

# Friends of Merrymeeting Bay

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**For Immediate Release: 6-16-09**

## **Citizen Salmon Petition & Lawsuit Successful!**

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6/16//09----The National Marine Fisheries Service [NMFS] and US Fish & Wildlife Service [USFWS] announced late Monday their decision to redefine the endangered Gulf of Maine population of Atlantic salmon to include fish found in the Kennebec, Androscoggin and Penobscot Rivers. The decision followed a 12-month multi-agency finding or Status Review which supported the science put forth in a citizen-filed Endangered Species Act petition. The petition, filed in 2005 requested the 2000 listing of salmon in small eastern Maine rivers be expanded to include Kennebec River salmon.

“This is great news” said Doug Watts, the president of Friends of Kennebec Salmon. “The decision should send a strong message that dams will need to improve their fish passage facilities making them both safe and effective for fish moving in both directions. I only hope the decision doesn’t come too late.”

The ESA listing is expected to be published in the Federal Register Thursday or Friday and will include an area designated as Critical Habitat covering salmon from the original 2000 decision as well as the decision announced yesterday. Critical Habitat provides another layer of protection for endangered species only when they may be affected by projects requiring federal licenses.

This decision comes in large part from pressure brought to bear by Doug Watts, Tim Watts, Friends of Merrymeeting Bay (FOMB) and the Maine Toxics Action Coalition in their 2005 citizen ESA petition to list the Kennebec Atlantic salmon and from a 2008 lawsuit filed in federal court by FOMB, Doug Watts and the Center for Biological Diversity (CBD) to force the listing decision which was 2 years overdue in spite of support from the federal Status Review of Gulf of Maine salmon.

“Critical habitat has a proven record of aiding the recovery of endangered species,” said Mollie Matteson, Northeast conservation advocate from the Center for Biological Diversity. “We are pleased that significant habitat for the critically endangered Atlantic salmon will finally be protected, although there remain glaring omissions in what the Services have put forward. Critical habitat as we have seen designated thus far only on a general map, needs to be strengthened to include unoccupied rivers and areas above dams where salmon can be restored in the future. Still, with the protections of the Endangered Species Act now extended to Atlantic

salmon in the Kennebec, Androscoggin, and Penobscot Rivers, this iconic species has a fighting chance of recovery.”

Concern over anadromous fish restoration on the Kennebec River and Merrymeeting Bay is nothing new. Section. 4. of the 1818 Massachusetts Laws, Chapter CXXI contains: *"An Act in addition to the several acts now in force for the preservation of Salmon, Shad and Alewives within the Counties of Cumberland, Lincoln, Kennebec and Oxford,"*

Penalties were described for those who would interfere with the fishery: *"Be it further enacted, that every person who shall drift or drag any net or seine in the waters of Kennebec River, at Merry-meeting bay, or in the Amarekoggin River, emptying into the same, so as to scrape the bottom, disturb or destroy any of the spawn or young of the salmon, shad or alewives, at any season of the year, he or they, so offending, shall forfeit and pay a fine of ten dollars for each and every offence, and shall moreover forfeit the net or seine and boat so used, to be disposed of according to the law passed on the twenty-second day of February, seventeen hundred ninety-four."*

Two of the three factors most detrimental to salmon recovery are dam related according to the status review and ESA proposal. Many dams block upstream fish passage and cause turbine mortality during downstream passage resulting in direct and adverse impacts to salmon populations. Policies and regulations around dams and licenses (many as long as 50 years) are also in large part to blame for the decline in salmon. FOMB and Watts have been actively engaged in the legislature, before the Board of Environmental Protection and state courts in recent years advocating for immediate safe and effective migratory fish passage for salmon, American eels and other diadromous species (those that need time in salt and fresh water to complete their life cycles).

The good news for migratory fish activists followed surprise news a week ago that MeTidal, a division of Oceana Energy had filed a request with the Federal Energy Regulatory Commission [FERC] to surrender their Preliminary Permit for a proposed tidal energy project at the Chops, a 280 yard chokepoint in the 10,000 square mile Merrymeeting Bay watershed.

Ed Friedman, Chairman of Friends of Merrymeeting Bay, the only group to oppose the Chops project on environmental grounds was happy this week to hear news of the salmon listing. "With a very strong Status Review, the Services may have in due course listed salmon on their own initiative," said Friedman "but there is little doubt a push such as we all provided with our petition and lawsuit, helped move this forward in a more timely manner. There is an interesting and troubling dichotomy between the ESA and Critical Habitat, he added. The former must be based only on science while Critical Habitat can include consideration of economic factors. The end result unfortunately can be that we list a species close to extinction and then deny that species access to the very historical habitat they need to survive."

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