

## Environmental group awaits lawsuit decision

New Brunswick Telegraph-Journal

Thu Feb 2 2012

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Section: City

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ST. STEPHEN - A Maine environmental group expects a decision soon affecting its lawsuit against the state for blocking anadromous fish from the upper St. Croix River.

On April 22 the Friends of Merrymeeting Bay and others filed a suit in the United States District Court claiming that Maine breached the constitution in 2008 by blocking **alewives** (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*) - collectively called river herring or gaspereau - from spawning beds above the Grand Falls Dam.

On June 30 the plaintiffs moved for summary judgment, the defendants for dismissal.

Judge John A. Woodcock Jr. in Bangor said that he would rule first on the motion for dismissal. Since then the court assigned the case to a new judge, Nancy Torresen in Portland.

In July the Conservation Law Foundation (CLF) based in Boston sent the United States Environmental Protection Agency (EPA) notice of intent to sue this federal agency for not reviewing Maine's law blocking river herring.

With this second lawsuit pending, Torresen held off ruling on the motion in front of her, Friends of Merrymeeting Bay Chairman Friedman in Bowdoinham, Maine, explained in an interview Wednesday.

Counsel in the Friends of Merrymeeting Bay's suit held a telephone conference with the judge Dec. 21.

These lawyers consulted with the EPA's counsel Jan. 5.

"While we are revisiting the issues surrounding the Maine Alewife Law in the context of this NOI (the CLF's notice of intent to sue), the agency has no formal administrative process or timeline involved for reviewing or responding to the NOI.

"We do not anticipate reaching any final conclusions in the near future," Ron Fein, assistant regional counsel in the EPA's New England office, stated in a Jan. 10 email.

This clears the road to Torresen making a decision, Friedman said, "The court knows this has been lingering too long, and the migration season will be coming around fairly soon," he said.

The gaspereau run begins in May. The numbers of these fish coming up the St. Croix River increased after the New Brunswick Power Corp. opened a better fishway at the Milltown Dam at St. Stephen/Calais, Maine, in 1981.

Sport outfitters blame the increased number of gaspereaux for a decline in smallmouth bass, an exotic fish introduced to the St. Croix River in 1877.

The number of **alewives**/blueback herring increased from 169,620 in 1981 to 2,624,700 in 1987 according to the St. Croix International Waterway Commission. In 1995 Maine blocked passage at the Woodland Dam above Milltown.

The official count at Milltown dropped to 900 in 2002. Canada's Department of Fisheries and Oceans began trucking them around Woodland.

Maine opened the Woodland fishway in 2008 allowing the fish to the foot of the Grand Falls Dam, giving them access to two per cent of their traditional spawning grounds.

The 10-year average for gaspereaux at Milltown for 2001 to 2010 is 12,154, the 20-year average for 1991 to 2010 131,710, the commission reports.

Environmental organizations criticize the International Joint Commission, which administers the Boundary Waters Treaty, for not forcing Maine to open the fishways.

The Natural Resources Defence Council based in New York filed a petition Aug. 5 with the United States National Oceanic and Atmospheric Administration (NOAA) to list these two species as threatened or endangered.

The deadline for filing written information on the petition falls on Friday, Feb. 3. The NOAA must make its final decision by Aug. 5, 2012.

Fisheries and Oceans has yet to announce who will count fish at Milltown this year.

The St. Croix International Waterway Commission, established by the New Brunswick and Maine legislatures in 1987, announced last year that it will no longer do this job it did for 21 years.

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