

# **Friends of Merrymeeting Bay Friends of Kennebec Salmon**

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## **Local Groups Put Androscoggin Dam Owners on Notice: Killing Must Stop**

Augusta, ME- On Friday, Friends of Kennebec Salmon, Friends of Merrymeeting Bay, Ed Friedman and Douglas Watts submitted a sixty-day notice of intent to sue three dam owners on the lower Androscoggin River for illegal “take” of Atlantic salmon protected under the Endangered Species Act (ESA).

Six weeks earlier, the same parties filed similar notices with lower Kennebec River dam owners for violating Atlantic salmon and American shad provisions of their Clean Water Act (CWA) licenses. Under citizen suit provisions of both ESA and CWA, sixty-day notices are a requirement meant to give all parties time to come to some resolution.

Section 9 of the ESA prohibits the “taking” of any endangered species. The Act defines the term “take” to include “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

The ESA defines “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”

The term “harm” is defined as “an act which actually kills or injures wildlife, [which] . . . may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.”

Douglas Watts, President of The Friends of Kennebec Salmon wrote in the letter: “We believe credible evidence already exists which shows your dams are now causing a 'take' of Atlantic salmon under the ESA by failing to provide them with safe and effective downstream passage around the turbines of your dams.”

Records show the downstream fish passage facility at Brunswick consisting mainly of an 18" pipe located between two turbines has never been tested for effectiveness. Fish passage studies at Pejepscot Dam in 1996 showed bypass weirs ineffective at preventing turbine entrainment of young alewives. In fact, 34% of the alewives at Pejepscot ended up passing through the turbines. Worumbo Dam in Lisbon Falls has never conducted downstream fish passage effectiveness studies for Atlantic salmon but several studies on juvenile alewives in the 1990's failed to produce any meaningful data.

"It is well accepted in the scientific literature that Atlantic salmon and other diadromous fish species are frequently killed or injured when forced to migrate through dam turbines." said Ed Friedman, chairman of Friends of Merrymeeting Bay. "Turbine mortality tends to increase as the body length of the fish increases. For this reason, large-bodied fish such as adult Atlantic salmon and American eel are particularly vulnerable to mortality and injury in dam turbines. Successful passage facilities prevent migrating fish from accessing turbines and guide them instead through bypasses in the dams" he added.

In stark contrast to the 66% efficiency rate at excluding alewives from the Pejepscot turbines, a new draft document issued jointly in August by NOAA, USFWS, Maine DMR and the Penobscot Indian Nation, titled "Atlantic Salmon Recovery Framework: August 2010 Draft," states: "In order for habitat to be considered accessible, it must be in an area where .... Anthropogenic barriers have the following characteristics: Cumulative downstream fish passage efficiencies of all barriers are 95 percent or greater unless site-specific demographic studies demonstrate other targets are sufficient to allow for recovery ..."

"There is no credible evidence showing the existing downstream facilities at the three Androscoggin River dams meet this performance standard", said Watts, "while Section 10 of the ESA allows for incidental take permits (ITP's), the dam owners have requested they be allowed multi-year studies before beginning the permit application process. Unfortunately, the few remaining salmon don't share this schedule."

Kathleen McGee, coordinator for Friends of Merrymeeting Bay's Healthy Rivers/Healthy Gulf initiative made clear the economic benefits of healthy Maine rivers not only in proving direct benefits to fisherman in the Gulf of Maine but also to the tourism industry. "Tourists more than ever drive a significant portion of our economy" she said. "In 2006, tourism brought in 10 billion dollars in sales, and was responsible for 140,000 jobs and 149 million dollars in taxes. People come to Maine for our special environment. Healthy rivers restored to the large migratory fish runs they once had will play a significant role in driving our sustainable economy well into the future."

Expressing the frustration shared by many, Friedman pointed out Atlantic salmon in the Merrymeeting Bay watershed and Gulf of Maine are on the verge of extinction yet dam owners and agencies continue to stall. "Instead of taking the Hippocratic position, first do no harm, it appears dam owners, agencies and universities would prefer to study these fish to death."



Friends of Merrymeeting Bay is a non-profit organization dedicated to preserving through research, advocacy, land conservation and education the ecological, aesthetic, historical, recreational and commercial values of Maine's Merrymeeting Bay and its watershed, which includes the Kennebec and Androscoggin Rivers. The salmon ESA petition, status review and other legal documents may be found in the legal documents section of the "cybrary" on the FOMB web site at [www.friendsofmerrymeetingbay.org](http://www.friendsofmerrymeetingbay.org).

Douglas Watts is a river activist in Augusta, Maine where he founded Friends of Kennebec Salmon. He has worked on historical and legal aspects of indigenous fish

restoration for many years in multiple watersheds of the state. In 2004 with his brother Timothy, Douglas filed a citizen's petition to list the American eel as endangered and in 2005 joining with Friends of Merrymeeting Bay and the Maine Toxics Action Coalition, he authored and filed a successful ESA petition to expand the ESA listing for Atlantic salmon to include those salmon in the industrial Penobscot, Kennebec and Androscoggin Rivers.

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