

Friends of Merrymeeting Bay

P.O. Box 233

Richmond, Me 04357

www.friendsofmerrymeetingbay.org

FOR IMMEDIATE RELEASE

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Contact:

Ed Friedman, Chair, Friends of Merrymeeting Bay, 207-666-3372 edfomb@comcast.net

Doug Watts, Wildlife Photographer, 207-622-1003 info@dougwatts.com

Kathleen McGee, Friends of Merrymeeting Bay, 207-666-3598

Roger Fleming, Earthjustice, 978-846-0612, rfleming@earthjustice.org

Erica Fuller, Earthjustice 508-400-9080 efuller@earthjustice.org

Friends of Merrymeeting Bay Wins St. Croix Alewife Dispute with EPA

EPA Disapproves Maine Fishway Law

RICHMOND, ME – Tuesday the US Environmental Protection Agency ruled a Maine law banning native alewives from living in the St. Croix River violates the U.S. Clean Water Act. In the wake of a lawsuit by Friends of Merrymeeting Bay, Doug Watts and Kathleen McGee against the state of Maine over a law designed to extirpate alewives from the St. Croix, the federal agency sent a letter to Maine’s Attorney General stating the Maine law represents an illegal lowering of water quality the agency cannot and will not approve. These parties’ legal actions asserted Maine and the EPA violated the Clean Water Act by enacting and refusing to strike down a 2008 Maine law eliminating alewife access to their necessary spawning habitat, located above Grand Falls Dam near Princeton.

Maine’s law prevents a native run of 21 million alewives, the largest on Earth, from ever being restored to the St. Croix.

Ed Friedman, Chair of FOMB said: “This is a huge victory not only for all of us plaintiffs but for all Mainers and for the Gulf of Maine. How the Maine AG, Governor and legislature respond will determine if further legal action on our part is needed, but there is legal precedent in a situation like this for the pre-existing bad law to be automatically nullified.”

In a phone call to Roger Fleming, one of the Earthjustice attorneys representing FOMB, Watts and McGee; the EPA noted their decision was in response to the well-written Notice of Intent [NOI] to sue letter received from FOMB and from the decision in a recent Oregon case the NOI cited.

Fleming, praising the EPA decision, noted: “this is a good example of how the ‘citizen suit’ provision of the Clean Water Act should work, with a well-crafted notice letter informing the agency of a problem, and in turn preventing an unnecessary lawsuit. I give

credit to the EPA for their response to our clients' letter and reaching a well-reasoned decision."

Under current law, the Commissioners of Maine Departments of Marine Resources, and Inland Fisheries and Wildlife are directed to eradicate alewives and blueback herring from their historic spawning and nursery habitat in the St. Croix River basin. This is accomplished using stop logs to block the dam's fishway, installed some years ago and paid for by US Fish and Wildlife Service.

In the finding, the EPA states:

"EPA is not aware of any sound scientific rationale for excluding indigenous river herring (or other migratory species) from the St. Croix River....To address EPA's disapproval and protect designated and existing uses, Maine should take appropriate action to authorize passage of river herring to the portions of the St. Croix River above the Grand Falls Dam."

Read the complete finding here:

<http://earthjustice.org/sites/default/files/RiverherringEPAfinding.pdf> or at:
<http://www.friendsofmerrymeetingbay.org/cybrary/#StCroixRiver>

The EPA's decision follows a case earlier this year by FOMB, Watts, and McGee in which U.S. Federal District Court Judge Nancy Torreson dismissed a suit brought by FOMB directed at the State of Maine. In the suit, the plaintiffs challenged the 2008 Alewife law arguing Maine law was preempted by the federal Clean Water Act, which requires EPA approval of changes to state water quality standards. In agreeing to dismiss the suit for the time being, Judge Torreson stated, "The CWA is structured to provide an administrative process for working out any conflicts between a state law and the CWA, and the citizen suit provision provides a safety net for correcting any administrative missteps that might occur along the way. This process must be given a chance to work."

Following Judge Torreson's decision, FOMB filed a 60-day notice of intent to sue the EPA. The Conservation Law Foundation in Portland also filed a notice of its intent to sue following FOMB's suit.

Alewives are ecologically, economically, historically, and culturally important to the St. Croix River basin and the entire Gulf of Maine ecosystem. The St. Croix River once produced the largest population of alewives in New England. Today, however, only a small fraction of that former population is found in a short section of the St. Croix River. Alewives play a keystone role in the river and coastal ocean ecosystem, serving as food for many other species of fish, marine mammals, and birds. They are fished for by commercial and recreational fishermen, and are valuable to fisherman and related coastal economies as bait for lobster and recreational fishermen, and as forage for commercially valuable species like cod, halibut, and tuna.

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