even this small percentage. Unfortunately, as you have experienced it in Michigan, it is not always possible to make progress as fast as we would like. Every session of the Legislature finds this subject high on the agenda for legislative consideration. Always we take at least a little step forward and it is my hope that the pace will quicken.

Letter from Governor Edmund S. Muskie to W.N. Mayo (June 26, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11).

149. See Letter from Dr. A.T. Coster to Governor Edmund S. Muskie 2 (July 30, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11).

150. See Letter from J.W. Penfold, Conservation Director, Izaak Walton League of America, Inc. to Governor Edmund S. Muskie (Nov. 29, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11).

151. See Letter from Albin Dearing, Acting Chairman, Water Resources Council, Inc. to Governor Edmund S. Muskie (Aug. 30, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 139-11).

152. MAINE WATER IMPROVEMENT COMMISSION, *SIXTH ANNUAL REPORT* (1956-57) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 194-13).

153. See *id.* at 1.

Water classification hearings had been held during the survey period regarding eighteen separate streams and watershed segments in Maine;¹⁵⁴

Thirteen licenses had been granted during the survey period for water discharges;¹⁵⁵

"A total of twenty-six special investigations including complaint investigations were reported";¹⁵⁶ and

the "future program of the Commission" would consist of: (1) "[e]xtension of classification work toward eventually classifying all waters within the state"; (2) "[e]nforcement of pollution control statutes"; (3) "[f]orwarding of limited research program[s]"; (4) "[a]ssembly and publication, insofar as budget and personnel permit, of informational material in the field of surface water sanitation"; (5) "[p]romotion of municipal treatment works construction on the basis of federal grants and state grants"; and (6) "[p]romotion of municipal planning in the field of sewerage and sewage works."¹⁵⁷

In addition, Governor Muskie also received several insightful pieces of information regarding water pollution problems of the St. Croix River in the September 1957 *Report on the Preliminary Investigations of the International Joint Commission*¹⁵⁸ and its *Supplementary Statement*¹⁵⁹ issued in December 1957, performed by the International St. Croix River Engineering Board. First, he received details of the topography, geology and history of development of the St. Croix River watershed area.¹⁶⁰ Second, Muskie learned valuable information regarding "power investigations" pertaining to the "[p]ublic demand for electricity" in basin area.¹⁶¹ Third, he was informed about the particulars of "fish and wildlife investigations" along the St. Croix River, including problems from "obstructions of water levels" and "estuarine fisheries."¹⁶² Fourth, Governor Muskie learned of extensive "pollution investigations" along the St. Croix including sources of pollution, chemical conditions, physical conditions, pollution control plans, and future objectives for boundary water quality control.¹⁶³ Fifth, the report also gave Muskie important information regarding the natural resources development potentialities of the St. Croix River.¹⁶⁴

154. *See id.* at 1-2.

155. *See id.* at 2.

156. *Id.* at 3.

157. *See id.*

158. INTERNATIONAL ST. CROIX RIVER ENGINEERING BOARD, WATER RESOURCES OF THE ST. CROIX RIVER BASIN: MAINE AND NEW BRUNSWICK—REPORT ON THE PRELIMINARY INVESTIGATIONS TO THE INTERNATIONAL JOINT COMMISSION (Sept. 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 231-5) [hereinafter September 1957 St. Croix Report].

159. INTERNATIONAL ST. CROIX RIVER ENGINEERING BOARD, WATER RESOURCES OF THE ST. CROIX RIVER BASIN: MAINE AND NEW BRUNSWICK—REPORT ON THE PRELIMINARY INVESTIGATIONS TO THE INTERNATIONAL JOINT COMMISSION-SUPPLEMENTARY STATEMENT (Dec. 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 231-5) (9 pages including cover).

160. *See* September 1957 St. Croix Report, *supra* note 156, at 11-15.

161. *See id.* at 24-32.

162. *See id.* at 33-40.

163. *See id.* at 41-47.

164. *See id.* at 50-56.

2. 1958

During the final full year of his tenure as Governor of Maine, Muskie continued to receive an assortment of pollution-related information, while he continued to communicate with a number of persons regarding this broad subject. Thus, Governor Muskie was provided, for instance, with frequent written briefings by the New England Interstate Water Pollution Control Commission regarding water pollution abatement activities in the New England region including such issues as sewage plant construction grants under federal law, specific pollution reduction activities along Maine's Androscoggin River, pending proposed state water supply and pollution legislation,¹⁶⁵ and a special report entitled *Tannery Wastes: Pollution Sources and Methods of Treatment*.¹⁶⁶ Moreover, as part of the Executive Council of the Governor's Conference, Muskie helped to pass a 1958 air pollution resolution that "urge[d] the Governor and legislature of each state to give careful consideration to the report [on air pollution prepared by the Council of State Governments in 1958] . . . and to take effective action to meet this growing problem in accordance with the state's particular needs."¹⁶⁷ In addition, perhaps the most interesting constituent mail that Governor Muskie received during the year regarding pollution problems was a letter from a man from Alna, Maine, enclosing a poem "written by a friend of mine concerning the pollution of the Kennebec River."¹⁶⁸ The poem reads:

"Maine Speaks"

Come take back your slime from my rivers,
For its poison has sickened and slain
The fish, the birds and beasts of the woods;
Oh, let me be *clean* once again!

Once, they were beautiful rivers,
When the Abenakis played
Through my waters sweet, in the noonday heat,
Or romped on the banks in the shade.

They flowed through my forest dark and cool,
Through my fields of greens and reds
That were flecked with orange and violet,
While white plumes danced on their heads.

165. See, e.g., NEWSLETTER (New England Water Pollution Control Commission) May 1958 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 186-6); NEW ENGLAND POLLUTION CONTROL COMMISSION, TENTH ANNUAL REPORT (1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 186-6).

166. JOSEPH W. MASSELLI, et al., NEW ENGLAND WATER POLLUTION CONTROL COMMISSION, TANNERY WASTES: POLLUTION SOURCES AND METHODS OF TREATMENT (1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 186-6).

167. See *Resolutions Adopted by the Governors' Conference, 50th Annual Meeting*, 31 STATE GOV'T 161, 164 (1958).

168. See Letter from Emin W. Hassan to Governor Edmund S. Muskie (May 16, 1958) (enclosing Poem by Ralph L. McKay) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 186-6).

The trout and the salmon hatched and grew;
 The pike and the pickerel wed;
 While down in my marshy fens, they spawned;
 The hornpout lolled in each bed.

And lovers met, in the trysting hours,
 While the Tarrantines plotted for more
 Of the Abenaki's land, who lived in peace,
 West of my Kennebec shore.

For theirs was the lush pine forests;
 Theirs was the moose and the deer;
 Theirs the mink and the beaver;
 In my rivers sweet and clear.

All this has passed. The pale-face came,
 From their lands beyond the sea;
 And if you'll but look, at my sick, sad face,
 You will *know* what they did to me.

You can smell my rivers for half a mile;
 You can see my sores—with shame—
 I tell you this, oh lad and miss,
 Your Congressmen are to blame!

Bring back my black bear and my deer,
 Let the mink and the otter play—
 While the moon rides high, in the midnight sky,
 Or hide through my swamps in the day.

Clean out the scum from my waters,
 So that bird and beast and man
 Can quench their thirst, as they did at first,
Before this pollution began.

*Ralph L. McKay*¹⁶⁹

C. Environmental Policy Roots: Gubernatorial Natural Resources Information and Action

1. 1957

Governor Muskie continued to receive and respond to a variety of information regarding natural resources during 1957. A selective portion of this material is discussed below.

169. Ralph L. McKay, *Maine Speaks* (date unknown) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 186-6).

Maine Citizens' Committee's Rejection of New Department of Natural Resources

The Survey of State Government, proposed by Governor Muskie in his First Inaugural Address in 1955,¹⁷⁰ finally came to fruition in early 1957 with the publication of its findings and recommendations.¹⁷¹ The members of the Maine Citizens Committee, which Muskie had appointed, consisted of government officials, labor union leaders, businessmen, conservationists, professors from Maine colleges and universities, attorneys, public school educators, journalists, and a member of the League of Women Voters, among others.¹⁷² In addition to other issues,¹⁷³ the Maine Citizens Committee recommended that a new Department of Natural Resources—raised as a possibility, in analogous terms, as a new “Department of Conservation” in Muskie’s 1955 Inaugural Address¹⁷⁴—not be formed. The Maine Citizens Committee’s report, in this regard, stated:

Rather than the creation of a proposed Department of Natural Resources, the Committee recommends that the Governor consider establishing by executive order a Natural Resource Council representing departments and agencies linked to Maine’s natural resources, charged with discussing policies and activities of the agencies concerned, and acting as a liaison body with the Governor.¹⁷⁵

To thank the Committee for its report, Governor Muskie delivered a speech before the Maine Citizens Committee on the Survey of State Government on January 29, 1957.¹⁷⁶ Referring, in part, by implication, to the Committee’s recommendation not to propose a new Maine Department of Natural Resources, Governor Muskie graciously and eloquently noted:

I have followed your recommendations with a great deal of interest. It is a matter of public record that I have a different opinion than a majority of this committee relative to some of the issues which you have considered. On appropriate occasions, I will probably continue to express those opinions and the reasoning which led me to them. However, I recognize that it has been your effort to present a comprehensive report establishing a base on which as many citizens and groups as possible can stand I applaud the process and the use which you have made of it. I hope that we shall continue to use it to make even more progress.¹⁷⁷

Conservation Education

With regard to other natural resources information which he obtained during 1957, Governor Muskie received, in April, a reprint of an article published in *Maine*

170. See Muskie, *supra* note 23; see also *supra* text accompanying note 46.

171. See MAINE CITIZENS COMMITTEE, SURVEY OF STATE GOVERNMENT (1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 143-3).

172. See *id.* at 2.

173. One of the more important issues collateral to natural resources policy was the Maine Citizens Committee Proposal “that the Legislature submit to Maine voters a proposed amendment to the Constitution providing a four year term for Governor.” See *id.* at 5.

174. See Muskie, *supra* note 23; see also *supra* text accompanying notes 46-48.

175. MAINE CITIZENS COMMITTEE, SURVEY OF STATE GOVERNMENT (1957) at 8 (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 143-3).

176. See Governor Edmund S. Muskie, Address Before the Maine Citizens Committee on the Survey of State Government (Jan. 29, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 172-1).

177. *Id.* at 2.

Teacher, written by an official of Maine's Department of Inland Fisheries and Game, about a state conservation education program that Muskie had initiated the previous fall.¹⁷⁸ The objective of Muskie's conservation education initiative was explained in the article as attempting to inculcate in public school children in Maine the values and knowledge of "wise resource-use."¹⁷⁹ As a foundation for that effort, Muskie's initiative contemplated a series of teacher workshops to be taught by state and federal public employees affiliated with natural resources related agencies.¹⁸⁰

Fisheries

During the latter part of the year, Muskie received a report about the 1957 activities of Maine's Department of Sea and Shore Fisheries from his newly-appointed Commissioner.¹⁸¹ The report—detailing the final six months of 1957—indicated, among other things, that:

The Department now consists of four divisions: Administration, Promotion, Research and Enforcement. It is organized so that each division is, at all times, aware of what is being done by the others; and all programs are planned in order to extend the greatest amount of services to the entire industry.

....

A major project of the Research Division is contract work on an economic-biological study of the Maine fishing industry with particular reference to lobster, herring and shellfish

....

At the insistence of the U.S. Public Health Service, the Maine Department of Agriculture and research personnel of the Department of Sea and Shore Fisheries

178. See Memorandum from Larry Stuart, Director, Conservation Education Program, Department of Inland Fisheries, to Governor Edmund S. Muskie (Apr. 2, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 119-12).

179. See Larry Stuart, *Conservation Education*, MAINE TEACHER, Mar. 1957, at 24, 40.

180. See *id.* at 40. Governor Muskie also received a copy of the Interim Report of the Theodore Roosevelt Centennial Commission, S. Doc. No. 85-53 (1957). See Letter from Hermann Hagedorn, Director, Theodore Roosevelt Centennial Commission, to Governor Edmund S. Muskie (Nov. 12, 1957) (enclosing Interim Report) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 119-12). This communication, in part, dealt with a commemoration of Teddy Roosevelt's contribution to the American conservation movement and the desire by the Centennial Commission to remind the American people of these contributions.

181. See Letter from Ronald W. Green, Commissioner, Maine Department of Sea and Shore Fisheries, to Governor Edmund S. Muskie (Mar. 1, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 160-1) ("This is to formally thank you for the confidence and trust you have shown in appointing me to the position of Commissioner of Sea and Shore Fisheries."). See also Letter from Governor Edmund S. Muskie to Ronald W. Green, Commissioner, Maine Department of Sea and Shore Fisheries, (Mar. 5, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 160-1) ("I have the utmost confidence in your ability to serve in your new position with credit to yourself and the State."). See also Memorandum from Ronald W. Green, Commissioner, Maine Department of Sea and Shore Fisheries, to Governor Edmund S. Muskie (Dec. 10, 1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 142-1) (enclosing Department of Sea and Shore Fisheries Report, December 1957).

have completed approximately five-sixths of the open clam and quahog growing areas along the coast. Bacterial surveys of closed areas have also been continued.

A general increase in coastal pollution is making it more difficult to open marginal and moderately polluted areas on only a seasonal basis. It can be anticipated that more growing areas [for clams and quahogs] will have to be restricted in the next several years unless efforts to reduce contamination are made.

A cooperative smelt disease study is being carried on with the U.S. Fish and Wildlife Service, and the general biological investigation of the Atlantic smelt has been continued

Cooperative work with the Salmon Commission and the U.S. Fish and Wildlife Service has been continued, particularly on the Sheepscot River

Cooperative work with the industry and coastal communities to introduce, improve and manage alewife runs has been continued. Production of alewives has continued to increase as it has each year beginning four years after the Department commenced this work. General stream improvement efforts have been carried on cooperatively with coastal towns and the industry.

Modification of the haddock mesh regulation established by the Northwest Atlantic Fisheries became effective this fall. This modification was agreed upon by the Ten-Nation Conference as a result of a study made by Departmental research personnel of Maine's small and medium dragger fleet.¹⁸²

Moreover, the report for 1957 received by Governor Muskie from the Maine Department of Inland Fisheries and Game provided the following pertinent natural resources information:

Many of our fishery problems in Maine revolve around the difficulty of adequate fish passage. Efforts to inform the public on the importance of fishways are becoming more and more effective

The Rangeley drainage plan has been implemented with construction of the fishway and trapping has already begun to determine exactly the numbers and migration patterns of the salmon and trout utilizing the fish passage facilities.

The Engineering Division is presently working on a fishway to pass Atlantic salmon and alewives over Saco Falls, a natural obstruction of the Pleasant River in Columbia Falls

The importance of tributary streams to the brook trout fishery is being measured at Socatean Stream, a tributary of Moosehead Lake. Over 1600 brook trout have been examined and tagged.¹⁸³

. . . .

Value of [river management studies distributed by the Department during 1957] is emphasized in several critical areas. The St. Croix River potential is presently

182. DEPARTMENT OF SEA AND SHORE FISHERIES, REPORT TO THE ADVISORY COUNCIL 1- 5 (1957) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 142-1).

183. See Fishery Research and Management Division, Maine Department of Inland Fisheries and Game, Annual Report 1957-58, at 2 (1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 179-8).

under consideration by the International Joint Commission and a public hearing is planned Potential of the St. Croix to produce Atlantic salmon, trout, alewives, and shad is described in the river management study.

Possible construction of the Rankin Rapids Dam on the St. John River poses several threats to the Allagash drainage and the Fish River Chain of Lakes. Surveys of the St. John and Allagash and studies of the landlocked salmon populations in the Fish River Chain of Lakes while limited as regards attaching a dollar sign to the fishery resource plainly demonstrate the ill effects of proposed construction.

Ninety-six additional lake studies were completed and published in time for the spring fishing. Seven hundred and seventy-nine Maine lakes have now been studied. Accurate information is available on their physical characteristics, fish populations, and the management plans to provide the best fishing.¹⁸⁴

Water Resources

In 1957, Governor Muskie received information from the Council of State Governments regarding state compilations and scientific studies of various waterways; the report detailed an explosion of activity on the state level and focused on such issues as surface and ground water supplies, water quality, and present and future water use.¹⁸⁵

2. 1958

In his final full year as Governor of Maine, Muskie continued to receive and to respond to a wide assortment of communications dealing with natural resources concerns. The more interesting and important communications are discussed below.

Natural Resources—in General

A staff memorandum that Muskie received in advance of his attendance at the National Governors' Conference was entitled *Natural Resources*.¹⁸⁶ Indeed, "natural resources" was one of four "major topics" that the Governors concentrated on at their May, 1958 meeting.¹⁸⁷

The 1958 Governors' Conference was the fiftieth such annual gubernatorial conference; as the staff memorandum on *Natural Resources* pointed out, the first Governors' Conference—convened by President Theodore Roosevelt—was held in 1908 to specifically address conservation of the nation's natural resources.¹⁸⁸

184. See *id.* at 1.

185. See Council of State Governments (Reports on Water Resources 1956 and 1957: An Annotated Bibliography of Recent Official Reports of State Agencies) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 120-6).

186. Council of State Governments, *Natural Resources: A Memorandum Prepared for the Governors' Conference* (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 176-9).

187. See Letter from Frank Bane, Secretary, Council on State Governments to "All Governors" (Apr. 23, 1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 176-4). The other "major topics" of concern at the 1958 Governors' Conference were "highway safety," "fiscal operation and control," and "the economic problem." See *id.*

188. Council on State Governments, *supra* note 185, at 1.

An opening paragraph of the staff memorandum suggested that "[i]t is appropriate that on the fiftieth anniversary of the first Governors' Conference the subject of natural resources should again be on the agenda."¹⁸⁹ This was the case because:

The wise use and conservation of our resources remain matters of major concern to the Governors and to the states. Broadly, the states' interest in natural resources has come to include soil conservation, forestry programs, the protection of wild life, mineral resources, and water resources.¹⁹⁰

The body of the staff memorandum on *Natural Resources* provided Governor Muskie with abundant food for thought in comparing the experience of governing his own state's natural resources problems with the general experience of other states. Among the specific issues discussed were the right to use water, federal-state relations in water resources policy, water development and control projects (and state-federal relationships), potential intergovernmental solutions to water resources problems, mineral resources policy, and resource administrative organization concerns within state government in governing natural resources.¹⁹¹ On this latter subject, the memorandum pointed out that "[m]ore than half the states have established agencies bearing the title of department or board of conservation of natural resources."¹⁹²

Water Resources

A convincing piece of evidence that Governor Muskie vitally cared about natural resources and pollution issues, absorbed a great deal of information on these subjects, and interacted with purveyors of this information is an archive record of a reprint of a *Harvard Business Review* (*HBR*) article by Gilbert F. White, sent to Muskie in 1958 by the *HBR*'s Editor,¹⁹³ and Muskie's response and intellectual reaction to the article.¹⁹⁴ White's article discussed "need vs. supply," predicted future public use, predicted future industrial use, "trouble spots" (such as "ground water mining," "heavy pollution," or "poor planning"), technological changes, and regional differences. The author—despite looming resources problems—concluded in rather rosy terms that the future of America's water supply was bright.

Governor Muskie wrote the following critique of the article in his letter reply to the *HBR* Editor:

Thank you very much for your letter of February 26, 1958, and the enclosed reprint I found it most interesting and, I must say [I was] somewhat surprised by the conclusion that the water supply for the nation as a whole is adequate. I was happy to note that, notwithstanding this optimistic conclusion, his emphasis was on the importance of making wise use of the supply available.¹⁹⁵

189. *Id.*

190. *Id.*

181. *See id.* at 2-10.

192. *Id.* at 10.

193. *See* Letter from Edward C. Bursk, Editor, *Harvard Business Review* to Governor Edmund S. Muskie (Feb. 26, 1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 195-1 (enclosing reprint of Gilbert F. White, *The Facts About Our Water Supply*, March-April (1958), *Harvard Business Review*)).

194. *See* Letter from Governor Edmund S. Muskie to Edward C. Bursk (Mar. 3, 1958) (on file with the Edmund S. Muskie Archives, Bates College, Governor Series, Box 195-1). *Gubernatorial Papers* (195-1), *supra*.

195. *Id.*

IV. THE ONCE AND FUTURE SENATOR: POSSIBLE GUBERNATORIAL EXPERIENTIAL INFLUENCES ON SENATOR MUSKIE'S ENVIRONMENTAL THINKING

Muskie's communications as Governor of Maine on pollution and natural resources matters introduced him to the complexity of attempting to legally order and govern the environment.¹⁹⁶ Muskie learned, while Governor of Maine, that economic development was intimately related to a state's natural resources base, which was, in turn, linked to both its water quantity and water quality; economic development and natural resources were also linked in complicated ways to human resources which were determined by educational opportunities available to the citizenry.

As part of his natural curiosity about "the facts," Muskie began a habit, after he took his first oath of office as Governor of Maine in 1955, that would continue through his period of major public service as a United States Senator and the greatest environmental legislator in the nation's history: relentlessly absorbing natural resources and pollution-related statistics and descriptions of pollution and natural resources problems and opportunities; reading scientific material concerning the natural world and human-induced pollution problems; and learning about the potential that human technology created for making the environment a cleaner place.

Being Governor of Maine before he became a United States Senator impressed upon Muskie the need for honest, bipartisan compromise. In this regard, Muskie came to realize as Governor that jobs and a clean environment, while necessarily interrelated in most respects, had to be carefully balanced in other respects. For example, Muskie probably wanted to achieve more aggressive and substantial state water pollution legislation in Maine, but he came to realize that the awkward processes of state government—with the Water Improvement Commission conducting its deliberate and plodding surveys and industrial concerns like the paper and tanning industries complaining about too strict enforcement of environmental quality laws—were necessary predicates to workable environmental policy in a free society. Another example of Muskie's gubernatorial insight about the need for honest compromise in fashioning environmental laws, which he probably brought with him to the United States Senate, was his frustrated First Inaugural Address proposal for a consolidated natural resources or conservation department (to govern the disparate fisheries, wildlife, forestry, parks, and other fragmented state agencies). He came to understand, in graciously accepting the negative reaction of the Maine Citizens Committee's to his proposal for a consolidated natural resources agency, that lawmakers cannot move faster than the people, even if the people are deficient in their logic or acumen.

His gubernatorial natural resources and pollution policy experiences also connected Muskie with the intricate and problematic nature of American federalism and its impact on state and local governments. This was to profoundly shape the way Muskie would go about legislating on environmental topics—from clean water to clean air to solid wastes—as a United States Senator and as Chair of the Senate's Public Works Committee's Subcommittee on Air and Water Pollution.

196. Cf. Robert F. Blomquist, *The Beauty of Complexity*, (Review Essay), 39 HASTINGS L.J. 555 (1988) (reviewing WILLIAM H. ROGERS, *ENVIRONMENTAL LAW: AIR AND WATER* (1986)) (exploring the complex nature of environmental issues).

Muskie came to realize as a result of the insights gained from his years as Governor of Maine that federal programs—no matter how well intentioned—can have burdensome and problematic impacts on the efficient functioning of states and municipalities.

As Governor, Muskie strengthened his personal qualities of patience, perseverance, flexibility, and synthesis which were to prove invaluable and essential in his future role as the Senate's leading environmental legislator.

As Governor, Muskie got accustomed to listening to the comments of his constituents, experts on various natural resource and pollution topics, staff of the Council of the States, his colleagues at the National Governors' Association, and other interested citizens. This sensitive "ear" was to be instrumental in planning and implementing hearings, and investigations on present or potential federal environmental legislation as a United States Senator. This, in turn, helped to establish a firm foundation for Muskie's environmental legislative program while in the Senate.

V. CONCLUSION

In this article I have attempted to suggest, by a judicious and selective look at Edmund S. Muskie's written record while Governor of Maine, that what was "past" in Muskie's career as a major public official was "prologue" to his workways, thoughtways, and sensibilities as a United States Senator whose chief legacy to the nation was his extraordinary achievements as an environmental legislator. Glimmers of his nascent interest in "things environmental" are apparent in reading through his gubernatorial archives. Indeed, patterns of communication and power-sharing that he exhibited as a United States Senator, immersed in crafting and passing environmental laws for the nation, are also detectable in bright sparkles embedded in his four year, two term, record as Governor of Maine.