

July 11

EPA orders state: Open St. Croix to alewives

The directive overrules two Maine laws intended to protect other fish species, but environmentalists say the presence of the foragers will benefit ecosystems.

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In a victory for environmentalists, lobstermen and the Passamaquoddy Indians, the U.S. Environmental Protection Agency has directed the state to allow alewives into the St. Croix River.



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Early last month, Bob Bryant, left, and Dale Lolar run past the Grand Falls Flowage created by a dam on the St. Croix River. The two were participating in a 100-mile sacred run relay organized by members of the Passamaquoddy Tribe to bring attention to the plight of alewives, which have been prevented from reaching their spawning habitat because fishways had been closed along the river.

Gregory Rec/Staff Photographer

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The ruling was issued in a July 9 letter to Attorney General William Schneider. In the letter, the federal agency effectively quashed Maine laws passed in 1995 and 2008 that ordered the fishways at Grand Falls Dam on the Maine-New Brunswick border to be closed to alewives, also known as river herring.

The EPA said the laws -- passed largely at the behest of sport camp guides in interior Washington County -- violated the federal Clean Water Act and EPA regulations. "Maine should take appropriate action to authorize passage of river herring to portions of the St. Croix

River above Grand Falls Dam," Stephen Perkins, director of the EPA Office of Ecosystem Protection, wrote to Schneider.

The ruling came a day after publication of [a Maine Sunday Telegram cover story](#) on the heated, 17-year battle over the alewives' access to the river.

The EPA wrote the letter in response to legal action by two separate groups earlier this year. On May 31, the Conservation Law Foundation filed a lawsuit against the agency in an effort to compel it to review and overrule the Maine laws. Another environmental group, the Richmond-based Friends of Merrymeeting Bay, had notified EPA they intended to sue as well.

"It's a good day for the St. Croix and for alewives and people and other critters that depend on them, but this is not done until the state takes the final step, which is repealing the law and allowing the perfectly functioning fish passage to operate," said Sean Mahoney of the Conservation Law Foundation. "It's not a question of building something and hoping (the fish) come. The fish are already here waiting."

The offices of Schneider and [Gov. Paul LePage](#) did not respond to requests for comment Tuesday. Their positions on the issue are not currently known.

The chiefs of the state's Passamaquoddy, Penobscot, Maliseet and Micmac Indian tribes sent a joint letter to LePage on June 21 urging him to support a forthcoming effort to get the Legislature to overturn the law and allow the forage fish to have access to the watershed.

Alewives were effectively shut out of the river from 1825 to 1981, first because of impassable dams, and later because of pollution from lumber and paper mills. But from 1981 to 1987, their annual run grew 13-fold to more than 2.6 million.

In 1995, Augusta lawmakers passed a law that ordered the fishways at Woodland and Grand Falls closed to the fish because of fears that they would harm smallmouth bass populations in the region's lakes and ponds. The St. Croix alewife runs collapsed to just 900 fish in 2002, a decline of 99.7 percent.

In 2008, the Legislature revisited the issue, but ultimately decided only to open the Woodland Dam in Baileyville to the fish, depriving them of an estimated 94 percent of their habitat.

Environmentalists and marine fisheries advocates say restoring the alewife population will benefit both the freshwater and marine ecosystems, because they are a source of food for smallmouth bass, cod and other species. One researcher estimated that if spawning runs were allowed access to the entire watershed, alewives could number more than 20 million, up from just over 31,000 now, with access confined to the lowest stretch of the river south of the Grand Falls Dam.

It is not yet clear whether the LePage administration would have any alternative to complying with the EPA's directive if they disagree with it.

Roger Fleming, an Appleton-based attorney with Washington, D.C.-based Earthjustice who helped file legal motions for the Friends of Merrymeeting Bay, said Maine has little choice but to comply.

"I think the letter is strong and they don't really have any options in this case," Fleming said. "We will do whatever is necessary to make sure they take appropriate action, and if we have to we will go back to court."

In a written statement, the EPA's office of public affairs for New England appeared to signal that the agency's most powerful enforcement cudgel might not be available in this case. The Grand Falls Dam was built prior to passage of the Federal Power Act and thus is not subject to federal licensing under the Clean Water Act.

"EPA's disapproval (of the Maine law) could affect licensing of any new activities on the St. Croix River in the vicinity of the Grand Falls Dam until the situation is rectified," the statement said. "Under present circumstances, however, the Grand Falls Dam does not require any (Clean Water Act) licensing that would be directly affected by EPA's disapproval."

EPA spokesman David Deegan declined Tuesday to elaborate on questions of enforcement.

This year's spring spawning run has ended, so from an ecological perspective there may be no particular rush to open the fishway.

As reported Sunday, the international body charged with resolving disputes on the shared waterway has already developed a plan to manage and monitor the reintroduction of alewives should the Grand Falls Dam be opened to them.

The International Joint Commission's "adaptive management plan" would let the alewives into more of the watershed while carefully monitoring their effects on the ecosystem and taking steps to restrict their numbers if problems arise. It is not clear whether the plan is consistent with the EPA's ruling, although it was developed with the expectation that the agency might take action.

The plan would allow the spawning alewives into the middle watershed, but prevent them from passing the next set of dams at Vanceboro (on the main river) and Grand Lake Stream (on the western branch.) Biologists would carefully monitor the situation, stepping in to close fishways if alewives appeared to cause trouble at certain densities.

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